

Mark Scheme (Results)

Summer 2012

GCE Government & Politics Governing the USA 6GP04 4C

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Question Number	Question
1.	What are the most significant factors in the president's choice of Supreme Court justices?

Among the factors the president will consider in his choice of Supreme Court nominee are:

- ideological leaning the president will want a nominee who corresponds as closely as
 possible to his own judicial outlook; in the recent past, nominees of Republican
 presidents have arguably been more obviously ideological than those put forward by
 Democratic presidents
- judicial credentials often nominees will have served as a judge; if they have not, they need to have a certain level of judicial credibility, as the reaction to the Harriet Miers nomination shows
- the composition of the Senate in particular, the president will need to consider the reaction of a Senate controlled by the opposition party, as the history of the Bork nomination shows
- representation of different groups the president may want to make the Supreme Court more diverse and more representative of the population; this was arguably one of President Obama's motivations in nominating two women justices, one of them a Latina

A threshold Level 2 response will typically exhibit the following features:

- Outline awareness of the process for selecting Supreme Court justices
- Limited knowledge of at least one significant factor which influences the president's choice

- Clear understanding awareness of the process for selecting Supreme Court justices
- Clear explanation of at least two significant factors which influence the president's choice

LEVELS	DESCRIPTORS
Level 3 (11-15 marks)	 Good to excellent: knowledge and understanding of relevant institutions, processes, political concepts, theories or debates. ability to analyse and explain political information, arguments and explanations. ability to construct and communicate coherent arguments, making good use of appropriate vocabulary.
Level 2 (6-10 marks)	 knowledge and understanding of relevant institutions, processes, political concepts, theories or debates. ability to analyse and explain political information, arguments and explanations. ability to construct and communicate coherent arguments, making some use of appropriate vocabulary.
Level 1 (0-5 marks)	 Very poor to weak: knowledge and understanding of relevant institutions, processes, political concepts, theories or debates. ability to analyse and explain political information, arguments and explanations. ability to construct and communicate coherent arguments, making little or no use of appropriate vocabulary.

Question Number	Question
2.	To what extent are the Senate and the House of Representatives equal
	in power?

Evidence that the Senate and the House are equal in power includes:

• both chambers have equal power in the passage of legislation, constitutional amendments, overrides of presidential vetoes and declarations of war

Evidence that the Senate is more powerful than the House includes:

- the Senate's exclusive powers of appointment confirmation and treaty ratification are often of considerable consequence for the political system
- the increased use of the filibuster, and the consequent need for a 'super-majority' to pass almost any legislation, means the president's legislative strategy is usually focused on the Senate
- the Senate delivers the final verdict in impeachment proceedings

Evidence that the House is more powerful than the Senate includes:

- the House initiates impeachment proceedings
- the House begins consideration of money bills
- the House elects the president if there is not a majority in the Electoral College

A threshold Level 2 response will typically exhibit the following features:

- Outline awareness of the structure of Congress
- Limited knowledge of one common power and one exclusive power of the two houses

- Clear understanding awareness of at least two common and two exclusive powers
- Clear explanation of which chamber if either has more power

LEVELS	DESCRIPTORS
Level 3 (11-15 marks)	 Good to excellent: knowledge and understanding of relevant institutions, processes, political concepts, theories or debates. ability to analyse and explain political information, arguments and explanations. ability to construct and communicate coherent arguments, making good use of appropriate vocabulary.
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Question Number	Question
3.	What are constitutional rights, and how effectively are they enforced?

Constitutional rights are rights explicitly listed in the amendments to the constitution, such as those contained in the first ten amendments (e.g. the right to freedom of speech in the first amendment) and elsewhere, e.g. the 13th, 14th and 15th Reconstruction amendments; and those which have been 'read into' the constitution by the Supreme Court, such as the right of children to attend a non-segregated school, or a suspect to be informed of his or her rights.

