



Social Studies Virtual Learning

AP Government:

U2 Judicial Branch Review (Pt 4)

April 24, 2020



AP Government
Lesson: April 24, 2020

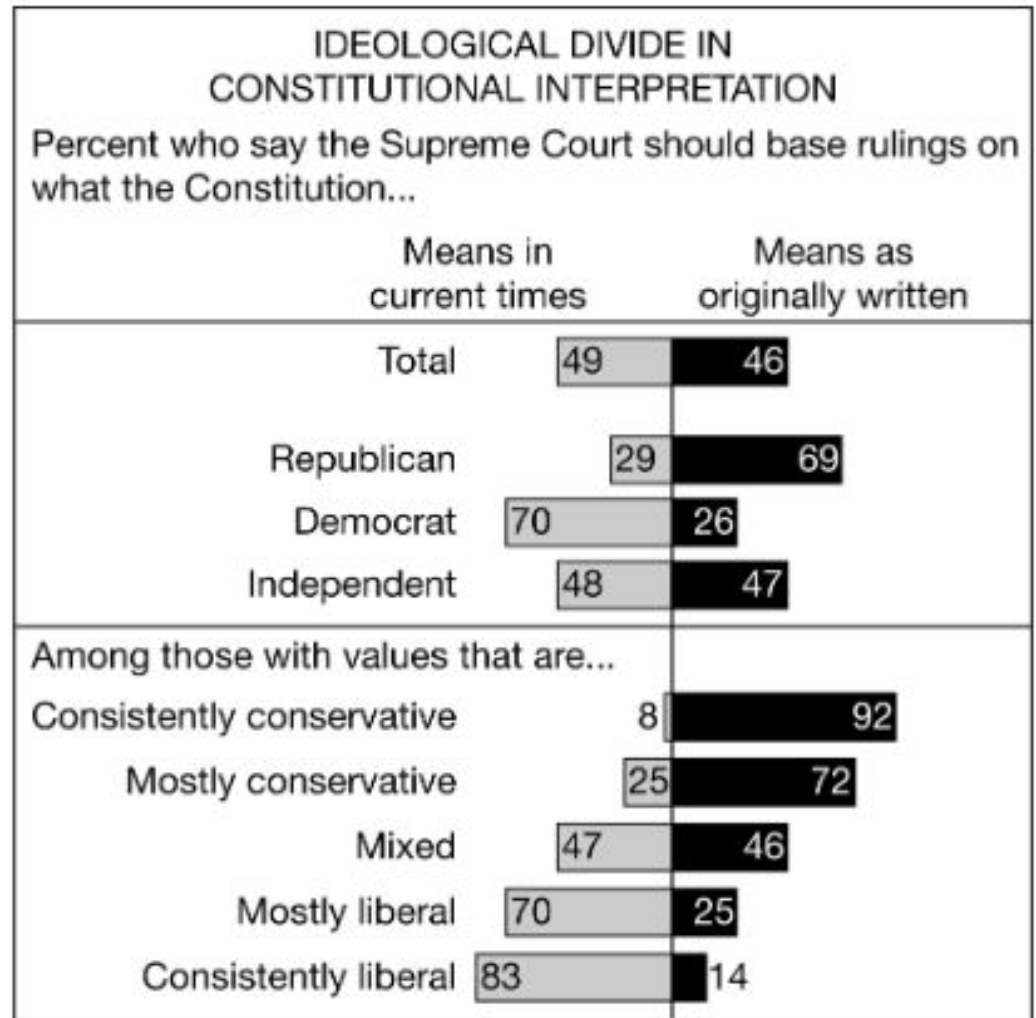
Objective: CON 5.B

Explain how the exercise of judicial review in conjunction with life tenure can lead to debate about the legitimacy of the Supreme Court's power.

Warm Up

In your notes, write down 4 observations of this data.

Choose 2 of those observations and write down why this is something worth knowing.



Lesson: Let's Review... Judicial Philosophy (write these down!)

Judicial *Activism*

- The Constitution is a **Living Document** and should change with the times.
- Judges make bold(er) policy decisions, even charting new constitutional ground with a particular decision.
- The courts should use the power of judicial review to correct pressing needs that the majoritarian political process left unmet.

