



Volume 27 | Issue 5

Article 2

1982

Legislative Proposals to Restrict the Jurisdiction of the Federal Courts: Are They Wise - Are They Constitutional

Dolores K. Sloviter

Follow this and additional works at: <https://digitalcommons.law.villanova.edu/vlr>

 Part of the [Constitutional Law Commons](#), and the [Courts Commons](#)

Recommended Citation

Dolores K. Sloviter, *Legislative Proposals to Restrict the Jurisdiction of the Federal Courts: Are They Wise - Are They Constitutional*, 27 Vill. L. Rev. 895 (1982).

Available at: <https://digitalcommons.law.villanova.edu/vlr/vol27/iss5/2>

This Symposia is brought to you for free and open access by Villanova University Charles Widger School of Law Digital Repository. It has been accepted for inclusion in Villanova Law Review by an authorized editor of Villanova University Charles Widger School of Law Digital Repository.

1981-82]

INTRODUCTION:
LEGISLATIVE PROPOSALS TO RESTRICT THE
JURISDICTION OF THE FEDERAL COURTS: ARE
THEY WISE? ARE THEY CONSTITUTIONAL?

DOLores K. SLOVITER †

THE SUBJECT which this Symposium addresses is among the most controversial and yet significant issues of our decade. There are currently pending in Congress some twenty bills which would restrict the jurisdiction of the federal courts. Some of these are addressed to restricting the jurisdiction of the lower federal courts, particularly in regard to specific remedies, while others are addressed to restricting the appellate jurisdiction of the United States Supreme Court in certain specific types of cases or controversies.

The Board of Editors of the *Villanova Law Review* invited a distinguished panel of legal scholars, representing the continuum of thought on the subject, to present papers and discuss the issue in a panel discussion. In this introduction to the publication of that Symposium, I will endeavor to call attention to some of the major questions raised by jurisdiction restricting legislation and present the constitutional background for discussion of the issue.

In considering the six articles and the Symposium Proceedings which follow, it is necessary to keep in mind the scheme which the United States Constitution provides for the exercise of the judicial power. Article III, section 1 provides that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."¹ In contrast, Article III, section 2 provides:

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Con-

† United States Circuit Judge, United States Court of Appeals for the Third Circuit.

1. U.S. CONST. art. III, § 1.

controversies to which the United States shall be a Party; to Controversies between two or more States;—between a State and Citizens of another State;—between citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.²

In the dispute over the current pending legislation, some very fundamental propositions may be overlooked, possibly because they are obvious. It may nonetheless be useful to begin the discussion with some black letter propositions.

I do not think that anyone questions or debates the proposition that article III, section 1 gives Congress the power to impose fundamental revisions on the jurisdiction of the inferior federal courts. If tomorrow Congress chose to enact a statute that withdrew from the lower federal courts jurisdiction over diversity cases,³ there might be some scholarly debate over the wisdom of such action, but not over congressional power. Similarly, if Congress chose by legislation to expand diversity jurisdiction of the federal courts by legislatively overriding the rule of “complete diversity” enunciated in *Strawbridge v. Curtiss*⁴ and sought instead to define diversity as embracing minimal diversity, there would be

2. *Id.* § 2.

3. 28 U.S.C. § 1332 provides in pertinent part:

(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$10,000, exclusive of interests and costs, and is between—

- (1) citizens of different States;
- (2) citizens of a State and citizens or subjects of a foreign state;
- (3) citizens of different States and in which citizens or subjects of a foreign state are additional parties; and
- (4) a foreign state . . . as plaintiff and citizens of a State or different States.

Id.

4. 7 U.S. (3 Cranch) 267 (1806) (where citizens of the same state appeared on both sides of a dispute, diversity jurisdiction was denied).

no question that Congress had acted within its constitutional grant of power.⁵ Congress has periodically decreased the diversity jurisdiction of the inferior federal courts by adjustment of the amount in controversy⁶ without evoking either dismay or alarm. The power to establish inferior federal courts encompasses as well the power to define their jurisdiction once they have been established.⁷

Congressional power with respect to jurisdiction of the inferior federal courts also patently includes power to distribute or redistribute business among the various federal districts or circuits.⁸ For example, the current pending bills which would enable a shift of venue in cases in which the United States is a party, and in appeals of regulatory agency decisions, which appear to be aimed primarily toward restricting the scope of decisions of the United States Court of Appeals for the District of Columbia, have not been challenged on the ground that such legislation would exceed Congress' power. Plainly it would not.

On the other hand, what is at issue in the pending legislation is the legislative attempt to restrict jurisdiction of both the inferior federal courts and the appellate jurisdiction of the Supreme Court in constitutional matters. In large part, the dispute is generated because it is apparent that congressional efforts to restrict jurisdiction are not neutral efforts, as is the restriction of diversity jurisdiction, but instead are efforts designed to manipulate the substantive outcome of controversial issues. Numerous practical, as well as constitutional, questions are raised by the type of legislation now pending in Congress. From a practical standpoint, the restriction of jurisdiction of the lower federal courts in certain categories of cases would necessarily result in such cases being de-

5. See *State Farm Fire & Cas. Co. v. Tashire*, 387 U.S. 523, 530-31 (1967) ("Article III poses no obstacle to the legislative extension of federal jurisdiction, founded in diversity, so long as any two adverse parties are not co-citizens").

