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# Examiners' Report

## June 2017

GCE Government & Politics 6GP04 4C

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## Introduction

This year's 4C paper was a usual mixture of familiar and less familiar-looking questions, and candidates found the less familiar ones more challenging and achievement was generally lower. This was, to some extent, the consequence of the difficulty candidates had in adapting their knowledge to a less familiar context. Examiners had the impression that in some instances candidates' knowledge was simply lacking, for example about controversies around the Bill of Rights. Just to take the second amendment, candidates should have been aware that there is firstly dispute about its meaning, and what sort of individual has a right to bear arms, if any, and secondly in what sense it can be said to protect 'liberty', given the scale of shooting casualties in the US every year. In many answers though, it was straightforwardly the case that *DC v Heller* upheld the second amendment and liberty was thereby protected, with nothing further to say.

Candidates found the 45 mark questions more inviting and achievement was higher. The questions on Congress and the Supreme Court was by a long way the most popular and the federalism question was answered by only a small minority. This was surprising, as federalism is such a core topic on 4C and has been in the past a popular essay topic. This topic had not appeared for a while, and possibly candidates had given up hoping for its return. The refusal of the Senate to begin the confirmation process of Merrick Garland featured in almost every answer to both the Congress and the Supreme Court questions and it is encouraging that candidates are being kept up to date.

## Question 1

Candidates found this one of the more accessible 15 mark questions and most answers were able to cite three factors which explain the weakness of the cabinet within the executive branch. Typical factors included the limited number of meetings, the nature of the singular executive, divided loyalty between the president and Cabinet members' departments, the rival role of the EOP and proximity to the president (with the last two often being combined). A feature of stronger answers was the effective use of evidence, and many candidates were able to use detailed contemporary examples from the Trump and Obama presidencies, citing for example the influence of Jared Kushner and Ivanka Trump, or the role of Stephen Miller in developing the travel ban executive order. The number of Cabinet meetings was commonly cited (with many different figures given) to illustrate the point about lack of impact. It was not uncommon for answers to begin with an unrewardable first paragraph defining what the Cabinet is. Quite a few candidates wasted time mistakenly balancing their answer, explaining how the Cabinet is still important.

Chosen question number: **Question 1**  **Question 2**  **Question 3**

**Question 4**  **Question 5**

The Cabinet, as part of the executive branch, are the heads of the fifteen ~~ed~~ departments of the Executive Branch, including education and Home Security. However, the cabinet does have minimal importance within the whole of the executive branch. In particular, they have limited importance as Cabinet Meetings are not frequent, and so have little contact with the president to give him information or advice, and so rarely receive any. For example, during Obama's time as president, the cabinet had only ~~had~~ <sup>had</sup> meetings around four

times a year, with a total of sixteen meetings throughout Obama's first and second term, thus illustrating their lack of relevance within the Executive, as the White House Staff, for instance, work with the President on a daily

basis. However, it can be argued that they do have partial importance as they receive information from ~~the~~ <sup>the</sup> President and help him follow his agenda, such as in 2017 where Obama told them how he wanted to focus on small businesses, and so are of partial importance.

However, to a greater extent, the Cabinet are also of limited importance as they do not have any ~~legislative powers~~ rule making powers, unlike the Federal bureaucracy, and can only give the President advice. For example, Rex Tillerson, part of Trump's Cabinet, could only advise him on how to approach the 'One China' policy, and how to conduct meetings and agreements with China in 2017. Thus, due to their limited powers, with their ~~only~~ main role being to

advise the president, they are of little importance within the executive branch, particularly when compared to the Federal Bureaucracy who ensure the implementation of policy, ~~which~~ and create rules, which Cabinet members do not do.

In addition, Cabinet members are also of little importance within the Executive branch as they also do not have full control over their ~~own~~ department. In particular, their department consists of experts who are in charge of conducting policy, ~~such as~~ such as those within the Health department. They also have little control over the budget of their department as this is decided by Congress, where in 2014, the department of Health were given an extra \$29 million for the implementation of the temporary Assistance of Needy Families programme. Thus, ~~due to~~ due to their lack of control within their department, Cabinet members are of little importance ~~in~~ within the Executive.



In conclusion, Cabinet members are of little importance ~~aspects~~ within the Executive due to their lack of control, ~~power~~ <sup>power</sup> ~~to~~ <sup>meet</sup> ~~advise~~ <sup>meetings</sup>, and their limited ~~meetings~~.



**ResultsPlus**

**Examiner Comments**

This is a fairly typical bottom Level 3 answer to this question. The candidate makes three points which are reasonably well developed with some exemplification. The second point is the least convincingly explained and the 'evaluation' at the top of the second side isn't required by the question and gains no reward. Nevertheless, it does just enough to score bottom Level 3, 11.



**ResultsPlus**

**Examiner Tip**

With a short answer, get straight into answering the question. The first sentence which gives a brief explanation of what the cabinet is gains no credit and is a waste of the candidate's time.