Judicial *Restraint*

- The Constitution should be viewed the way the Founders intended (Originalism).
- Judges should stick closely to precedent and play minimal policymaking roles, leaving policy decisions to the other branches/states.

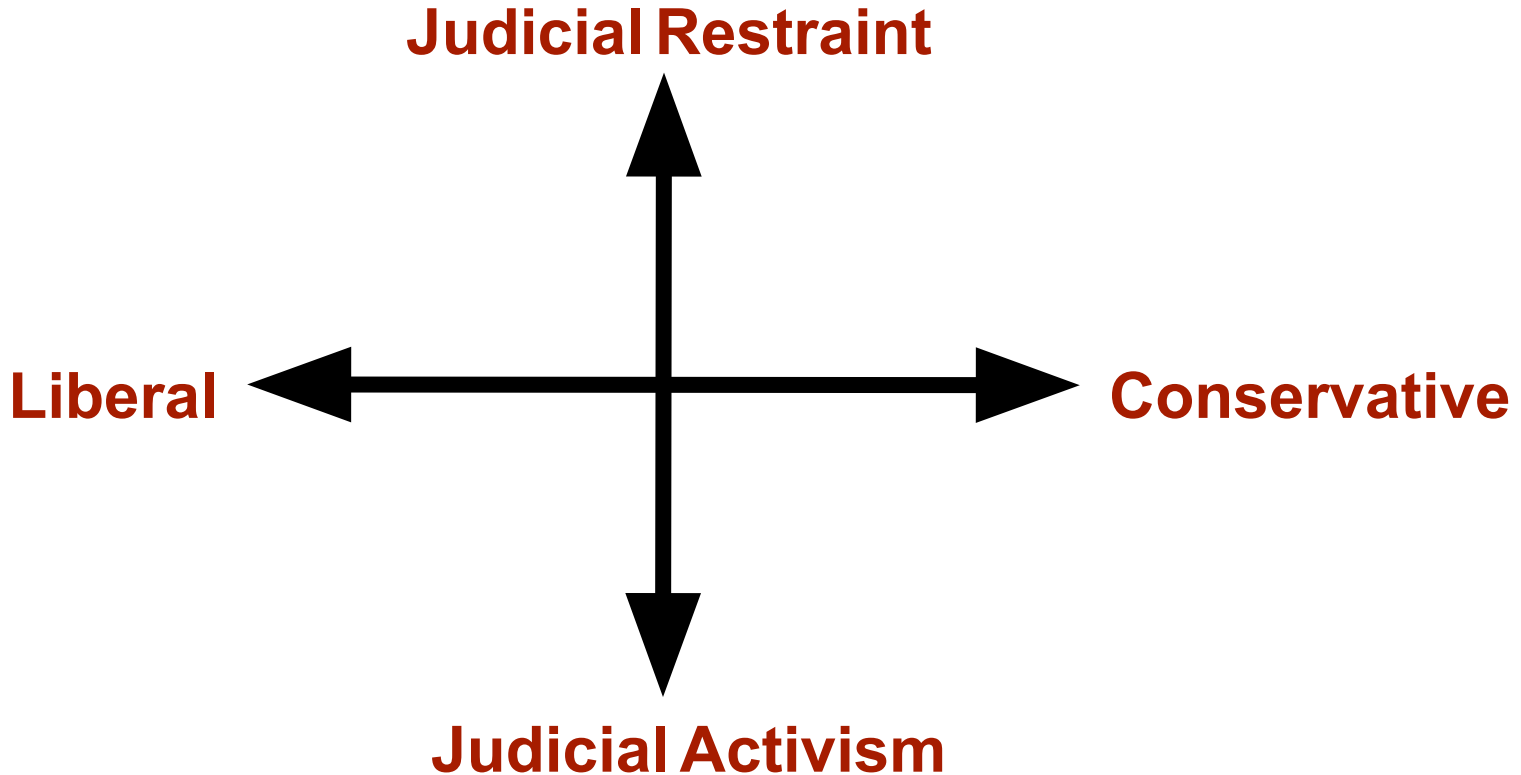


“The cardinal principle of judicial restraint – if it is not necessary to decide more, it is necessary not to decide more”