To be meaningful, these rights need to be enforced through the political system, most importantly by the courts; sometimes the courts are able to enforce rights despite pressure from other parts of the system, e.g. *Hamdi* and *Boumediene* in recent years, but evidence that sometimes rights are not enforced includes:

- the Supreme Court has been unable to cope with sustained resistance, e.g. the 15th amendment asserted the right of all to vote but this was only realised 100 years later through the passage of the Voting Rights Act
- the court has ignored evidence which did not support its judgment in order to deny rights, e.g. in *Plessy v Ferguson*
- dependence on the enforcement of other branches can further erode rights, e.g. the right to attend a non-segregated school, established by *Brown*, was only realised through congressional action over 10 years later
- the court may defer to the executive branch, e.g. Korematsu

Candidates may rewardably recognise that enforcement of the rights of one individual or group is often at the expense of the rights of others, e.g. the recent Supreme Court decisions in Synder v Phelps and Citizens United v FEC

A threshold Level 2 response will typically exhibit the following features:

- Outline awareness of the nature of constitutional rights
- Limited knowledge of the mechanisms through which they are enforced

- Clear understanding awareness of the nature of constitutional rights
- Clear explanation of the extent to which they are enforced

LEVELS	DESCRIPTORS
Level 3 (11-15 marks)	 Good to excellent: knowledge and understanding of relevant institutions, processes, political concepts, theories or debates. ability to analyse and explain political information, arguments and explanations. ability to construct and communicate coherent arguments, making good use of appropriate vocabulary.
Level 2 (6-10 marks)	 knowledge and understanding of relevant institutions, processes, political concepts, theories or debates. ability to analyse and explain political information, arguments and explanations. ability to construct and communicate coherent arguments, making some use of appropriate vocabulary.
Level 1 (0-5 marks)	 Very poor to weak: knowledge and understanding of relevant institutions, processes, political concepts, theories or debates. ability to analyse and explain political information, arguments and explanations. ability to construct and communicate coherent arguments, making little or no use of appropriate vocabulary.

Question Number	Question
4.	Explain the factors that limit the power and influence of the Supreme Court.

The formal restraints on the court include:

- lack of enforcement power, evident in the slow pace of desegregation after Brown
- the court's decisions may be reversed by constitutional amendment
- Congress can alter the size of the court or withdraw appellate jurisdiction
- no power of initiation

The informal restraints on the court include:

- self-imposed reluctance of the court to become involved in some areas, such as foreign policy
- the court's own precedents
- public opinion, e.g. state and federal legislative reaction to the decision in Furman v
 Georgia was cited in the judgement in Gregg v Georgia as evidence that the death
 penalty was acceptable to the majority of the American public
- political pressure, e.g. President Obama's declared expectation that the court will not overrule health care reform

A threshold Level 2 response will typically exhibit the following features:

- Outline awareness of the nature and significance of judicial review
- Limited knowledge of at least one factor which limits the power and influence of the court.

- Clear understanding awareness of the nature and significance of judicial review
- Clear explanation of at least two factors which limit the power and influence of the court

LEVELS	DESCRIPTORS
Level 3 (11-15 marks)	 Good to excellent: knowledge and understanding of relevant institutions, processes, political concepts, theories or debates. ability to analyse and explain political information, arguments and explanations. ability to construct and communicate coherent arguments, making good use of appropriate vocabulary.
Level 2 (6-10 marks)	 knowledge and understanding of relevant institutions, processes, political concepts, theories or debates. ability to analyse and explain political information, arguments and explanations. ability to construct and communicate coherent arguments, making some use of appropriate vocabulary.
Level 1 (0-5 marks)	 Very poor to weak: knowledge and understanding of relevant institutions, processes, political concepts, theories or debates. ability to analyse and explain political information, arguments and explanations. ability to construct and communicate coherent arguments, making little or no use of appropriate vocabulary.

Question Number	Question
5.	How significant is the president's power of veto?

Relevant points include:

- the veto was used extensively by earlier presidents, e.g. FDR vetoed a total of 635 bills in total, as means of asserting executive power
- the veto is now typically used less often; frequent use may suggest the president has lost control of the agenda, if Congress is willing to pass legislation in defiance of his known wishes, especially if it is controlled by his own party; the threat of a veto may be more potent
- in the later stages of a presidency or against a Congress controlled by the opposition party, the veto may be the only way the president has of exerting influence
- because he has no re-election to consider, a second term president can be unrestrained in his use of the veto
- to some extent, the veto may have been replaced by the extensive use of 'signing statements', which have the effect of a veto but none of the attendant political costs

- Outline awareness of the nature of the presidential veto
- Limited knowledge of at least one factor which determines its significance A threshold Level 3 response will typically exhibit the following features:
- Clear understanding of the nature of the presidential veto
- Clear explanation of at least two factors which determine its significance