## Question 2

This was a new question which required precise knowledge of some of the decisions of the Roberts court and their antecedents. Reward was given when candidates could show understanding of the judicial background to a decision, even when they were unable to give details of a previous case, or when two cases were linked by subject matter but were decided on completely different grounds. Some candidates claimed, for example, that *DC v Heller* upheld the precedent of *US v Lopez*, although *Heller* in fact turned on the second amendment and *Lopez* the commerce clause. Somewhat similarly, candidates related first amendment cases on very different issues (such as flags, campaign finance and rap lyrics) which was rewarded. It was not uncommon, unfortunately, for candidates either to use Roberts cases being confirmed by other Roberts cases, or to claim a case decided by the Rehnquist court was decided by Roberts: the *Bollinger* affirmative action decisions were probably the most frequently seen in this connection.

Chosen question number: **Question 1**  **Question 2**  **Question 3**

**Question 4**  **Question 5**

A case in which the Roberts court upheld the decisions of its predecessors is with regards to Affirmative Action. In the 2003 the *Bollinger* cases the Rehnquist court both struck down crude quotas whilst upholding individualised admissions schemes. This decision was effectively a ruling that concerned the constitutionality of affirmative action. This decision was upheld by the Roberts' court's reaction to *Fisher vs Texas* in 2013. The court referred to the decisions in the *Bollinger* cases and refused to take another case that was seen as similar to a previous one, therefore the court has been shown to some extent to uphold and confirm the decisions of its predecessors.

A case where the Roberts court did not uphold predecessor decisions is in *Citizens United vs FEC* in 2010 which



decisions is in *Citizens United vs FEC* in 2010 which struck down limits on advertising expenditure outlined in the McCain-Feingold Bipartisan Campaign Reform Act (BCRA) of 2002. The justices and courts were seen to return to conservative activism as they struck down a previous decision in *McConnell vs FEC* which upheld the BCRA. This decision shows to some extent that the Roberts court have not consigned decisions by predecessors and have overruled previous courts.

A different court decision that concerned previous courts is when regarding gun control. In *DC vs Heller* the court upheld the right to individual gun ownership based on the protection of the right outlined by the second amendment to the constitution. This case was the first decision on gun control since *US vs Miller* in 1939 and to some extent consigned the decision in a similar way. However it perhaps went further than the decision in *Miller* which concerned gun ownership within the terms of a militia, whereas *DC vs Heller* concerned that an individual had the right to gun ownership. This case presents that the court consigned the *Miller* decision however they went further than that decision in giving even more rights to gun owners.



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### Examiner Comments

This is not a long answer but it is impressive in the precision of its knowledge. The candidate accurately cites three Roberts court cases and three cases from earlier courts to which they are linked, which is sufficient to place the answer in Level 3. Many candidates used *DC v Heller* in their answers but very few indeed were aware of the connection with *US v Miller* which this answer refers to. The Rehnquist affirmative action cases are not entirely accurate and otherwise it is only the lack of detail on *Citizens United* which stops this answer moving towards full marks.



## ResultsPlus

### Examiner Tip

The main cases of the Roberts court will be part of an answer to almost any question on the Supreme Court and it is worth knowing them in some detail.

### Question 3

Questions on the Bill of Rights have appeared in previous series, so it was surprising that many candidates seemed unprepared for this one. There was quite a lot of uncertainty over which rights are actually contained in the Bill of Rights - candidates frequently claimed that it gave US citizens a right to life (and indeed a right not to die in at least one answer) - and which court cases upheld which rights. Many did not know, for example, that the rights established by *Roe* and *Obergefell* are based on the 14<sup>th</sup> amendment. More fundamentally, very few candidates seemed aware that the meaning of the ten rights contained in the Bill of Rights and their application to modern society are the subject of intense debate: for example, many on the left contest the idea that the second amendment confers an individual right to gun ownership or that corporations have the right to spend an unlimited amount on political campaigns through the first amendment. The fact that *Citizens United* and *Heller* were both 5-4 verdicts should offer a clue that the rights they established are not uncontroversial, and this needed to be recognised in a discussion of how far these decisions protected liberty. Many candidates claimed police brutality or perceived racism showed that the Bill of Rights was not protecting liberty without reference to a specific amendment, and cited the Patriot Act and Guantanamo Bay similarly generally.

*Brynn V. Repelica*

Indicate your second question choice on this page.  
You will be asked to indicate your third question choice on page 9.

*8th amendment*

*32*

Put a cross in the box  indicating the second question that you have chosen. If you change your mind, put a line through the box  and then indicate your new question with a cross .

Chosen question number: Question 1  Question 2  Question 3

*1st - Citizens United v FCC*

Question 4

Question 5

*Graetz v Ballinger DC v Heller 1996*

Arguably, conservatives on the right of the political spectrum believe that the 2nd amendment right to bear firearms has protected liberty in the USA in the 21st century. This was seen in (DC v Heller) 2008 decision 5-4 ruling in which the 1996 hard gun law prohibiting firearms was deemed as ~~controversial~~ unconstitutional and the ~~court~~ stated conservative wing of the court Alito, Roberts, Kennedy, Scalia and Thomas stated this is an individual right rather than a collective right.



Therefore, the DC v Heller 2008 ruling upheld  
the Bill of rights 2nd amendment and  
protected liberty of us citizens.

However, many liberals including former president  
Obama openly criticised this decision and by  
ruling it still constitutional it gives way and  
in effect allows people to be subject to violence  
such as the sandy hook school shooting which  
inevitably would not of happened if the 2nd  
amendment was not upheld.