Chief Justice Roberts

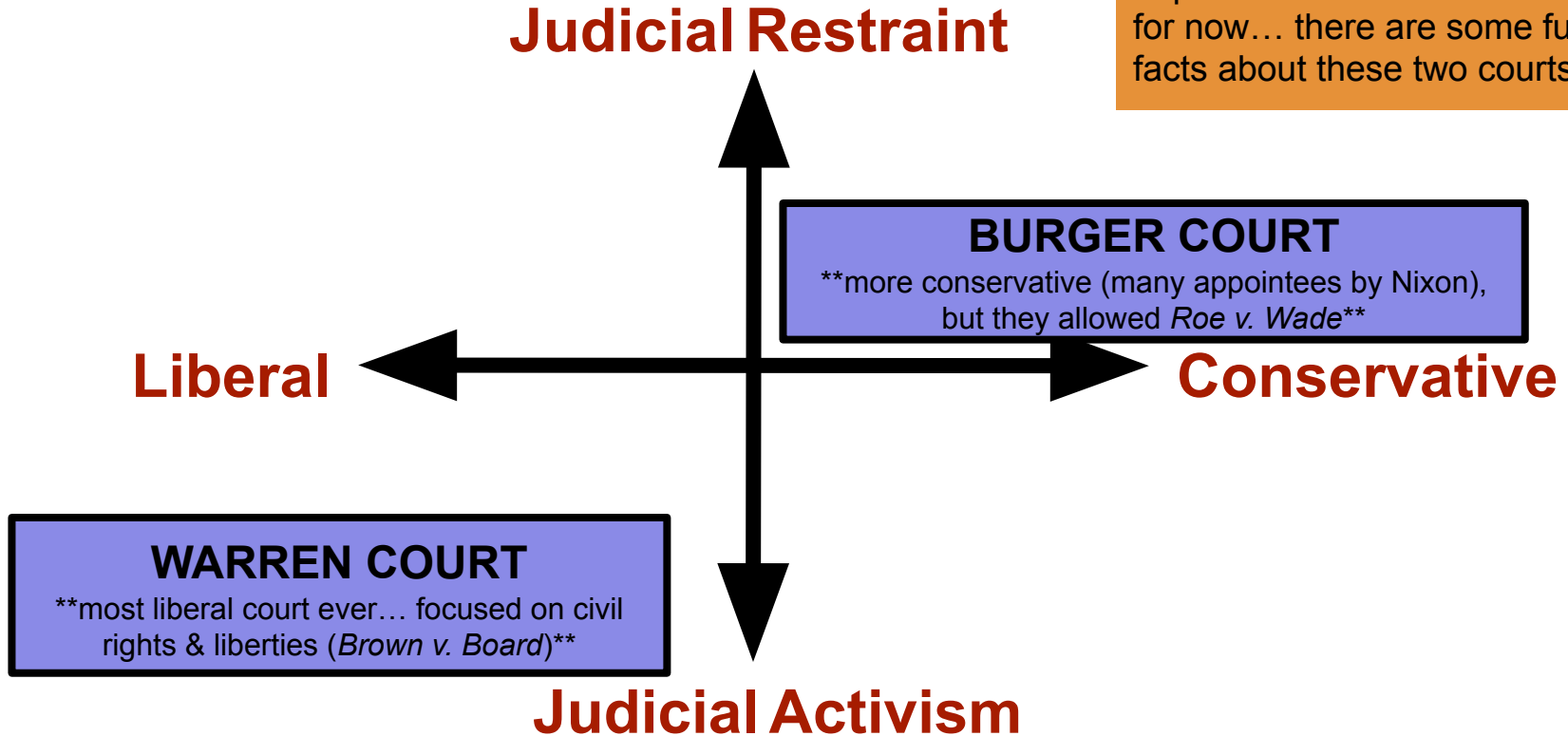
True or False: Does Activist = Liberal?

(Write down your answer and why you chose it!)



True or False: Does Activist = Liberal?

