Congressional Research Service
Informing the legislative debate since 1914

Legal Sidebar

Jurisdiction Stripping: When May Congress Prohibit the Courts from Hearing a Case?

March 15, 2018

The U.S. Supreme Court recently issued its decision in *Patchak v. Zinke*, a case implicating a host of difficult legal issues concerning the respective powers of Congress and the judiciary. *Patchak* ultimately upheld the Gun Lake Trust Land Reaffirmation Act (Gun Lake Act) against a separation-of-powers challenge. However, because a majority of the Court could not agree on the legal basis for its decision, *Patchak*'s ultimate meaning with respect to Congress's power over the courts remains uncertain. The various opinions in *Patchak* signal sharp divisions on the Court concerning the scope of Congress's power to "strip" the jurisdiction of federal courts. Whereas at least four Justices appear to view that power as being "plenary" in nature, at least four other Justices embrace a more restricted view of Congress's authority. *Patchak* also implicates several other important issues related to the law of federal courts, including whether a particular law alters a court's jurisdiction, as well as what Congress must say in order to modify the government's sovereign immunity.

This Sidebar analyzes *Patchak* and its relevance to Congress. The Sidebar begins by briefly describing the Court's prior attempts to demarcate the boundaries of Congress's power to take cases away from the federal judiciary. The Sidebar then discusses the facts and opinions in *Patchak* and analyzes the effect *Patchak* may have on Congress's legislative objectives.

Setting the Stage

Over the past 150 years, the Supreme Court has repeatedly struggled to delimit the power Congress can exert over the federal courts without unlawfully encroaching upon the judiciary's powers under Article III of the U.S. Constitution. On the one hand, the Supreme Court has announced that Congress cannot "enact a statute directing that," in the case of "'Smith v. Jones,' 'Smith wins.'" Picking the winners of lawsuits is what federal judges do, and allowing Congress to choose who wins a case would therefore raise grave separation-of-powers concerns. On the other hand, however, any law that alters a party's legal rights necessarily affects that party's ability to win a lawsuit, and Congress generally possesses the constitutional authority to enact legislation that affects a person's legal rights and to make such legislation "applicable to pending cases, even when the amendment is outcome determinative." Thus, the Supreme Court has held that Congress generally "does not impinge on judicial power when it directs courts to apply a *new* legal standard to undisputed facts," even if that new legal standard may alter the outcome of a pending case. As long as Congress *changes* the law—as opposed to directing a court to reach a specified

Congressional Research Service
https://crsreports.congress.gov
LSB10100

result under *old* law—Congress does not impinge upon the judicial power. The Supreme Court has likewise concluded that Congress possesses largely "plenary" authority to determine what sorts of cases the federal courts may and may not hear—even though preventing courts from hearing certain classes of cases on jurisdictional grounds will necessarily cause plaintiffs who bring those cases to lose.

Because those competing principles are necessarily in tension, an enduring question since the Supreme Court first broached these issues 150 years ago has been: When does a statute that requires a court to dismiss a case constitute an unconstitutional encroachment upon the judicial power, and when does it instead constitute a lawful exercise of Congress's legislative power and its authority to define the jurisdiction of the federal courts? Although the Supreme Court's 2016 decision in *Bank Markazi v. Peterson* suggested that Congress possesses considerable power to "amend the law and make the change applicable to pending cases, even when the amendment is outcome determinative," *Patchak* presented the Court with an opportunity to explore the outer limits of that power.

The Facts

The dispute underlying *Patchak* began in 2009 when the Secretary of the Interior took a parcel of land known as the "Bradley Property" into trust for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, which wanted to build a casino on the property. A nearby landowner, David Patchak, filed suit, claiming that the Secretary lacked the authority to take the Bradley Property into trust. The Secretary argued that the doctrine of sovereign immunity—which prohibits litigants from suing the United States without its consent—barred Patchak's suit. The Supreme Court initially rejected the Secretary's argument, concluding that the United States had "waived its sovereign immunity from Patchak's action."