The 14th amendment, due process clause has been  
interpreted to encompass the right and  
freedom to entered marriage and family life.  
This was initiated in the Obergefell v Hodges 2015  
ruling which was a 5-4 decision which liberal  
swing justice Kennedy upholding his liberal  
principles and thus allowing same sex marriage  
to be prohibited across all 50 states. Therefore,  
highlighting how the 14th amendment has upheld  
liberty in USA. Similarly, the 1st amendment  
freedom of speech was upheld with the  
Citizen United v FEC 2010 decision in which  
the court gave corporations the same right  
as individuals in funding election campaigns  
arguably this gave way to the immense  
£750 million from super pacs spent in the 2016

presidential election race.

However, arguably this has not protected liberty as it means in effect candidates whom possess massive wealth are able to obtain usually through the 'old boys network' this citizens' control of the process was not protected liberty as it's made the process elitist.

The Bill of Rights has effectively protected liberty in the USA according to case studies on the 2003 (Gratz v Bollinger) ruling under ~~Reynolds~~ Reingold case. As it ruled that Michigan's in-state admission criteria of using race was unconstitutional. Many prominent political figures including Justice Clarence Thomas argue this is unfair and perpetuates division.

Thus the Gratz v Bollinger ruling is ~~unconstitutional~~ protecting amendment 9 in which proclaims that just because it's not stated on the ~~constitution~~ amendment they're still the right to uphold. Highlighting the Bill of Rights amendment 9 has been upholding liberty in the 21st century.

However, arguably ~~in the USA~~ the Bill of Rights has not been upheld ~~due to the~~ in the 8th amendment. Due to the ~~Marx v Nees~~ ~~ruling~~ in 2008 which declared lethal injection used by 38 states and Federal.



government to be ~~constitutional~~ constitutional.  
Liberals believe this does not protect the liberty  
of the individuals



**ResultsPlus**  
Examiner Comments

The strength of this answer is its recognition that the nature of the liberties contained in the Bill of Rights is disputed, and that a decision of the Supreme Court cannot be seen as a simple endorsement or rejection of any given liberty. Unfortunately the candidate goes astray in their discussion of the 14th amendment but nevertheless does enough to get into Level 3.



**ResultsPlus**  
Examiner Tip

It is important to keep clear the difference between the Bill of Rights, which is very specifically the first ten amendments, and the broader concept of constitutional rights which includes as well any rights in or derived from subsequent amendments.

## Question 4

This question was a variant on the veto question which has been asked for and proved popular in previous series but, rather like question 3, many candidates who attempted it seemed unprepared. Even a cursory study of the president's veto power would surely recognise the downward historical trend in its use (and which reached new lows during the administrations of the last two presidents), but it apparently occurred to only a few to consider in any detail what the reasons for this trend might be. Most answers showed at best minimal knowledge of the context of the Bush and Obama administrations – partisan control of Congress was obviously particularly relevant – and instead relied on a series of generic points which it was often difficult to find evidence for. Many claimed, for example, that Presidents Bush and Obama didn't use the veto more often because they didn't want to see their vetoes overridden, but during the periods when this might most plausibly have been the case (i.e. when both chambers of Congress were controlled by the opposing party) both presidents' use of the veto markedly rose. It was easier to reward the use of signing statements than executive orders, as candidates could not generally substantiate or exemplify a claim that executive orders were used instead of vetoes. Some candidates ran out of material and discussed why Bush and Obama *did* use the veto rather than why they didn't, and a few misunderstood 'sparingly' to mean 'a lot'.

## Question 5

The best answers to this question discussed the relevance of three or more factors which influence the votes of members of Congress and related them to specific votes. The quality of evidence and the intelligence with which it was used were important discriminators here (as for all questions in fact) and it was slightly depressing to see Elizabeth Dole and the 'bridge to nowhere' being referred to as often as they were, when there are plenty more current (and consequently relevant) examples available. The negotiations around the American Health Care Act and the subsequent votes gave more confident candidates an excellent case study to consider the tensions between the demands of constituents, party and the administration. Some answers apparently assumed that it was obvious why the folks back home were important, and never really explained why members of Congress are so sensitive to local views. Others argued that members of Congress in safe seats or states could pretty much ignore their constituents and didn't seem aware of the possibility of a primary challenge.

Chosen question number: **Question 1**  **Question 2**  **Question 3**   
~~Question 1~~ **Question 4**  **Question 5**

~~The folks~~

The folks back home are the most important influences on the voting of members of congress to a huge extent. House Representatives, rely on the 'folks back home' to become elected, every two years, this has given rise to the growth of the primary campaign, for example in 2011 the house was only in session for less than 100 days. One example of Representatives voting, is ~~when~~ <sup>when</sup> all 138 Republican ~~members~~ <sup>members</sup> voted against Obamacare, as they had a number of fear their constituents, to lower government debt and keep taxes low. This is due to the folks back home are the most important reason for voting of members of congress.

However also to a large extent, Party  
leaders and a large influence  
on voters, as the members of congress. Voters,  
for example, party voters since the 1997 Republican  
revolution, party voters have been on the side,  
for example in 2018, 94% of Republicans  
and 93% of Democrats voted with their party.