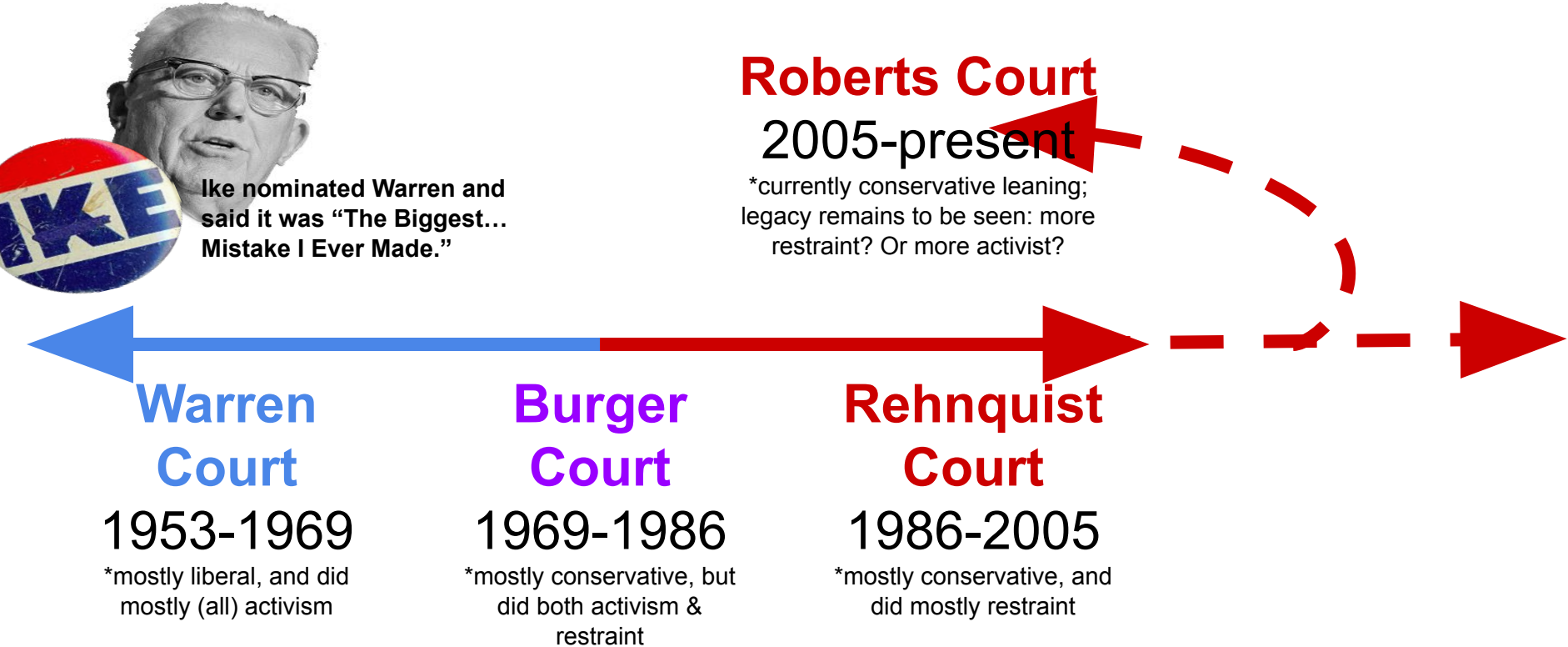
FALSE! We will see this depicted better in a minute. But for now... there are some fun facts about these two courts!



Why was the previous question false?

Because of Judicial Migration

Judges & Courts Change Over Time



Practice: MCQ

Which of the following best defines the term “judicial activism?”

- a) The demands on judges to hear large numbers of cases.
- b) The efforts of judges to lobby Congress for funds.
- c) The attempts by judges to influence election outcomes.
- d) The tendency of judges to interpret the Constitution according to their own views.

Practice: MCQ → Answer

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- c) The attempts by judges to influence election outcomes.
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Practice: FRQ

The Supreme Court is commonly thought to be “above politics.” However, one can argue that the appointment of Supreme Court justices is political.