LEVELS	DESCRIPTORS
Level 3 (11-15 marks)	 Good to excellent: knowledge and understanding of relevant institutions, processes, political concepts, theories or debates. ability to analyse and explain political information, arguments and explanations. ability to construct and communicate coherent arguments, making good use of appropriate vocabulary.
Level 2 (6-10 marks)	 knowledge and understanding of relevant institutions, processes, political concepts, theories or debates. ability to analyse and explain political information, arguments and explanations. ability to construct and communicate coherent arguments, making some use of appropriate vocabulary.
Level 1 (0-5 marks)	 Very poor to weak: knowledge and understanding of relevant institutions, processes, political concepts, theories or debates. ability to analyse and explain political information, arguments and explanations. ability to construct and communicate coherent arguments, making little or no use of appropriate vocabulary.

Question Number	Question
6.	'Transformed beyond recognition from the vision of the Founding Fathers.' Discuss this view of the modern US constitution.
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Evidence that the modern operation of the constitution has departed drastically from the vision of the Founding Fathers includes:

- the Founding Fathers created a system in which the 'popular passions' were filtered and diffused; the Senate was not directly elected, nor was there a requirement that presidential electors were; the popular passions are now given much freer rein
- Congress was the preeminent branch of government; the president was only to suggest legislation 'from time to time' and the power to declare war was reserved to Congress; since the Second World War especially, the president has assumed a dominant role
- the federal government's powers relative to the states were intended to be constrained by the 10th amendment; since the New Deal especially, the federal government has assumed power at the expense of the states
- the Supreme Court's power of judicial review is not mentioned in the constitution; its discovery has created what some see as an 'imperial judiciary'

Evidence that the modern operation of the constitution has not departed drastically from the vision of the Founding Fathers includes:

- the president's constitutional powers remain unaltered; the expansion of presidential power at the expense of Congress has been with the acquiescence of Congress and he remains dependent on it to a significant extent
- the system of separation of checks and balances continues fundamentally unaltered
- the expansion of Congress's power through the 'necessary and proper' clause was anticipated by the Founding Fathers in the Federalist Papers, and the state governments still retain a significant degree of autonomy
- the power of judicial review is implicit in the constitution, and was established very soon after its ratification

A threshold Level 2 response will typically exhibit the following features:

- Outline awareness of at least one aspect of the original conception of the US constitution
- Limited knowledge of the extent to which they have changed subsequently

- Clear understanding at least two aspects of the original conception of the US constitution
- Clear explanation of the extent to which they have changed

A01	Knowledge and understanding
Level 3 (9-12 marks)	Good to excellent knowledge and understanding of relevant institutions, processes, political concepts, theories or debates
Level 2 (5-8 marks)	Limited to sound knowledge and understanding of relevant institutions, processes, political concepts, theories or debates
Level 1 (0-4 marks)	Very poor to weak knowledge and understanding of relevant institutions, processes, political concepts, theories or debates
AO2	Intellectual skills
Level 3 (9-12 marks)	Good to excellent ability to analyse and evaluate political information, arguments and explanations
Level 2 (5-8 marks)	Limited to sound ability to analyse and evaluate political information, arguments and explanations
Level 1 (0-4 marks)	Very poor to weak ability to analyse and evaluate political information, arguments and explanations
AO2	Synoptic skills
Level 3 (9-12 marks)	Good to excellent ability to identify competing viewpoints or perspectives, and clear insight into how they affect the interpretation of political events or issues and shape conclusions
Level 2 (5-8 marks)	Limited to sound ability to identify competing viewpoints or perspectives, and a reliable awareness of how they affect the interpretation of political events or issues and shape conclusions
Level 1 (0-4 marks)	Very poor to weak ability to identify competing viewpoints or perspectives, and a little awareness of how they affect the interpretation of political events or issues and shape conclusions

AO3	Communication and coherence	
Level 3 (7-9 marks)	Good to excellent ability to construct and communicate coherent arguments, making good use of appropriate vocabulary	
Level 2 (4-6 marks)	Limited to sound ability to construct and communicate coherent arguments, making some use of appropriate vocabulary	
Level 1 (0-3 marks)	Very poor to weak ability to construct and communicate coherent arguments, making little or no use of appropriate vocabulary	

Question Number	Question
7	To what extent is the modern presidency an 'imperial presidency'?