6. See 28 U.S.C. § 1332(a) (1956), amended by 28 U.S.C. § 1332(a) (1958) (the amount in controversy required for diversity jurisdiction increased from \$3,000 to \$10,000).

7. See *Sheldon v. Sill*, 49 U.S. (8 How.) 441 (1850). Congress precluded the lower federal courts from exercising jurisdiction in cases where an assignee of a chose in action attempted to bring an action which his assignor could not have brought. The assignor in this case was of the same citizenship as the opposing party and, therefore, could not have maintained the action. Thus, despite the fact that the assignee was a citizen of a different state, he was also precluded from bringing the action due to lack of jurisdiction. *Id.* at 449-50. See also *Palmere v. United States*, 411 U.S. 389, 401 n.9 (1973).

8. See, e.g., 28 U.S.C. § 1404 (1976) (transfer of a civil action to another district permitted for the convenience of parties and witnesses); 28 U.S.C. § 41 (1976 & Supp. 1981) (creating the Court of Appeals for the Eleventh Circuit by severing part of the Fifth Circuit).

cided, in the first instance, by the various state courts. Because there is a high probability of diverse interpretations of issues of federal constitutional significance by state supreme courts, the United States Supreme Court, with the sole opportunity and responsibility for definitive resolution, would undoubtedly be greatly overburdened. It was this concern which led Congress in 1875 to vest jurisdiction over federal questions in the lower federal courts.⁹ The opposite problem would be presented if the appellate jurisdiction of the Supreme Court were restricted. Then the problem would not be one of overburden, but rather the nonreconcilable nonuniformity of constitutional interpretation which would inevitably result when fifty state supreme courts were given the opportunity to make diverse decisions on the same provisions of the federal Constitution. Imagine the plight of federal officers, such as the Attorney General of the United States, who may be subject to inconsistent obligations. Because neither of these scenarios are politically palatable, it may be that ultimately, as with many issues in a democratic society, practical considerations, rather than those of principle, will lead to a resolution and avoid a constitutional crisis.

This Symposium, however, addresses power, not politics. Obviously, if the precedent were conclusive on the power of Congress to enact legislation restricting the appellate jurisdiction of the Supreme Court, this Symposium would have been convened on another topic. As the various participants suggest, the precedent is inconclusive and is cited as support by those with opposing viewpoints. Although the number of pending bills to restrict the Supreme Court's jurisdiction, and the apparent support which they have engendered, may appear to be unique, in fact there have been prior efforts to affect outcome determinations by manipulation of jurisdiction, and not all have failed. Perhaps the leading example of such an instance is the provision restricting the jurisdiction of the federal courts to issue injunctions "in any case involving or growing out of a labor dispute" except under certain defined circumstances.¹⁰ The Court had little difficulty in sustaining "the power of Congress . . . to define and limit the jurisdiction of the inferior courts of the United States,"¹¹ although it would indeed be myopic to believe that the impetus behind the restriction of jurisdiction was a neutral effort to regulate the business of the courts.

9. 3 C. WARREN, *THE SUPREME COURT IN UNITED STATES HISTORY* 402 (1922).

10. Norris LaGuardia Act, 29 U.S.C. § 107 (1976).

11. *Lauf v. E.G. Skinner & Co.*, 303 U.S. 323, 330 (1938), *citing* *Kline v. Burke Constr. Co.*, 260 U.S. 226, 233-34 (1922).

However, the principal distinction between provisions such as the anti-injunction section of the Norris LaGuardia Act and the pending bills is that the Norris LaGuardia Act merely restricted use of an injunctive remedy in a situation where no constitutional right was implicated.¹²

In addition to the effect of the current bills on the ability of the federal courts to vindicate constitutional rights, another serious concern is that Congress is attempting to use its article III power to define the jurisdiction of the federal courts in order to make changes in substantive constitutional law which the constitution envisions as the function of the amendment process. Thus, the question is whether a simple legislative majority can override the purposefully time-consuming and cumbersome amendment procedure which article V mandates.¹³ Indeed, in August 1981 the American Bar Association's House of Delegates, voted almost unanimously to oppose congressional efforts to bypass the amendment process by simple legislation.¹⁴

I hope to have performed the simple function of an appetizer at a great feast—to whet your appetite for the delights which follow.

12. See 29 U.S.C. § 107 (1970).

13. U.S. CONST. art. V. Article V provides in pertinent part:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, . . .

Id.

14. See Meserve, *Limiting Jurisdiction and Remedies of Federal Courts*, 68 A.B.A.J. 159 (1982).