Because of party leaders. However, party leaders  
actions, can greatly influence voting of congress,  
for example Boehner (Dem), purged 3 party  
members for being too strongly conservative,  
which shows that party leaders are watching  
how congressmen vote, and thus have a  
great influence.

However, the President is also a great influence  
on voters and members of congress. The President  
delivers a State of the Union address, at the  
start of each year, outlining his agenda,  
much of congressmen work is done around  
this, for example, congress voted for increased  
aid against ISIS and the fight on trade  
embargo on Cuba, both of these happened under  
a partisan government. It shows the President  
has large influence, more over the President  
can use his patronage power, to influence voters,

or vary for the party, it been and others recorded.  
For example, <sup>Obama</sup> ~~Barack~~ appeared Michael Bloomberg  
and Julia Luyten.

A final, ~~was~~ reason why congress members  
votes are influenced is by pressure groups,  
which, because increasingly hostile towards  
fossil against representatives, for example  
Koch Brothers in 2012, gave donations to a  
number of congress who voted against Obama.  
Here, Pressure groups are more significant  
as a result of the passing of Obama care was  
passed in the House 212-213

In conclusion therefore, <sup>although</sup> ~~the~~ Pressure  
groups and party leaders influence  
number of congress votes to a large extent.  
The most important reason is the fossil  
back loans.



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#### Examiner Comments

This is a fairly typical low Level 3 answer to this question: it identifies four factors which influence the votes of members of Congress, explains them clearly and uses some supporting evidence. The examples aren't in fact the most convincing but the range of points gets the answer into Level 3.



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#### Examiner Tip

Precise contemporary examples immediately raise the quality of an answer so try and incorporate them into a new topic as you learn it.



## Question 6

This was a popular question for which, in contrast to some of the short answer questions, many candidates seemed well prepared. The essence of the question is consideration of what has happened to the power of Congress relative to the other two branches of government, and the most obvious approach, which many took, was to examine the ways in which Congress could be argued to have lost power or gained power from the judiciary and executive. Some answers were based around the three main roles of Congress and it could certainly be relevant to consider, as some did, how far – if at all – the partisan gridlock of recent years has weakened Congress in its legislative role. It was less easy to make consideration of Congress's compositional representation relevant: in fact, those that discussed representation usually claimed lack of women and LGBT members, for example, weakened Congress when, since such representation has increased in recent years, Congress has, if anything, been strengthened. Answers which received reward in mid to higher level 2 typically rehearsed the main checks and balances between the three main branches without directly answering the question of how far Congress has *become* the weakest branch. It was common to see examples of Supreme Court decisions such as *Roe* and *Brown*, or for candidates who were more up to date *Obergefell*, as examples of judicial review which thwarted Congress's legislative will, when Congress was not directly involved.

Chosen question number: **Question 6**  **Question 7**  **Question 8**

It could be argued that Congress is now the weakest of the three branches, as it has suffered from increasing partisanship, as well as having lost hold on presidents when it comes to foreign policy, and due to uses of executive orders to make it not the only legislative making branch. ~~However~~ Despite the fact that Congress has the prime legislative function and ~~has~~ is able to impose checks on both branches of government, a more imperial president and Supreme Court have managed to an extent oppress the power of Congress.

The most significant argument, which shows that Congress has become the weakest of the three branches of government is the fact that it has suffered from increasing polarisation of the parties and

as a result, this has meant that, Congress finds it much harder to pass any bipartisan legislation, as proposed by the president of the opposing party, or the other party itself. For example, Congress was one of the key determinants in Obama not being able to pass any comprehensive immigration reform. Once there is no ~~any~~ clear majority in Congress it becomes harder for any legislation to be passed, for example, after using up all his political capital in the first half of his first term to pass the affordable care act, Obama lost seats in his first midterm, which led to the Republicans using a filibuster to block the Dream Act (2010). This shows that Congress's bipartisanship has prevented it from fulfilling its main function of being a legislative body. However it could be argued that more recently the breaking up of the parties into factions has led to each party being more accepting of the other as was seen with the ~~the~~ new federal spending budget, as Democrats were able to come to a bipartisan agreement to forego a concession of \$1.1 million of domestic spending.

Furthermore, Congress cannot be seen as the weakest of the three branches as it has little jurisdiction over the foreign policy arrangements. This all up to the president, who as described as Schenbinger, has become increasingly important, due to the power he

has in foreign policy. In recent years the president has been able to use his power as commander in chief to commit troops abroad in spite of the War Powers Act, which arguably gave the president more ~~power~~ authority to commit troops for 60 days. The power of commander in chief has also meant that the president has been able to take war time into his own hands. For example Obama sent drone strikes to places in the middle east such as Yemen, Libya and Syria. More recently ~~Obama~~ Trump (2017) sent missiles attack on Syrian base. This shows that despite Congress having the power to declare war, increasingly presidents have taken it upon themselves to interpret powers given in the constitution to work around the checks and balances which Congress holds.

