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Federal Supremacy, State Court Inferiority, and the Constitutionality of Jurisdiction-Stripping Legislation

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The perennial debate over jurisdiction stripping has taken on new life in the last several months. The House of Representatives has adopted legislation that proposes to restrict the authority of the federal courts (both Supreme and inferior) over certain federal constitutional claims. In addition to providing the state courts with final authority to pass on constitutional issues, certain of the bills would free the state courts from the precedential effect of federal decisional law. One of the bills would threaten federal judges with impeachment if they exercise jurisdiction denied them by the legislation.

In assessing the constitutionality of this legislation, this Essay examines the relationship between state courts and the federal judiciary. Congress has a good deal of control over the relationship: it can create lower federal courts to hear Article III business, or it can leave these matters to the state courts and provide for appellate review in the federal judiciary. But can Congress assign matters exclusively to the state courts and foreclose appellate review entirely? Attempts to answer that question have focused on the Madisonian compromise (and its provision for congressional control over the jurisdiction of the lower federal courts); on the Appellate Jurisdiction Clause, with its provision for the creation of exceptions to, and regulations of, the Supreme Court's appellate jurisdiction; and on other provisions in Article III.

This Essay broadens the discussion to include the provision in Article I, Section 8 that empowers Congress to “constitute tribunals inferior to the Supreme Court.” Building on the text, history and structure of this provision, the Essay contends that when Congress confers exclusive jurisdiction on the state courts, it should be seen as constituting them as inferior tribunals within the meaning of Article I. All inferior tribunals (including state courts, Article I tribunals and lower federal courts) must obey Supreme Court precedents and be subject to the Court's oversight and control. While Congress can regulate the Court's appellate jurisdiction, it cannot free inferior state tribunals from their subordinate relationship to the Court. The Essay concludes that legislation proposing to invest state courts with unreviewable authority over issues of federal law would violate the inferiority requirement.