Chapter 12

1. What was the most important ruling in *NFIB v. Sebelius* (2012)?

a. Established the practice of judicial review

\*b. Upheld the individual mandate in the Affordable Care Act

c. Struck down provisions of the Endangered Species Act

d. Prohibited Congress from exercising judicial powers

2. Which of these types of federal courts is most analogous to congressional committees?

\*a. District courts

b. The Supreme Court

c. State courts

d. Courts of appeal

3. Which of the following is *not* a tool Congress has to check the judiciary?

a. Ability to withdraw jurisdiction

b. Power of impeachment

c. Constitutional amendment

\*d. Demote justices to a lower court

4. What is the primary function of courts of appeals?

a. Judicial review

b. Bankruptcy hearings

\*c. Error correction

d. Criminal trials

5. Which of the following is an example of statutory interpretation?

a. A ruling that prayer in schools violates the First Amendment

b. A ruling that the President’s war powers allow him to take a particular action

c. A ruling that certain restrictions on abortion access are unconstitutional

\*d. A ruling that the text of a congressional statute does not apply retroactively

6. What is the norm of senatorial courtesy?

a. The President informally meets with members of the majority party in the Senate before choosing a nominee

\*b. The President consults home-state senators before submitting nominees from their state

c. The Supreme Court defers to the Senate on issues of congressional procedure

d. Senators have the right to unlimited debate during impeachment proceedings

7. How would a textualist approach interpreting a congressional statute?

\*a. Look for the plain meaning for the words at the time the law was enacted

b. Examine the legislative history carefully

c. Try to interpret the language as if the law were written today

d. Rely primarily on legal briefs to interpret various aspects of the law

8. How are nominees to the Supreme Court appointed to office?

a. The Senate selects a nominee who is then subject to Presidential approval

\*b. The President selects a nominee and the Senate confirms him/her

c. The House selects a nominee and the Senate confirms him/her

d. The President selects and confirms a nominee

9. Which of the following is *not* a stage in the selection and confirmation of federal judges?

a. President sends written nomination to the Senate

b. Judiciary Committee holds hearings

\*c. House of Representatives votes to approve the nominee

d. President creates a short list of nominees

10. Why do modern Presidents take longer to fill judicial vacancies than in the past?

a. Complex rule-making procedures in the bureaucracy

b. There are not enough qualified nominees

c. Recently passed legislation requires a waiting period

\*d. Extensive vetting of potential nominees

11. Which of the following is the most important role of the Supreme Court?

\*a. Policy making

b. Norm enforcement

c. Correcting errors in lower court rulings

d. Providing a forum for all appeals brought to it

12. It is easier for Congress to respond to and overrule the Supreme Court in cases involving statutory interpretation opposed to those involving constitutional interpretation.

\*a. True

b. False

13. The Supreme Court hears and decides about half the cases that are appealed to it.

a. True

\*b. False

14. Members of Congress sometime manipulate the Congressional Record to provide the Supreme Court with potentially misleading legislative history.

\*a. True

b. False

15. The controversy around confirming lower court judges is a recent development in the Senate.

\*a. True

b. False

16. More Supreme Court nominees are rejected in the modern Senate than at any earlier time in U.S. history.

a. True

\*b. False

17. The creation of federal courts other than the Supreme Court is left entirely to the discretion of Congress.

\*a. True

b. False

18. Throughout U.S. history, confirmation hearings in the Senate have typically been highly politicized and controversial.

a. True

\*b. False

19. Once the Supreme Court has issued a decision, Congress is essentially powerless to respond.

a. True

\*b. False

20. Only one Supreme Court justice has ever been impeached.

\*a. True

b. False

21. In general, parties unhappy with a judicial decision at the district court level have an automatic right of appeal to a district court of appeals.

\*a. True

b. False

22. The Constitution sets the size of the Supreme Court at nine justices.

a. True

\*b. False

23. Congressional legislation has been more important in shaping the structure of the federal court system than are constitutional mandates.

\*a. True

b. False

24. What is the “nuclear option” and how does it apply to judicial nominees?

\*a. Answers Vary

@The nuclear option is eliminating the filibuster in the Senate. Because of a series of disputes over blocking Obama’s judicial nominees in the Senate, the filibuster was ended for executive branch and judicial nominations only. The filibuster is still permitted for Supreme Court nominees. This resulted in far fewer of Obama’s judicial nominees being blocked by the Senate, at least when it was under Democratic control.

25. What are the major factors the President considers when selecting a Supreme Court nominee?

\*a. Answers Vary

@The President will tend to have two major goals in selecting a nominee. First, the person will reflect his political and policy views; a liberal president will want to make liberal appointments and vice versa. The President will also want to select an individual who is perceived as competent and knowledgeable and will be able to make it through a daunting confirmation process. He may rely on ratings by the ABA or Federalist Society (for Republicans) for this step. Students might also mention demographic factors such as age, gender, religion, or race, as well as considering how difficult/easy it will be to get a particular candidate through the Senate confirmation process.

26. How do the factors of ideology and qualifications figure into Senate decision making on judicial nominees?

\*a. Answers Vary

@Ideology (and partisanship) has become more important in Senate confirmations since Bork’s failed nomination under Reagan. But, Senators often tend to couch their criticisms in terms of qualifications. Compared to earlier in American history, when justices tended to have extensive legislative or executive experience, today the most important qualifications are related to judicial experience.

27. Why have lower court confirmations become much more controversial in recent years?

\*a. Answers Vary

@Students could reference a variety of reasons here. These include the involvement of interest groups, awareness that lower court judges may ultimately have more influence than the Supreme Court because they hear so many cases, confirmation fights are seen as “warmups” for Supreme Court nomination fights down the road, polarization, and a desire to “wait out” a President late in his term in hopes that the next President will be of the opposite party.