In addition, Congress main function of being a legislative body has also been diluted by the powers which the president tends to use increasingly in order to fulfil his agenda. The most common way in which the ~~Congress~~ <sup>President</sup> is known to ~~have increased~~ overreached power, has been through the use of executive orders. These are when President issues the ways in which the federal bureaucracy should implement their work. This has had both effects on the domestic and foreign policy. For example in 2017 Trump used an executive order to ban any ~~immigrants~~ visitors or immigrants coming into the US from 6 muslim majority



carries. This showed an overreach of power from the executive, as immigration policy is usually only determined by legislation which has passed through Congress. Although this was a temporary ban, ~~the~~ the order could not be overturned by Congress and the Court cases which followed, took time, to ~~have~~ reach any significant verdict.

However, it could be argued that Congress is not the weakest branch because it has ~~to~~ still been able to effectively check the president, to avoid a tyrannical leader, ~~just~~ as the ~~first~~ architects of the constitution intended for. ~~§~~ Congress is still the sole branch of government which can confirm nominations to both the executive and to the judicial branches Supreme Court. For example, in 2016, Obama nominated ~~§~~ Merrick Garland to be the next justice after Scalia passed. However, Mitch McConnell, Senate majority leader, refused to even hold a hearing for Garland as he deemed it to 'undemocratic' for a president who is about to leave office to choose a justice who has a life tenure. Therefore the Senate waited for a new president, Trump to nominate a judge, which he did, Neil Gorsuch, was ~~to~~ confirmed by the Senate in 2017. This was greatly favoured by Conservative commentators as it meant that the new justice ~~to~~ could be a conservative, based on who won the election. This shows how

The Congress is still a strong branch, as it was able to assert its power over the executive on a decision which would change the face of American society. Though it could be argued that this is only the power of the Senate, not Congress as a whole.

Many liberal commentators have argued that the Supreme Court does not have any significant powers as the other branches do. Its power of judicial review is by conservatives said to lack legitimacy, as it is not enshrined in the original constitution, and was originally meant to be the branch with least significance. As a result any interpretable amendments which are made by the Supreme Court have little significance when it comes to the implementation of these rulings. For example in the case of *Brown v. Board* (1954), although the Supreme Court ruled that segregation in ~~the~~ public places was unconstitutional, it didn't explicitly say it was illegal. This gave leeway to states when implementing the ruling. It was only when Congress said it would reduce ~~the~~ federal funding to any states who did not follow the ruling, ~~and~~ which led there to being change. This shows the Supreme Court to be one of the weakest branches of government as it is seen to be an unelected branch and therefore lacks legitimacy, and a precedent which ~~the~~ people feel they need to follow.



Congress could be seen to be one of the most strongest branches of the three as it has the constitutional power of oversight. This means that it is able to check ~~the~~ powers ~~through~~ of the president, with one of the main functions of oversight. This oversight function is carried out by congressional committees to make sure that the actions of the ~~gov~~ executive are in line with the law. This function is usually carried out by standing committees or select committees. For example the House committee on oversight and government reform is looking into Flynn the USA head, as he had not fully disclosed the payments he received from associates ~~from~~ <sup>of</sup> the Russian and the Turkish in 2017. This shows how Congress is able to use its power in order to enhance democracy as it makes the executive accountable for its actions, which has also been seen with the Senate Select Intelligence Committee looking into ~~how~~ if Russians have interfered with US democracy during the election. This shows how Congress is able to check the executive to ensure that they are following the law, and are not in a position where they are able to exercise power without any consequences.

Overall, it is clear that Congress has been able to use its ~~power~~ powers as given by the

Constrain to check the other branches of government and to try and carry out its functions and achieve balance within government. However, an increasing partisanship and a polarising political climate has meant that Congress powers have been limited, and overshadowed by the other branches, who have come to ~~control~~ <sup>control</sup>, not just foreign but domestic agenda.



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**Examiner Comments**

This answer is a very solid Level 3 answer to this question. All the points are clearly explained and examples are relevant and up-to-date. The only paragraph which is less convincing is the one on the first and second side on the effects of partisanship: the material here could probably be more persuasively used to argue not that Congress has been weakened but rather that it has considerable power to thwart the president's agenda.



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**Examiner Tip**

Introductions - this introduction doesn't achieve very much and its principal merit is that it's short and doesn't waste too much time. What the introduction should do is signal to the reader the nature of the debate the question raises and the direction the argument is going to take.

## Question 7

Questions on federalism always seem to invite a historical narrative approach and many candidates devoted a sometimes significant section of their answer to discussion of the New Deal and Great Society. This was by no means irrelevant as background, but the focus of the answer did need to be contemporary. The word constitutional in the question served as a pointer for candidates, and a very rewardable approach was to take key elements of the constitution, such as the interstate commerce clause, the 10<sup>th</sup> amendment and the amendment process, and examine the extent to which these allowed states to remain powerful. There was plenty of contemporary evidence of federal incursion into state power for candidates to draw on: specific policies such as Bush No Child Left Behind and policy areas such as marijuana were often cited, as were Supreme Court cases such as *Obergefell* and *Raich*. Many candidates assumed that any expansion of the federal government, such as the creation of the Department of Homeland Security, must always mean an attenuation of the power of the states, when it is not necessarily the case. A small number of candidates confused federalism with the separation of powers and discussed checks between the three branches of the federal government, which in a few cases meant there was unfortunately nothing to reward at all.