In response to the Supreme Court's decision allowing Patchak's lawsuit against the Secretary to continue, Congress enacted the Gun Lake Act, which provided that any lawsuit relating to the Bradley Property could "not be filed or maintained in a Federal court." The Gun Lake Act further required any federal court presiding over a lawsuit involving the Bradley Property to "promptly dismiss[]" it. Accordingly, the district court presiding over Patchak's case dismissed his claims. Patchak appealed to the U.S. Court of Appeals for the D.C. Circuit, claiming that, by forcing the court to dismiss his pending case, Congress had "impermissibly infringed the judicial power that Article III of the Constitution vests exclusively in the Judicial Branch" by directing a particular result in a pending case. After the D.C. Circuit rejected Patchak's argument that the Gun Lake Act violated Article III, Patchak asked the Supreme Court to review the case.

The Opinions

The Supreme Court granted certiorari and affirmed, rejecting Patchak's challenge to the Gun Lake Act. However, the Court could not agree why the law passed constitutional muster.

Justice Thomas, in a plurality opinion joined by Justices Breyer, Alito, and Kagan, concluded that the Gun Lake Act was a permissible exercise of Congress's well-established authority to demarcate the jurisdiction of the federal courts. The plurality first cited prior Supreme Court precedent holding that Congress may generally enact a statute that "strips federal jurisdiction over a class of cases" without violating Article III so long as that statute does not violate some other provision of the Constitution or otherwise guarantee results that Congress would ordinarily be "powerless to prescribe." Because the plurality believed that the Act did "nothing more" than strip the federal courts of "jurisdiction over suits relating to the Bradley Property," the plurality concluded that the Gun Lake Act was "a valid exercise of Congress's legislative power" rather than an unconstitutional congressional attempt to "usurp[] a court's power to interpret and apply the law to the circumstances before it." The plurality reasoned that, whereas "Congress violates Article III when it 'compels findings or results under *old* law,'" Congress does not encroach upon the judicial power when it merely "*changes* the law." The plurality concluded that the Gun Lake Act did the latter because it modified the jurisdiction of the federal courts; whereas federal courts

previously "had jurisdiction to hear" cases like Patchak's, "now they do not." Because the Gun Lake Act did not "attempt[] to direct the result" of Patchak's case "without altering the legal standards" that would apply to that case, the plurality determined that the Gun Lake Act was not equivalent to an unconstitutional "statute that says, 'In *Smith v. Jones*, Smith wins.'" The plurality accordingly concluded that the law did not violate Article III.

However, Justice Thomas's opinion did not command a majority of the full Court. Although Justice Ginsburg and Justice Sotomayor concurred with the Court's conclusion that the lower court had properly dismissed Patchak's case, they believed that the Gun Lake Act was "most naturally read" as restoring the United States's sovereign immunity from Patchak's suit, rather than as "strip[ping] the federal courts of jurisdiction" to adjudicate Patchak's claims at all. The concurring Justices emphasized that Congress had enacted the Gun Lake Act in order to overrule the Supreme Court's prior determination that the United States had waived its sovereign immunity from Patchak's claims. By voting to uphold the Gun Lake Act on sovereign immunity grounds, the concurring Justices avoided many of the constitutional questions regarding when, and under what circumstances, Congress unlawfully exercises the judicial power by abrogating the federal courts' jurisdiction over a limited subset of cases.