The term 'imperial presidency' was used by Arthur Schlesinger in his book of 1973 to characterise the growth of presidential power culminating in the Nixon presidency, which saw the unilateral and secret conduct of hostilities abroad and the selective enforcement of laws at home.

After a period when the president's power was seen by many as in decline, the term was revived to describe some aspects of the presidency of George W. Bush.

Evidence from the Bush administration that the modern presidency is imperial includes:

- some of its members, including the vice-president, believed the administration had a
 duty to revive the executive branch, exploiting President Bush's status as a 'wartime
 president'
- expanded use of signing statements, often asserting the right to ignore those sections
 of a bill which, in the view of the administration, unconstitutionally infringed the
 president's authority
- expanded use of executive orders and the use of military orders to designate fighters captured in Afghanistan as 'unlawful enemy combatants' and the creation of military tribunals to try them
- the pervasive culture of secrecy and executive privilege

Subsequently, President Obama has exerted unilateral power, e.g. in the military campaign in Libya in 2011, which was conducted without congressional authorisation

Evidence that there are significant restraints on the modern presidency include:

- during and subsequent to the Nixon presidency, Congress passed a number of measures to rein in presidential power, e.g. the War Powers Act, the Budget & Impoundment Control Act, the National Emergencies Act and the Intelligence Oversight Act
- the expanded powers of the Bush administration were largely a consequence of the attacks of September 11th 2001, and only applied in a narrow range of policy relating to national security; even on some national security issues it was forced to compromise, e.g. on the status of the new Department of Homeland Security
- military action in both Afghanistan and Iraq was authorised by Congress
- the extent of the president's power in the Bush first term depended on an acquiescent Republican majority in Congress
- the checks and balances of the constitution remain, as illustrated by the failure of President Bush to make progress with the domestic agenda of his second term
- even with a Democratic Congress, President Obama encountered significant problems in advancing his domestic agenda

A threshold Level 2 response will typically exhibit the following features:

- Outline awareness of the constitutional role of the president and awareness of the meaning of the term 'imperial presidency'
- Limited knowledge of at least one way in which the modern president might or might not be considered imperial

A threshold Level 3 response will typically exhibit the following features:

• Clear understanding of the constitutional role of the president and awareness of the meaning of the term 'imperial presidency'

Clear explanation of at least two ways in which the modern president might or might not be considered imperial

A01	Knowledge and understanding
Level 3 (9-12 marks)	Good to excellent knowledge and understanding of relevant institutions, processes, political concepts, theories or debates
Level 2 (5-8 marks)	Limited to sound knowledge and understanding of relevant institutions, processes, political concepts, theories or debates
Level 1 (0-4 marks)	Very poor to weak knowledge and understanding of relevant institutions, processes, political concepts, theories or debates
AO2	Intellectual skills
Level 3 (9-12 marks)	Good to excellent ability to analyse and evaluate political information, arguments and explanations
Level 2 (5-8 marks)	Limited to sound ability to analyse and evaluate political information, arguments and explanations
Level 1 (0-4 marks)	Very poor to weak ability to analyse and evaluate political information, arguments and explanations
AO2	Synoptic skills
Level 3 (9-12 marks)	Good to excellent ability to identify competing viewpoints or perspectives, and clear insight into how they affect the interpretation of political events or issues and shape conclusions
Level 2 (5-8 marks)	Limited to sound ability to identify competing viewpoints or perspectives, and a reliable awareness of how they affect the interpretation of political events or issues and shape conclusions
Level 1 (0-4 marks)	Very poor to weak ability to identify competing viewpoints or perspectives, and a little awareness of how they affect the interpretation of political events or issues and shape conclusions

AO3	Communication and coherence	
Level 3 (7-9 marks)	Good to excellent ability to construct and communicate coherent arguments, making good use of appropriate vocabulary	
Level 2 (4-6 marks)	Limited to sound ability to construct and communicate coherent arguments, making some use of appropriate vocabulary	
Level 1 (0-3 marks)	Very poor to weak ability to construct and communicate coherent arguments, making little or no use of appropriate vocabulary	

Question Number	Question
8.	'The broken branch' To what extent is this a fair assessment of
	Congress?