28. What is judicial activism and how is this criticism used by members of Congress?

\*a. Answers Vary

@Judicial activism is the idea that Supreme Court justices are essentially legislating from the bench and overstepping their role as neutral arbiters of the law. The idea is that judges are—but should not be—making decisions on the basis of their personal values or beliefs rather than legal principles. However, members of Congress often use this criticism to attack decisions they do not agree with and are more accepting of similar behavior from justices on their side of issues.

29. What are some of the costs and benefits of allowing television cameras to film Supreme Court proceedings?

\*a. Answers Vary

@One of the main benefits would be transparency and the ability for more citizens to easily access and learn about Court proceedings. Costs include worries that cameras might change decision making, intrude on the privacy of justices or threaten their security, or turn court proceedings into opportunities for media soundbites instead of collegial debates. Thus far, Congress has not permitted television cameras in the courtroom.

30. Why has Congress limited the growth of judicial salaries, and what are some of the dangers of this policy?

\*a. Answers Vary

@One major reason Congress has limited judicial salaries is that for a long time, judicial and legislative salaries were linked. Members didn’t want to raise their own salaries since this might be politically unpopular, so they didn’t raise judicial salaries either. They also may not want to raise judges’ salaries because of budgetary problems. One danger of this policy is that talented individuals may not seek federal judgeships because they can make so much more money outside of the government.

31. Describe a time when Congress used a constitutional amendment to overturn a Supreme Court ruling.

\*a. Answers Vary

@Students could identify and describe the 11th Amendment, 13th/14th Amendments, 16th Amendment, or 26th Amendment.

32. What is the power of judicial review?

\*a. Answers Vary

@This is the power of the Supreme Court to strike down congressional laws. It is based on the idea that the Supreme Court has the final, authoritative view on how to interpret the Constitution.

33. How has Congress used the power of impeachment in checking the judiciary? Is it a viable way to reign in “activist” judges?

\*a. Answers Vary

@Although Congress has threatened impeachment for various reasons, it has only removed judges from office for unethical and illegal acts, not for unpopular legal or policy decisions. Impeachment has been rarely used throughout U.S. history. Although this power could in theory be used to discipline “activism” and remove judges who make unpopular rulings, this has not historically been a practice of Congress and would probably put members at electoral risk since people perceive value in an independent judiciary.

34. What does it mean for Congress to “withdraw jurisdiction” from the Court and how has this power been used in the past?

\*a. Answers Vary

@Withdrawing jurisdiction means that Congress can withdraw the Court’s ability to review certain categories of cases, a power granted to it by the Constitution. Although Congress has threatened to withdraw jurisdiction for various types of cases (and these threats may sometimes impact Court behavior), it has actually been used only once. Radical Republicans used it after the Civil War to block the Court from reviewing military occupation/rule of the South.

35. What is the purpose of the “lifetime tenure” provision in the Constitution?

\*a. Answers Vary

@This provision grants federal judges and justices of the Supreme Court lifetime appointments to the Court; they cannot be removed by voters or by members of Congress (except in the case of impeachment in extreme circumstances). The idea behind this provision is that it makes the judiciary independent, or protected/insulated from political pressure.

36. What are the two primary ways that the Supreme Court carries out its policy-making function? Give an example of each.

\*a. Answers Vary

@First, its interpretive decisions can broaden or restrict the powers of Congress. An example of this would be upholding the individual mandate in *NFIB v. Sebelius*, by affirming that Congress’s power did reach to encompass the individual mandate. Second, the Supreme Court can act as a policy-making catalyst, especially when the political branches are deadlocked. An example of this would be *Brown v. Board* prohibiting segregated schools after Southerners blocked this policy change in Congress.

37. Has Congress been successful in using the courts to curb executive power?

\*a. Answers Vary

@Very rarely. Courts will often rule that members of Congress have no standing to bring these suits. They also often turn to the political question doctrine or rule that the issue ultimately legislative rather than constitutional in nature.

38. Some people argue that judges have become too activist in their approach to interpreting the Constitution and legislation. What are the main ways Congress can check the judiciary? Which of these tools do you believe is most effective? Does Congress need stronger tools to reign in judges?

\*a. Answers Vary

@Students should define and describe the four main checks on the judiciary: withdrawing jurisdiction, impeachment, influencing size, procedures, pay scale of the courts, and passing constitutional amendments. They should then make a clear argument about which of these tools is most effective and whether Congress needs additional or stronger tools to properly check the judiciary.

39. Select a recent nominee to the Supreme Court under either the Bush or Obama presidency. Using news and government sources, trace the nominee from his/her selection by the President to confirmation by the Senate. You may wish to consider factors such as what the Presidential vetting process looked like, what factors the President seemed to consider in selecting the nominee, to what extent the President considered (and was constrained by) the Senate’s advice and consent power, senatorial courtesy, to what extent the Senate considered qualifications versus ideology in hearings, and other issues that were raised in hearings.

\*a. Answers Vary

@Students should present a clear, organized analysis of how a recent Supreme Court nominee was confirmed. They should consider both the formal steps of the process as well as informal norms and the political motivations of various actors. They should correctly utilize concepts from the text in their analysis.

40. Select a recent Supreme Court case. Using LexisNexis, SCOTUSblog, and other news and governmental sources, analyze both the decision itself and responses to the decision by Congress.

\*a. Answers Vary

@Students should present a clear, organized analysis of the selected case. They should consider factors such as whether the case falls under statutory interpretation or constitutional interpretation, what the major arguments on each side were, and what the final outcome of the case was. They should also consider whether and how Congress responded to the case—whether rhetorically, by passing override legislation, or by other means.