- Identify three characteristics of SC nominees and discuss how each characteristic has been politically relevant during the appointment process.



Reflection: In this picture, who is practicing activism and who is practicing restraint? How do you know?
(And yes... I know LeBron no longer plays for Cleveland. That's beside the point.)



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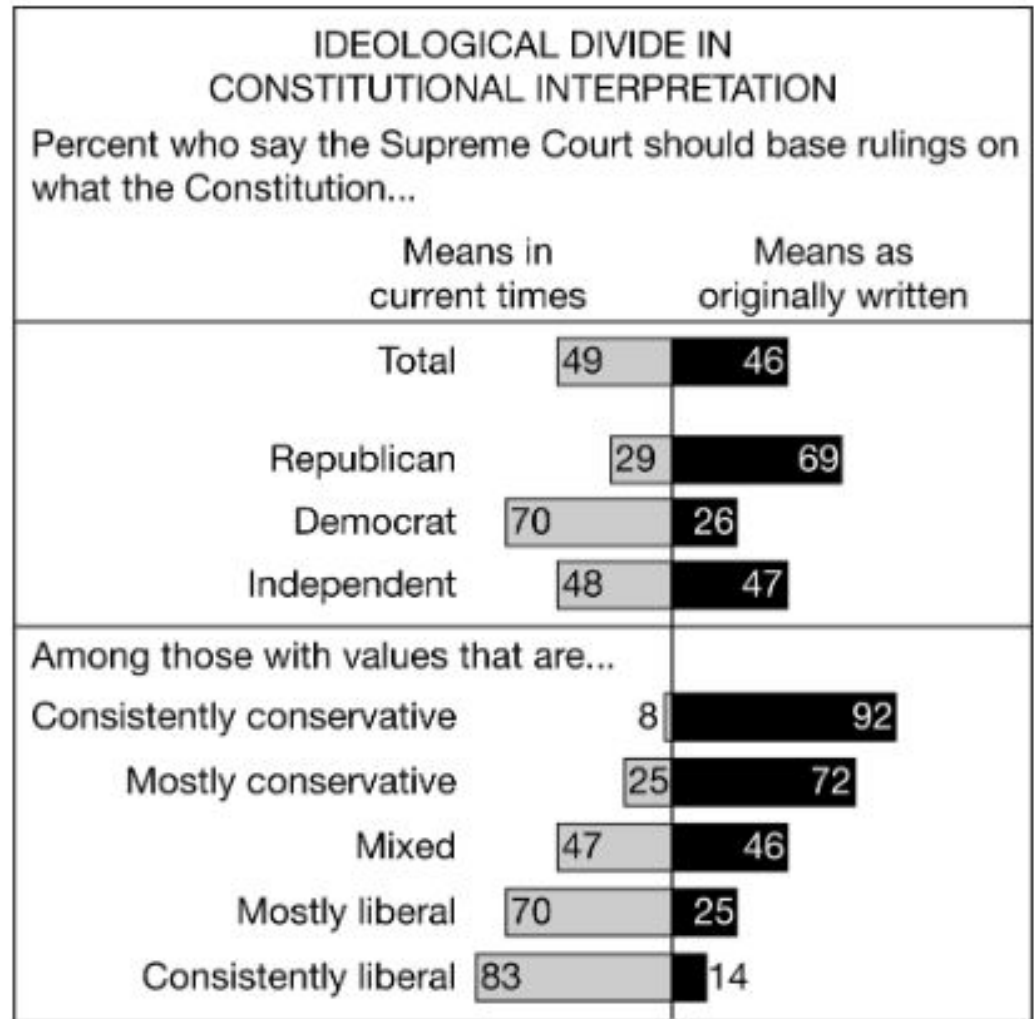
AP Government
Lesson: April 24, 2020

Objective: CON 5.C

Explain how other branches in the government can limit the Supreme Court's power.

Warm Up

You saw this chart a little bit ago. Yes, it has to do with whether or not the public thinks the court should take an activist approach or a restraint approach. However, how might this impact decisions the President or Congress may make when interacting with the Judicial Branch?