Chief Justice Roberts, in a dissenting opinion joined by Justices Kennedy and Gorsuch, maintained that the Gun Lake Act unconstitutionally "target[ed] a single party for adverse treatment and directed the precise disposition of his pending case." The Chief Justice first disagreed with the plurality's conclusion that the Gun Lake Act was best read as a jurisdiction-stripping statute. Whereas prior Supreme Court precedent had held that a statute deprives the federal courts of jurisdiction only when "Congress has 'clearly stated' that the rule is jurisdictional," the Gun Lake Act did "not clearly state that it imposes a jurisdictional restriction." The Chief Justice therefore concluded that the Gun Lake Act was not merely an exercise of Congress's broad authority to demarcate the jurisdiction of the federal courts, but rather an unconstitutional congressional attempt to usurp a judge's duty to decide which party wins a particular case. The Chief Justice further maintained that, even if the plurality was correct that the Gun Lake Act was best read as a jurisdiction-stripping statute, the law would still be unconstitutional because separation-of-powers principles prohibit Congress from "manipulat[ing] jurisdictional rules to decide the outcome of a particular pending case." According to Chief Justice Roberts, Article III prohibits Congress from "enacting a bespoke statute tailored to" a particular case "that resolves the parties' specific legal disputes to guarantee [one party's] victory," and the Gun Lake Act did exactly that. The Chief Justice likewise disagreed with the concurring Justices' conclusion that the Gun Lake Act could be read "as restoring the Government's sovereign immunity from suit" because Congress had not "express[ed] 'an unambiguous intention'" to "withdraw[] the sovereign's consent to suit" in the explicit language of the Gun Lake Act.

The Takeaways

Because no single opinion garnered a majority vote, *Patchak*'s impact on the jurisdiction-stripping doctrine remains uncertain. "When a fragmented Court decides a case and no single rationale explaining the result enjoys the assent of five Justices, 'the holding of the Court may be viewed as that position taken by those Members who concurred in the judgments on the narrowest grounds.'" Because the concurring Justices voted to uphold the Gun Lake Act on what appears to be narrower grounds than the plurality, the plurality's relatively broad statements regarding the extent of Congress's power to take cases away from the courts may not ultimately have any binding effect. Furthermore, even though Justice Sotomayor voted to uphold the Gun Lake Act on sovereign immunity grounds, she nonetheless "agree[d] with the dissent" that "an Act that merely deprives federal courts of jurisdiction over a single proceeding . . . should be viewed with great skepticism." Justice Sotomayor, like the dissent, expressed concern that the plurality's approach would allow Congress to "achieve through jurisdiction stripping what it cannot permissibly achieve outright" without unconstitutionally usurping the judiciary's authority—"namely, directing entry of a judgment for a particular party" in a pending case. As a result, four members of the Court (namely

Justice Sotomayor and the three dissenting Justices) concluded that the Gun Lake Act could not pass constitutional muster as a jurisdiction-stripping statute, while an equal number (namely the four Justices in the plurality) believed that it could. Moreover, because only four Justices agreed that the Gun Lake Act was most plausibly read as a jurisdiction-stripping statute—rather than as a restoration of sovereign immunity (as the concurring Justices believed) or as an unconstitutional statute directing a particular substantive result in a pending case (as the dissenting Justices believed)—it remains unclear exactly what language Congress must use to divest federal courts of jurisdiction over a particular matter without running afoul of the Constitution. Thus, although *Patchak* and earlier cases like *Bank Markazi* signal that Congress possesses considerable authority to bar federal courts from hearing certain kinds of lawsuits, the precise boundaries of that authority presently remain unsettled.

Patchak has potentially important implications for the doctrine of sovereign immunity as well. The concurring Justices' opinions signal that, after a federal court decides that the United States has waived its immunity from a particular lawsuit, Congress possesses broad authority to undo that court's decision by enacting a statute directing the court to dismiss the case. The concurrences further imply that, because the Gun Lake Act does not explicitly mention "sovereign immunity," Congress need not use magic words to modify the government's sovereign immunity.

In sum, while *Patchak*'s ultimate impact on Congress presently appears uncertain, the decision at least reinforces the importance of carefully considering the impact that proposed legislation may have on the crucial balance of powers between the legislative branch and the judiciary.

Author Information

Kevin M. Lewis
Legislative Attorney

Disclaimer