LESSON SAMPLER FOR

PATHWAY 2:

POWER AND EMPOWERMENT
OVERVIEW: PATHWAY 2: POWER AND EMPOWERMENT

This “Lesson Sampler” can be used with any Civics and Law Academy format. For three possible models, go to pages 12-13 of the Resource Guide, “Selecting Your Academy Format.” Organized into 8 sessions, this set of 10 lessons follows the “Pathway to Understanding” on Power and Empowerment, one of six featured in the Resource Guide (pages 5 – 8). The Pathways offer different curricular frameworks for the Civics and Law Academy. In addition to Power and Empowerment (Pathway 2), the other five are: 1—Law and Justice; 2—Constitutions and Constitutionalism; 4—Rights and Responsibilities; 5—Freedom and Equality; and 6—American Identity and Pluralism. The Resource Guide presents concepts, topics, and suggested court cases for each Pathway.

Concepts and Topics: federalism and shared powers, separation of powers, checks and balances, popular sovereignty, ideals and realities of political power

Have these items available for each session:
- Handouts required for lessons
- Supplies and equipment: such as AV equipment, flip charts, markers, extra pencils/pens and notepads for participants,
- Refreshments (e.g., soft drinks/water and cookies) and service supplies

Arrange the setting:
- Set up room to facilitate group interaction and movement
- Have tables ready for refreshments, handouts, and other Academy materials

Have refreshments available as students arrive.

Establish beginning and ending times and stick to them! Sessions that convene later than announced encourage latecomers and dishonor punctual arriviers. Participants will expect sessions to adjourn as announced and are likely to become distracted and disgruntled when sessions go over time.

Plan Ahead

Consider an Off-site Visit
For example, Session 4 (the last of the sessions focusing on federalism) would be enriched by holding it on the site of a local governmental agency. Such a setting would enhance understanding of ways local governmental structures engage and serve the people and interact with state and federal agencies.


Decide on Guest Speakers and Presenters
Review the sessions to determine how guest speakers and presenters would enrich the experience for participants. Identify and invite them well ahead of the date of the session.

CONTENTS

This "Lesson Sampler" includes 10 lessons organized into 8 sessions that explore the contexts and issues of government power and citizen empowerment. Democratic empowerment within the context of Federalism is addressed in the first 4 lessons and within the context of separation of powers and checks and balances in the final 4. Each lesson includes detailed, step-by-step instructions on how to use it as part of an overall Academy curriculum.

SESSION    LESSONS

Empowerment in the context of Federalism
I        The Conundrum of Federalism
II        Comparing State and Federal Constitutions
III       Comparing State and Federal Constitutions (continued)
IV        It's My Life

Empowerment in the context of Separation of Powers and Checks and Balances
V        Claim your Powers
VI        A Clash of Giants
VII       Weights and Measures
VIII      Will the Court Hear This Case?
PATHWAY 2: POWER AND EMPOWERMENT

SESSION | LESSONS
---|---
I | The Conundrum of Federalism
II | Comparing State and Federal Constitutions
III | Comparing State and Federal Constitutions (continued)
IV | It’s My Life
V | Claim Your Powers
VI | A Clash of Giants
VII | Weights and Measures
VIII | Will the Court Hear This Case?
SESSION I – POWER and EMPOWERMENT: THE CONUNDRUM OF FEDERALISM
(Time: 2 hrs)

Concepts and Topics: federalism, popular sovereignty,

Lesson
The Conundrum of Federalism: Can There Be Strong State Governments and a Strong National Government?

Handouts
Provide individual copies of the following:
- U.S. Constitution
- Your state constitution
- Student Handouts 1 and 2

Other material
Prepare projected copies of the diagram on Handout 1
and the chart on Handout 2

NOTE: The following directions adjust the accompanying lesson plan to reduce the time required.

Procedure
Opening
(1) Welcome [15 minutes]
- Introduce yourselves and participants
- Give brief background on Civics and Law Academies
- Review the curricular focus of this Academy (the Pathway you are following), the topics to be covered, and the schedule of sessions [Distribute handout with this information.]
- Review session agenda

(2) Warm Up [10 minutes]
Introduce the concept of conundrum.
- Write on the board: “Conundrum—a puzzle or dilemma for which a solution is not easily found.” Ask participants to think of a conundrum that they may have faced or are facing. Give them a few minutes to exchange experiences with someone next to them then open the floor for examples.
- Stop when a variety of examples are given and move into the lesson by giving the information provided in the “Background” paragraph of the lesson.