Chosen question number: Question 6  Question 7  Question 8

- > CONSTITUTIONAL (DEBATED)
- > POWERFUL UNDERMINED
- > UNDERMINED BY STATES

Federalism is a founding principle of the United States, describing how a balance of power should exist between the Federal government and local states (i.e. one should not dominate the other). Despite its enshrinement in the Constitution, recent actions by the Federal government ~~and~~, reinforced by SCOTUS rulings, has seen its ~~existence become under~~ operation within the US weaken considerably.

Firstly, the U.S. can be viewed to still ultimately operate a system of federalism due to its inherent enshrinement in the "constitutional framework".

During the constitution's inception, features were intentionally added to ensure federalism remained a guiding framework for the nation's governance. Most simply, this is illustrated through Article I's requirement that states, not the federal government,

provide the means of representation within the Bicameral Congress (with its Bicameral nature, also, enshrining federalism, ensuring that smaller states were placated with a proportional equally representative upper Senate, whilst larger states were benefited by a proportional lower House). This illustrates federalism's

continued existence as element of the U.S., considering states are ultimately not neglected from the legislative process. Furthermore, the constitutional amendment process's requirement that, after passing the executive and legislature, a proposal must be ratified by  $\frac{3}{4}$ 's of states, again illustrates its enshrinement in the constitutional framework, through ensuring that states are not excluded from the amendment process, and can voice opinions over



a document that will ultimately determine their capabilities. ~~The~~ The 10<sup>th</sup> amendment serves as a substantial indicator of federalism's continued existence within the constitutional framework - the amendment reserves all rights not explicitly awarded to the federal government to be reserved for the States. ~~The~~ This direct accrediting of considerably flexibility to the States further bolsters the existence of federalism, considering it upholds federalism's definition - that both the federal and state governments should hold power. Of course, some may argue that the 17<sup>th</sup> amendment's ending of the State legislature's selecting Senators could undermine its existence, yet the Senators are still ultimately elected by the State's populations, upholding the State's representative power. Several features of the Constitution, therefore, illustrate federalism's continued existence as a leading framework for US governance.

Yet, the Constitution's indirect nature, implying federalism's existence yet not explicitly referring to it, has enabled administrations of late to considerably undermine its influence within the constitutional framework. The Bush Administration,



For instance, 'oversaw some of the largest expansions in the federal role since the Great Depression - the introduction of Medicare (costing over \$500 billion in its first year alone), for instance, illustrates the expansion of the federal government's role, as opposed to the state's role, in providing healthcare and assistance to citizens.

The introduction of the No Child Left Behind Act, similarly, further subjected the state's once considerable independence in the domain of education to the federal government. Alongside the considerable funding provided to the States of New York and Florida following 9/11 and Hurricane Katrina, respectively, the Bush administration's legacy indicates the declining autonomy of the States, and thereby federalism, in the state-federal government relationship. This has been further exacerbated by the Obama administration - 2016 Executive Orders over newly enforced gun salesman licenses and background checks, for one, considerably undermine the great levels of autonomy provided over gun regulations previously (as illustrated, for instance, through the overruling of the Gun Free School Zones Act, following *Reno v. United States*).

Most ~~are~~ importantly, the introduction of the Affordable Care Act further exacerbated the <sup>Declining</sup> role of the states, started by Medicare under Bush, over healthcare. True, the work of the Trump administration in attempting to restore the ~~federal~~ state's role via the

American Health Care Act may indicate a gradual return to state health flexibility.

This is considerably undermined by the ~~Executive Order~~ ~~Republican Moderate's~~ enforcement of measures to ensure federal funding for pre-existing medical conditions, alongside retaining other 'popular' federal features of the ACA (alongside, more generally, Trump's enforcement of a Border Wall upon several states, costing billions). ~~There is~~ In a contemporary, non-constitutional perspective, therefore, the U.S. can be viewed to have drifted away from the federalism seemingly inferred throughout the constitution, towards increasing federal dominance.

This conclusion is further bolstered by the works of the Supreme Court, who have consistently sided with the federal government to further erode its existence within the constitutional framework.



Notably, *UFIB v. Sebelius*, for instance, ruled that the Affordable Care Act's new enforcement of taxes and penalties upon states was constitutional (through Justice Roberts's interpretation of the non-insured 'penalty' to constitute as a 'tax', making it viable under the 16th amendment). Furthermore, *Cooper v.*

*Harris* ruled against the state congressional districts, proposed by North Carolina lawmakers, citing 'racial gerrymandering' was at play - this was despite the fact that, as the lawmakers argued, very similar districts had been ruled constitutional beforehand, illustrating the Supreme Court's potential inconsistency towards upholding state autonomy. Finally,

~~the~~ *United States v. Arizona*, ruling that three provisions of Arizona's immigration code ~~which~~ ~~an~~ interfered in the work of the federal government to institute its own

immigration laws, explicitly illustrates the Supreme Court's favouring of the states over the federal government over the states, hereby undermining federalism. This ~~is~~ 'favouring' of the federal government may not be of just contemporary significance - *McCulloch v.*

*Maryland*, one of the Supreme Court's earliest cases, ruled that the state of Maryland

could not impose a tax on a federal bank, thereby establishing the precedents that the Supreme Court has the unspecified

~~could~~ authority to undermine the works of the states. More generally, therefore, the constitution's ambiguity surrounding the express powers of the ~~State~~ Supreme Court ~~and~~, alongside the unspecified existence of federalism, may illustrate how federalism would almost inevitably be eroded as a part of the constitutional framework, as the states were ultimately subjugated to the SCOTUS's immense flexibility. This further bolsters the notion that the U.S. fails, and always has failed, to operate within a constitutional framework of Federalism.

