

Legal Sidebar

Dude, Where's My Jurisdiction? Congressional Efforts to Strip Federal Courts of Jurisdiction

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Federal courts, in presiding over lawsuits, have significant [power over the citizenry's life, liberty, and property](#), and that power can be exercised in a manner that may raise concerns with the legislative branch. One way Congress potentially can reduce the judiciary's influence is by regulating federal court jurisdiction. Federal courts are [limited to the jurisdiction](#) granted by the Constitution, which, in [Article III](#), [authorizes federal courts to decide certain limited "cases" and "controversies."](#) Article III also [authorizes Congress](#) to determine what classes of "cases" and "controversies" inferior courts have jurisdiction to hear. A recent case decided by the U.S. Court of Appeals for the D.C. Circuit, [Patchak v. Jewell](#), demonstrates how Congress, perhaps concerned by how a court might rule on a matter before it, might "strip" the court of jurisdiction to hear a case in the midst of litigation. *Patchak* highlights the scope of Congress's authority to remove a class of cases from federal jurisdiction and the consequences for already pending lawsuits.

[Patchak](#) involved a challenge to the Department of the Interior's (DOI) [decision](#) in 2005 to place a tract of land in Wayland Township, Michigan (known as the "Bradley Property") in trust under the [Indian Reorganization Act](#) (IRA) for the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (known as the "Gun Lake Tribe"). After the Gun Lake Tribe began building a casino on the Bradley Property, David Patchak, who lives in Wayland Township, sued officials from the Bureau of Indian Affairs under the Administrative Procedure Act (APA), asserting that the DOI lacked authority under the IRA to place the Bradley Property in trust for the Gun Lake Tribe. He additionally claimed that the casino would cause him injury by "irreversibly chang[ing] the rural character of the area, increase[ing] traffic and pollution, and divert[ing] local resources away from existing residents." The [district court](#) initially dismissed the suit, concluding that Patchak lacked prudential standing—i.e., whether his asserted interests arguably fell within the zone of interests to be protected or regulated by the underlying statute. The matter reached the [Supreme Court](#) in 2012, and the Court concluded that Patchak, indeed, had prudential standing to sue. With prudential standing ensured, the case was remanded to the district court for resolution on the merits.

Meanwhile, on September 26, 2014, President Obama signed into law the [Gun Lake Trust Land Reaffirmation Act](#) ("Gun Lake Act"), which ratified and confirmed the DOI's decision to place the Bradley Property in trust for the Gun Lake Tribe. Additionally, the Act stripped federal courts of jurisdiction to hear claims related to the Bradley Property: "Notwithstanding any other provision of law, an action (including an action pending in a Federal court as of the date of enactment of [the] Act) relating to the [Bradley Property] shall not be filed or maintained in a Federal court and shall be promptly dismissed." The legislation was necessary, [according to](#) a House Report on the Gun Lake Act, out of concern that the underlying DOI decision may have been unlawful under then-existing precedent. The Report even referenced Patchak's lawsuit, noting that the legislation would void it.

Because *Patchak* was still pending in the district court at the time of enactment, the [district court](#) concluded that it no

longer had jurisdiction to hear the case and dismissed the suit. The D.C. Court of Appeals affirmed, explaining that so long as the Act is not otherwise unconstitutional, “[t]he language of the Gun Lake Act makes plain that Congress has stripped the federal courts of subject matter jurisdiction to consider the merits” of Patchak’s complaint. Noting that “federal courts have ‘presumptive jurisdiction . . . to inquire into the constitutionality of a jurisdiction-stripping statute,’” the court next considered—and rejected—each of Patchak’s constitutional challenges to the Act. Among other things, Patchak contended that the Gun Lake Act violates the separation-of-powers doctrine by encroaching on the judiciary’s Article III powers. The Constitution grants the judicial branch the power to decide “cases and controversies,” which long ago in [Marbury v. Madison](#) was interpreted to mean that the judiciary gets to “say what the law is” in those cases and controversies. But “Congress has the power (within limits) to tell the courts what classes of cases they may decide,” as well as to direct courts to apply newly enacted legislation in pending civil cases. Nevertheless, in doing so Congress cannot dictate the outcome of pending litigation, as such an exercise of power would intrude on the power of the judiciary described in *Marbury*. Indeed, in a famous and oft-debated Reconstruction Era case, [United States v. Klein](#), the Supreme Court held that Congress could not, by limiting, in part, appellate jurisdiction, dictate a “rule of decision” that undermined the independence of the judiciary. Recently, though, the Court has minimized the import of *Klein*, noting that while Congress cannot invade the judicial role by dictating how courts rule in a particular case, Congress is permitted to amend the substantive law in a manner that may alter the outcome of pending litigation.

Applying these principles, the D.C. Circuit concluded that Congress, in enacting the Gun Lake Act, amended the substantive law applicable to Patchak’s claims and permissibly directed federal courts to apply that new law. The court recounted the Supreme Court’s recent decision in [Bank Markazi v. Peterson](#), in which the Court declared that “Congress . . . may amend the law and make the change applicable to pending cases, even when the amendment is outcome determinative.” The D.C. Circuit also relied on its previous ruling in [National Coalition to Save Our Mall v. Norton](#), which addressed whether a statute removing judicial review for statutory challenges to the placement of the World War II Memorial—enacted in the midst of pending litigation—violated Article III. The court in *National Coalition* concluded that the statute was constitutional and, in doing so, “emphasized that there is no ‘prohibition against Congress’s changing the rule of decision in a pending case, or (more narrowly) changing the rule to assure a pro-government outcome.’” Next, the court rejected Patchak’s contention that for a court to apply new legislation to pending litigation, Congress must change the substantive law upon which the lawsuit rests—here, the APA and IRA. Rather, the court explained, it was sufficient that the Gun Lake Act “provided a new legal standard that we are obligated to apply: If an action relates to the Bradley Property, it must promptly be dismissed.” Because Patchak’s lawsuit related to the Bradley Property, the court concluded, federal courts lacked jurisdiction to hear it.

This case provides a few takeaways for Congress. Congress, indeed, has authority to prescribe the kinds of cases Article III courts may hear, and that authority can even extend to ending litigation midstream. That authority, at least in theory, is limited by the principle in *Klein* that Congress may not direct the outcome of pending litigation, as that would violate separation of powers. Yet *Patchak* seems to read *Bank Markazi* as holding that Congress does not violate this principle even if the newly enacted law, as applied to pending litigation, has the practical effect of directing its outcome by taking away federal jurisdiction to hear certain matters (and thus requiring courts presiding over those matters to dismiss those lawsuits for lack of subject matter jurisdiction). Nevertheless, while the court rejected *Patchak*’s constitutional challenges to the legislation, jurisdiction stripping can raise other difficult constitutional questions that were not at play in *Patchak*.

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