Curricular Focus
(3) Federalism or the Federal System
- Begin with Procedure #1. a. through f. Then distribute Handout 1 and review the information with the group. [10 minutes]
- Follow Procedure #2 [see page 14 of the Resource Guide for brainstorming guidelines]. Stop when a few points have been made under each category. [15 minutes]
(4) The Conundrum: Federal Authority and State Power?
   • Turn to Procedure #4. Distribute Handout 2 and have students work in pairs to complete
     the form. [20 minutes]
   • Follow Procedures #5 - #8 to prepare and conduct the role-play. [45 minutes]

Closing
(4) Debrief and Wrap Up [5 minutes]
Follow suggestions under Procedure #9. If time allows, you may wish to push the issue of local
government involvement raised in the final comments by asking, “How are local governments
involved in facets of foreign affairs?”

(5) Look Ahead
Tell participants that in the next three sessions they will be examining more issues related to
federalism and empowerment of the people.

(6) Adjourn – remind participants when and where they will meet next!
Teaching Strategy

The Conundrum of Federalism: Can There Be Strong State Governments and a Strong National Government?

Mary Louise Williams

Background
A conundrum refers to a puzzle or dilemma for which a solution is not easily found. The framers of the Constitution, in designing the new federal system of government, did not designate which government—the states or the federal—was to have priority in every area of public life. As a result, the question has been one of the central constitutional and political issues throughout our history. Political parties have attempted to resolve the conundrum, only to discover that they have raised even more questions. This lesson invites students to participate in the conundrum by grappling with some of these questions.

Objectives
As a result of this lesson, students will
• Define federalism and sovereignty as determined by the U.S. Constitution
• Understand federalism as a fundamental part of American constitutionalism
• Analyze federalism as a source of conflict and cooperation between the states and the federal government

Target Group: Secondary students
Time Needed: 2-3 class periods

Materials Needed: Student Handouts 1 and 2; copies of the United States Constitution and your state’s constitution; transparency of the diagram

Procedures
1. Introduce the lesson by displaying the diagram from Student Handout 1 on an overhead transparency projector. Use the following questions to encourage discussion:
   a. Where is the ultimate authority or power (sovereignty)?
   b. What is meant by through the National Constitution?
   c. How do delegated powers differ from reserved powers?
   d. Do you agree with the size of the circles?
   e. Where should the 50 state constitutions be placed on the diagram?
   f. Who do you think created this diagram, a representative of the federal government or a state government?
   g. For homework and/or assessment, have students create a diagram of the Tenth Amendment.
2. Draw three labeled columns, Federal Government, Shared Powers, and State Governments, on a transparency or the chalkboard. Ask students to brainstorm a list of powers that should go under each column heading. (For example, To Declare War is a federal power; Taxation is shared; and the States are responsible for Education.)
3. Distribute Student Handout 1 for silent reading or homework. Review the contents with students.
4. Distribute Student Handout 2. Review the list and point out that each category may have many subcategories and is complicated. The point is to get students thinking of services, regulations, protections, and powers that are necessary for a society to operate efficiently and fairly. Add other categories suggested by students.
5. Organize students into the following three groups:
   • Group 1, Staters, who support stronger state governments.
   • Group 2, Nationals, who support a stronger national government.
   • Group 3, New Voters (immigrants who have just taken the oath of citizenship) are trying to decide with which political party they would like to register.
6. Review the list of government activities from the brainstorming session and Student Handout 2. Clarify some of the reasoning and needs of each activity. Have the three groups meet separately. Have the Staters and Nationals create arguments to support their positions. Ask the New Voters to generate questions based on their needs as new citizens.
7. After the groups have prepared, reorganize the class into groups with three people each. In each group of three, have a Stater, a National, and a New Voter. Based on the prepared arguments, the Stater gives reasons for the voter to join that group. Then the National does the same. Each New Voter decides with which group he or she will register and why.
8. In the large group, New Voters announce their decisions and share what they considered the most convincing arguments.

Mary Louise Williams has written a number of teaching activities for Update on Law-Related Education magazine and guest-edited the fall 1993 edition—The Right to Sustainability: The Environment, the Citizen and the Law. A secondary teacher for 28 years, Ms. Williams now contracts as an education consultant in Santa Fe, New Mexico.

continued on inside back cover
Teaching Strategy continued from page 9
9. Use the following as a guide to summarize the lesson:
a. Have you determined which party each group represents?
b. Were any of you in Group 1 or 2 having difficulty arguing your position? Explain.
c. Is federalism a dilemma/contradiction? Explain.

Use the following comments to bring closure to the lesson: Over time, political parties have formed, and conflicts have flared between the states and the "feds" over what each should be doing and paying for. Most responsibilities of government, now, are shared by the states and the federal government with the cooperation of local governments. One government may have priority or "the final say" in certain specific matters, but all of our governments are more or less involved in almost every facet of domestic and foreign affairs. They share power in order to serve "We the People..."