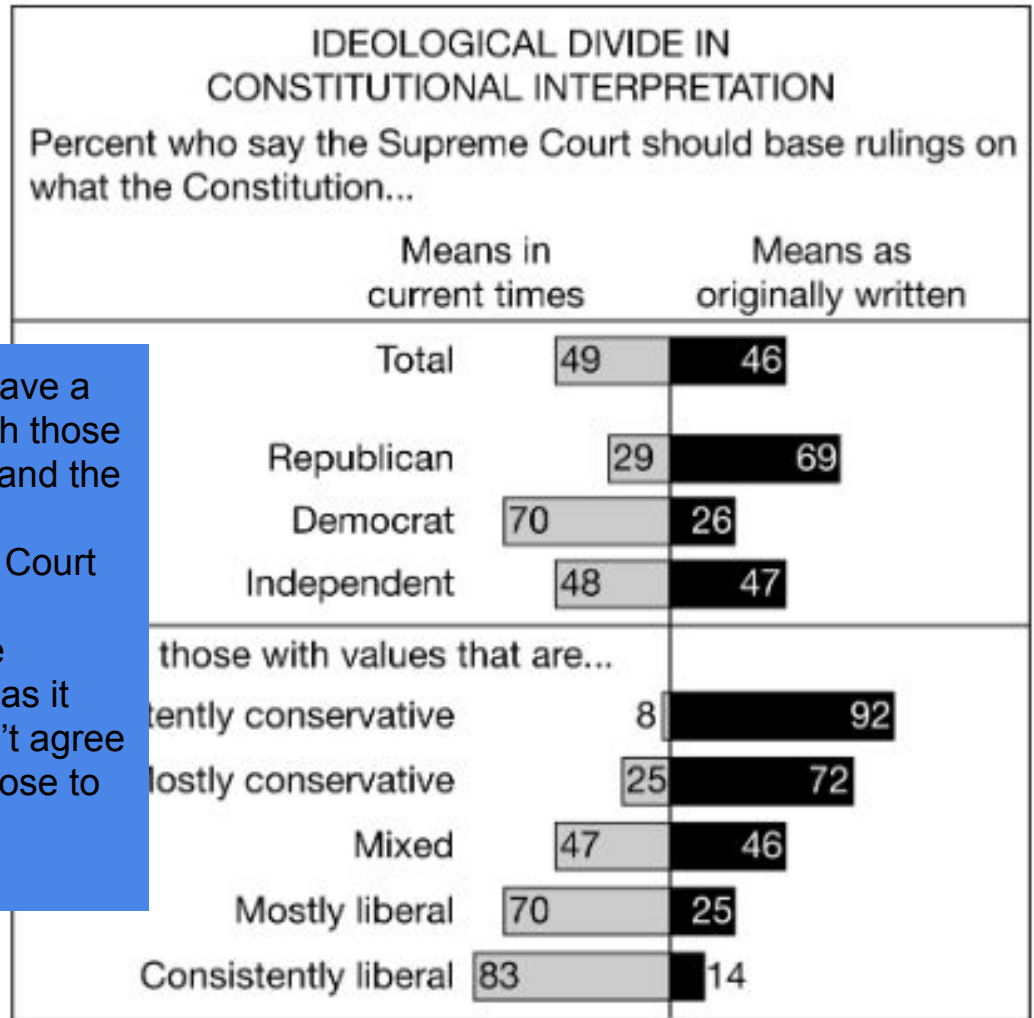
Warm Up

You saw this chart a little bit ago. Yes, it has to do

with whether or not the

public should support the Supreme Court as it is currently slanted “mostly conservative” and Republican. If the Court hands down a decision that is more restraintist, because they believe the Constitution needs to be interpreted as it was written, but the President doesn’t agree with that, the President may just choose to not enforce certain court decisions!

Branch?