To conclude, therefore, the notion that the U.S. currently does not reside in a federalism-based framework is clearly illustrated not only by the ~~and~~ contemporary work of the Executive, Congress and SCOTUS to undermine state's importance, but the very nature of the constitution, failing to explicitly detail federalism as part of its framework, may illustrate that the US has never operated wholly in a federalism-derived framework.



⊕ Through meaning members prioritise passing bills and securing votes over pleasing their electorate. However, seeing as many of these 6 pack-barrelled bills ultimately make the member more 'liked' in their state. Through securing more funding, the importance of the 'joke back home' is maintained, considering they are park-barrelled bills are mostly negotiated to secure electoral favour and thereby secure re-election (i.e. ~~so~~<sup>95</sup> the 'joke back home' are pleased with their member's work).



### ResultsPlus

#### Examiner Comments

This is a huge topic and any treatment of it in a 45 minute essay can only be partial. Nevertheless, this answer does a decent job and at times shows a touch of sophistication: it avoids the narrative approach which many candidates opted for and directly engages with the constitutional framework part of the question. It is a secure mid-Level 3 answer.



### ResultsPlus

#### Examiner Tip

This conclusion summarises the preceding argument quite well, which is the purpose of a conclusion.

## Question 8

Another question for which candidates were well prepared, and it was often done very well. Most candidates found more evidence to suggest that the court was political rather than judicial, and these arguments tended to focus on the appointment process and the inevitable involvement of the judiciary in politics when the justices are adjudicating on issues which are the source of deep division between the political parties. There was some impressively detailed knowledge of the different majorities of different decisions. Many candidates claimed that the court's lack of enforcement power showed that it was a judicial body, when it could be argued that it is the grounds on which decisions are arrived at, rather than the courts ability to enforce them, which is the key consideration. Likewise, the fact that there is often only a small majority supporting a particular verdict does not necessarily reflect a political division as it was sometimes argued.

Chosen question number: **Question 6**  **Question 7**  **Question 8**

In recent years, the Supreme Court has become involved in more and more areas of social and political issues - such as <sup>the</sup> 1973 ~~case~~ Roe vs. Wade and 1954 Brown vs. Topeka Board of Education rulings. This had led many to question where it has become a "political rather than judicial institution". This essay will ~~argue~~ prove that the Supreme Court ceases to be a "judicial institution" like it used to be and now is a political institution.

Firstly, the nominees for vacancies on the Supreme Court are nominated by a President, who obviously is a highly political figure. ~~The~~ ~~the~~ Presidents cannot help but nominate candidates who ~~they~~ support their views and share their ideologies. This is because Supreme Court justices have life

tenure, therefore their impact will be far longer lasting than that of their own as they are restricted by their time in office. For example, Donald Trump's nomination to the Supreme Court in 2017 was Neil Gorsuch. Gorsuch is a conservative, like Trump, and they share a similar ideological beliefs - such as, the right to life in most cases of abortion as shown by Gorsuch's ruling in the 2013 Hobby Lobby case. President's can't help but nominate a candidate who supports their ideological and political views, therefore making the Supreme Court a political institution as the bench can be clearly divided - most of the times - into liberal justices appointed by Democrat presidents and conservative justices appointed by Republican presidents.

Secondly, the Supreme Court has become a political institution and this idea is supported by the fact that the appointment process in the ~~senate~~ Congress has become increasingly politicised. This is clearly evidenced by Robert Bork's nomination in 1987 which, after intense scrutiny and highly politicised media coverage, did not make it through the Democrat dominated senate, as Bork



proved to be a very strict Conservative. For example, he did not agree with the Civil Rights Act in the 1960s. Since Bork's ~~re~~ rejection, confirmation of nominees has become highly politicised - especially, because of the increased partisanship in Congress. It is likely that had the Senate not been Republican dominated in 2017, that Neil Gorsuch would not have been confirmed due to his conservative - receive seen by many as 'Republican' - standing.

Thirdly, numerous amounts of Supreme Court rulings have been 5-4 rulings. This highlights the political nature that the court has adopted and the conservative/liberal divide that politicises it. There has been a decline in 9-0 rulings, whilst 5-4 rulings have seemingly increased in number. This ~~text~~ emphasises the fact that the Supreme Court is a political rather than judicial institution because - like partisanship in Congress has increased - ~~per~~ the divide between ~~the~~ liberal and conservative justices has developed. For example, justices who are considered to be more liberal (and often appointed by a Democrat president) include Stephen Breyer and Ruth Bader



Ginsburg. Whilst justices who are considered to be more conservative (and usually appointed by a Republican president) include Clarence Thomas, Chief Justice John Roberts and Antonin Scalia (before his recent passing). It is not often - certainly less common now than it used to be - for justices to move from their positions of liberal and conservative, thereby politicising the court. Whilst, also placing extreme influence in the hands of the 'swing justice' of which the court usually has one - currently, it is supposedly Anthony Kennedy, whilst having previously been Sandra Day O'Connor.