Evidence that Congress is 'the broken branch' includes:

- increased partisanship, the product of ideological polarisation of the parties since the 1980s, and fuelled by the growth of partisan media outlets, gerrymandering and ideological interest groups, has led to:
- an increase in 'party votes', confrontation between the parties, e.g. the passage of the recent health care legislation, and an unwillingness to compromise
- routine use of the filibuster in the Senate, meaning a 'super majority' is required for the passage of almost all legislation
- abuse of congressional procedure, e.g. the extension of the roll call vote for Medicare expansion in 2003
- appointment hearings which focus on personality rather than fitness for office
- oversight now being conducted for the purpose of partisan advantage
- a breakdown in civility, epitomised by the shout of 'you lie' during President Obama's address on health care to Congress in 2009
- the disappearance of more moderate members, either through resignation, e.g. Olympia Snowe, or primary defeats, e.g. Richard Lugar

Evidence that Congress is not 'broken' includes

- measures with broad sustained support will pass, e.g. the welfare reform bill initiated by the Republican leadership and signed by President Clinton in 1996, the 'No Child Left Behind' Act, initiated by President Bush and co-sponsored by Teddy Kennedy
- some commentators argued that President Obama's first term difficulties with health care were the result of a failure of strategy, rather than any problem inherent in Congress
- health care reform did eventually pass, and some commentators have claimed that the 111th Congress (2009-11) 'made more law affecting more Americans since the 'Great Society' legislation of the 1960s'
- the extent of party control may be overstated; if there is a conflict between party and district, congressmen will almost always 'vote the district'.

A threshold Level 2 response will typically exhibit the following features:

- Outline awareness of the constitutional role of Congress and awareness of the meaning of the term 'broken branch'
- •Limited knowledge of at least one way in which Congress might or might not be considered broken

- Clear understanding of the constitutional role of the Congress and of the meaning of the term 'broken branch'
- Clear explanation of at least two ways in which Congress might or might not be considered broken

AO1	Knowledge and understanding
Level 3 (9-12 marks)	Good to excellent knowledge and understanding of relevant institutions, processes, political concepts, theories or debates
Level 2 (5-8 marks)	Limited to sound knowledge and understanding of relevant institutions, processes, political concepts, theories or debates
Level 1 (0-4 marks)	Very poor to weak knowledge and understanding of relevant institutions, processes, political concepts, theories or debates
AO2	Intellectual skills
Level 3 (9-12 marks)	Good to excellent ability to analyse and evaluate political information, arguments and explanations
Level 2 (5-8 marks)	Limited to sound ability to analyse and evaluate political information, arguments and explanations
Level 1 (0-4 marks)	Very poor to weak ability to analyse and evaluate political information, arguments and explanations
AO2	Synoptic skills
Level 3 (9-12 marks)	Good to excellent ability to identify competing viewpoints or perspectives, and clear insight into how they affect the interpretation of political events or issues and shape conclusions
Level 2 (5-8 marks)	Limited to sound ability to identify competing viewpoints or perspectives, and a reliable awareness of how they affect the interpretation of political events or issues and shape conclusions
Level 1 (0-4 marks)	Very poor to weak ability to identify competing viewpoints or perspectives, and a little awareness of how they affect the interpretation of political events or issues and shape conclusions

AO3	Communication and coherence
Level 3 (7-9 marks)	Good to excellent ability to construct and communicate coherent arguments, making good use of appropriate vocabulary
Level 2 (4-6 marks)	Limited to sound ability to construct and communicate coherent arguments, making some use of appropriate vocabulary
Level 1 (0-3 marks)	Very poor to weak ability to construct and communicate coherent arguments, making little or no use of appropriate vocabulary

SUMMARY A2 MARKING GRIDS

These grids should be used in conjunction with the fuller Level descriptors.

PART A - SHORT QUESTIONS (15 marks)

	Excellent	15
Level 3	Very good	13-14
	Good	11-12
	Sound	10
Level 2	Basic	8-9
	Limited	6-7
	Weak	4-5
Level 1	Poor	2-3
	Very poor	0-1

PART B – ESSAY QUESTIONS (45 marks)

AO1 / AO2 / Synopticity		
Level 3 (Good to excellent)	9-12	
Level 2 (Limited to sound)	5-8	
Level 1 (Very poor to weak)	0-4	

AO3	
Level 3 (good to excellent)	7-9
Level 2 (Limited to sound)	4-6
Level 1 (Very poor to weak)	0-3

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