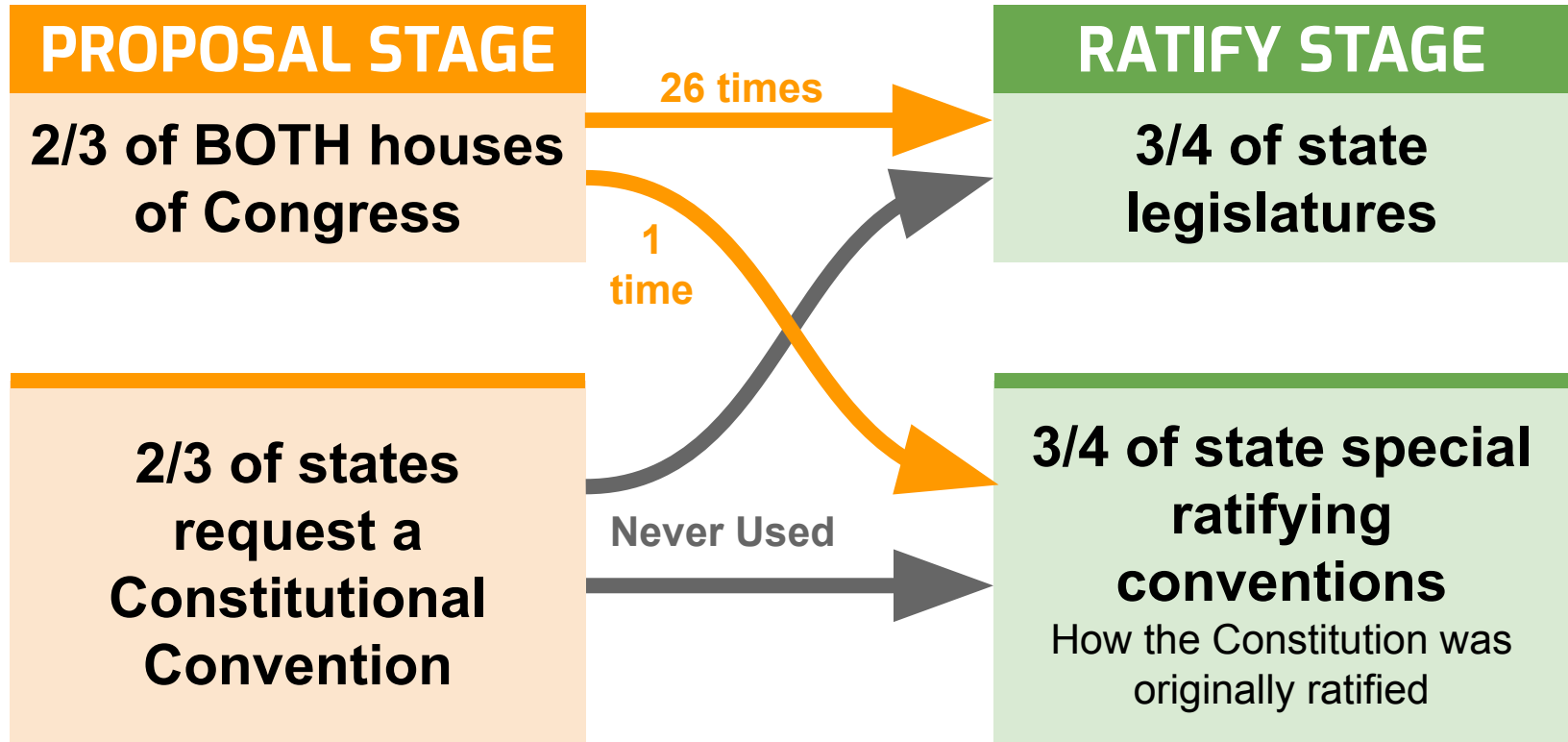


Lesson: Let's Review!

Checks and balances allow Congress to place restrictions on the Court by:

- Making legislation that modifies the impact of prior supreme court decisions
- Using constitutional amendments to change how the case would be interpreted, thus voiding the Court's decision.
 - (How an amendment is passed is shown on the next slide.)

FORMAL AMENDMENT PROCESS



Lesson: Let's Review!

Congress (and the President) also restrict the Court through the use of Judicial appointments and confirmations.

- The President uses the following to determine who they would like to select for any Court vacancies:
 - Party affiliation
 - Judicial philosophy
 - Race, gender, religion, and region of the country (though region is currently less of a factor now than it used to be)
 - Judicial experience
 - An ideological “Litmus Test” (How “pure” is their ideology?)
- Congress, then, confirms those that are generally less controversial, and grills the appointee in a Senate committee! It's important to remember that an appointment doesn't get on the court unless the Senate confirms the person!