~~Finally~~ The power of judicial review - 'granted' by the court in 1803 in the case *Marbury vs Madison* - has increased the political nature of the court as it has enabled it to rule over issues which cover social and political issues thereby influencing and impacting public policy. For example, in 2011 the Roberts Court ruled, in the case *Wal-Mart vs. Dukes*, that evidence ~~was~~ brought forward by female employees of Wal-Mart was not sufficient in showing sexual discrimination in their work place. This ruling meant that Wal-Mart ~~was~~ escaped

having to pay ~~billions~~ billions of dollars of compensation to what could have been 1.6 million ~~per cent~~ of their female employees. This had a huge impact on public policy as it meant women found it harder to bring up cases, against big corporations, of sexual discrimination. However, it also could have sparked Obama's numerous pieces of legislation advancing women's rights such as the Lilly Ledbetter Fair Pay Act, which granted women and men equal pay. More evidence of the Supreme Court acting on political issues, therefore ~~is~~ causing it to be seen as a political rather than judicial institution, includes rulings on abortion rights e.g. Roe vs. Wade in 1973; on desegregation and civil rights e.g. Brown vs. Topeka Board of Education in 1954; and also on gun-rights e.g. DC vs. Heller.

Finally, the Supreme Court is a political institution because the Justices do not ~~conduct~~ <sup>decide</sup> their rulings in a political vacuum. They will be aware of public opinion and this can impact how they rule on certain cases. This idea is also evidenced by the fact that highly politicised

pressure groups can submit amicus curiae briefs which can influence the rulings, as it did in 2008 with DC vs. Heller when the NRA submitted amicus curiae briefs. This shows how the Supreme Court and its rulings have ~~been~~ become affected by politics and therefore can be seen as a political institution.

On the other hand, ~~many~~ there is credit to the argument that the Supreme Court is not a political but still is a judicial institution.

~~The~~ Firstly, justices are granted life tenure when appointed and their salaries remain fixed. This means that the justices cannot be bribed or threatened into ruling in certain ways in certain cases. This helps to maintain the 'neutral' and impartial nature of the court.

Secondly, although nominees are politicised during the appointment process, once on the bench they are free agents and can adopt any stance they want - they don't have to ~~be~~ be restricted by the president that nominates them. For example, Justice David Souter, before his appointment was described as



a "hone-run" conservative. However, he did not stick to this label he had been given and ruled with a more liberal stance on many occasions. For example, in 2008 he ruled that the ban on handguns should remain and not be deemed unconstitutional in *DC vs Heller* - a ~~liberal~~ liberal not conservative view. The fact that justices ~~are~~ are "free agents" once appointed to the bench highlights the fact that ~~some~~ ~~the~~ ~~are~~ agree there is validation to the argument that the Supreme Court is not a political institution. However, ~~the~~ ~~are~~ justices do not normally break away like Souter did, so this argument cannot always be sustained.

Finally, the Supreme Court also does not have the power of enforcement nor of initiation either. Therefore, it is not a political body in the same sense that ~~the~~ ~~Supreme~~ ~~Court~~ Congress and the executive ~~are~~ are. Their lack of enforcement was most obviously clear after the 1954 ~~Brown~~ *Brown vs Topeka Board of Education* ruling as which desegregated schools, as schools remained segregated for years after the ruling occurred. This emphasises



that the Supreme Court is not a political institution because even ~~if~~ if it rules over political issues, their rulings cannot be enforced like Congress's rulings can.

The lack of ~~initiation~~ initiation & denials from the fact ~~that~~ the Court has appellate jurisdiction and only a very small amount of original jurisdiction - over ambassadorial cases, citizens vs states cases or state vs state cases. This means that if an <sup>issue</sup> ~~case~~ is not presented to the Court, they will have no power to have any influence over the issue - therefore undermining its 'political' nature as ~~it is~~ the Court is heavily restricted on what it can rule over.

In conclusion, the Supreme Court in recent years ~~has~~ <sup>has</sup> become an increasingly political institution. Whilst, it still remains judicial in many ways - its lack of enforcement and initiation powers, the life tenure of justices etc. Recent developments - especially in the appointment and confirmation process - have caused it to be viewed by many as an increasingly political ~~institution~~ institution.



**ResultsPlus**

**Examiner Comments**

This is a very solid mid-Level 3 answer. The candidate deploys many of the arguments seen in these answers, some of which are more convincing than others. The prevalence of 5-4 decisions is not necessarily a clinching argument that the Supreme Court is a political body, and neither is lack of enforcement power conclusive proof that it is not.

## Paper summary

Based on the performance of this paper, candidates are offered the following advice:

- Short answer structure – three points developed fully or four points with less detail can both work equally well.
- With regard to introductions for short answers, don't waste time summarising points which you then explain later on in more detail.
- With regard to conclusions, all long answers need a conclusion when your main argument is restated.
- Try to use up-to-date evidence especially for Supreme Court cases – *Brown* and *Roe* are sometimes the most relevant examples but usually a more contemporary case is stronger

## Grade Boundaries

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