Lesson: Let's Review!

The President (and also states, via the governor's office) can also put restrictions on the Court's power, by use of executive orders, which are similar to laws passed by Congress, but it's a directive straight from the President (or governor). These typically direct members of the executive branch to follow a new policy or directive (for instance- Governor Parson issued an executive order to stay at home during this coronavirus outbreak).

The President, specifically can do this because of the Unitary Executive Theory!

Unitary Executive Theory

**Vesting Clause

“The executive Power shall be vested in a President of the USA” Article II, Section 1

**Take Care Clause

“The President shall take care that the laws be faithfully executed...” Article II, Section 3

There can be only **ONE** Executive and that person has **COMPLETE** Executive Power

Practice: MCQ

All of the following serve as checks on the power of federal courts EXCEPT

- a) Federal judges can be impeached.
- b) The voters can oust federal judges in national elections
- c) Presidents, governors, and local executives can refrain from enforcing court rulings.
- d) Congress and the state legislatures can amend the Constitution.

Practice: MCQ → Answer

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Practice: MCQ

In 1998, Goodyear employee Lilly Ledbetter filed suit against her employer for pay discrimination based on her gender. Though Ledbetter was initially successful, Goodyear appealed the decision and the case went to the Supreme Court. In *Ledbetter v. Goodyear Tire and Rubber Co.* (2007), the Supreme Court ruled that the Civil Rights Act of 1964 requires that sex discrimination complaints must be made within 180 days “after the alleged unlawful employment practice occurred,” which Ledbetter had failed to do. Which of the following actions could be taken to reverse the impact of this decision?

- a) Ledbetter could renew her appeal by seeking additional Supreme Court review.
- b) The president could sign an executive order to alter the Civil Rights Act.
- c) Ledbetter could pursue her case using the same arguments in state courts.
- d) Congress could enact legislation to amend Title VII of the Civil Rights Act.

Practice: MCQ → Answer

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Practice: MCQ

In *Worcester v. Georgia* (1832), the US Supreme Court ruled that a Georgia law violated the US Constitution. In response to Chief Justice John Marshall's majority opinion, President Andrew Jackson said, "John Marshall has made his decision, now let him enforce it." Which of the following ideas regarding government does President Jackson's statement exhibit?

- a) Since the Supreme Court has no enforcement mechanism, the executive and legislative branches can restrict its decision.
- b) When the court takes an activist approach to decision making, it can influence policy.
- c) Constitutional amendments have granted the Supreme Court greater power to enforce its decisions.
- d) Unpopular Supreme Court justices can be removed by a $\frac{2}{3}$ vote in Congress and a presidential signature.

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Practice: MCQ

Presidents have had the most success in changing the direction of decisions of the federal judiciary by

- a) Using the media to build consensus for the President's opinion.
- b) Requesting Congress reduce the term of office that judges may serve.
- c) Using the appointment process to select judges with judicial philosophies similar to those of the President.
- d) Pressuring Congress to pass the appropriate legislation to override judicial opinions.

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Practice: MCQ

The majority party in the Senate is concerned that the Supreme Court has made a number of ideologically dangerous and controversial rulings. Which of the following actions would the Senate take in their attempt to limit the Supreme Court's power?

- a) Replace the chief justice of the Supreme Court with someone with whom they agree with ideologically.
- b) Pass legislation that would limit the impact of the Supreme Court's recent rulings.
- c) Ratify a constitutional amendment limiting the Supreme Court's power.
- d) Enforce term limits for justices on the Supreme Court.

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Practice: MCQ

The Supreme Court issued a ruling that was unpopular with a majority of Americans. The president and Congress might be able to lessen the impact of the decision by

- a) Reducing the pay of the justices to pressure them to reverse their decision.
- b) Overruling the Supreme Court's decision by a $\frac{2}{3}$ vote in Congress.
- c) Impeaching the justices in the majority.
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Reflection

Which branch of government is the most powerful? Why?