Resources

Teaching Strategy continued from page 38
Amendment has been interpreted in recent times not as a limitation upon Congress, but as a recognition of the right of the states to make laws when not preempted by congressional activity. Over the last 30 years, Congress has entered many criminal law areas with little or no concern about possible Tenth Amendment violations.

There were times in our constitutional history when the Supreme Court treated the Tenth Amendment differently. Up until the 1930s, the Court ruled that there were some definite areas that were reserved to the states with which Congress could not interfere. Some constitutional scholars and political leaders advocate a return to this position. The Supreme Court in Lopez may have given these advocates encouragement. However, the Supreme Court ruled primarily that Congress exceeded its powers under the commerce clause. It did not conclude that Congress had breached limits found in the Tenth Amendment.

Second Amendment
Although the Lopez case involved the regulation of firearms by Congress, the Supreme Court did not base its decision upon the Second Amendment. The Second Amendment of the Constitution reads:

A well regulated Militia, being necessary to the security of a free state, the right of the people to keep and bear Arms, shall not be infringed.

Courts have generally ruled that laws regulating weapon use are not prohibited by the Second Amendment. All states have laws regulating gun usage.

Since 1934, Congress has passed laws regulating the sale and manufacture of weapons under its power to regulate commerce. These laws prescribe criminal penalties for violations. Congress has also passed laws creating federal offenses for crimes that involved interstate activities and travel over state lines. Penalties exist for using weapons in these federal offenses.

Federalism continued from page 44
unique circumstances may be needed to hold that country together and maintain its new democracy.

In summary, human relationships, shared rule and self-rule, diversity in unity, balanced powers, cooperation, and partnership are among the key elements of federalism. These are also key ingredients for the coexistence of diverse peoples in a world of peace, prosperity, and liberty.

Resources
Federalism or the Federal System

The framers of the U.S. Constitution created our unique federal system and gave a new meaning to the term *federalism*. Examine this diagram from a 1940 textbook written by the federal government for "Use in the Public Schools by Candidates for Citizenship." Does it correctly represent federalism today?

In the 18th century, federalism referred to leagues or confederations of independent nations that would unite by treaty for a common cause but keep their sovereignty. *Sovereignty* referred to the ultimate supreme power to make decisions for and take actions on behalf of the nation. Sovereignty was believed to exist in one person or one place—the king. In England after 1688, it was in the King/Parliament, as one. No political theorist of the time believed that sovereignty could be divided.

The framers of the Constitution had to resolve this question of where to locate the powers of sovereignty. If left entirely with the states, then there was no need to change the Articles of Confederation. If the new national government was to be the source of sovereignty, the states would never ratify it because they had been "tyrannized" by a strong national government (the King and Parliament).

The framers of the Constitution placed sovereignty with "*We the People of the United States*" as citizens of both the individual states and the United States. Limited powers were delegated to the national government; all other powers were left to the states. Both the states and the national government act as *agents on the people's behalf*. The framers did not designate which government was to have priority in every area; however, a basic purpose of the Constitution was to protect individual rights against state and national governments.

The framers enumerated powers of the national government and stipulated in the Tenth Amendment that unenumerated powers were reserved to the states or to the people. Actions that the national government could not do (Article I, Section 9), and others forbidden to the states (Article I, Section 10) were stated clearly. Federalism, then, became a system of divided powers.

In trying to determine how best to protect our general welfare and individual rights, the framers left us with a puzzle or a dilemma to solve—a conundrum. Searching for solutions has not been easy.

This diagram came from *Our Constitution and Government: Lesson on the Constitution and Government of the United States for Use in the Public Schools by Candidates for Citizenship* by Catheryn Seckler-Hudson, Washington, D.C., 1940, p. 82.
Student Handout 2

The Conundrum: Federal Authority and State Power?

Throughout our constitutional history, there have been tension and sometimes conflict between those who want more power given to the federal government, and those who want the most power to rest with the states. Looking at the list below, think about what each category means and what each involves (e.g., environmental protection—species, air, water, and ozone.)

Directions: The following activity will help clarify your position as you begin to participate in our system of federalism. Use the U.S. Constitution, your state constitution, and this worksheet to prepare for the group activity. The following list may include less obvious powers than the ones you brainstormed earlier. Feel free to add others.

<table>
<thead>
<tr>
<th>GOVERNMENT AUTHORITY/POWER NEEDED TO REGULATE/PROTECT</th>
<th>Government: State, Federal, Shared or No Role</th>
<th>YOUR REASONING</th>
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<tbody>
<tr>
<td>Civil Rights; Equal Rights</td>
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<td>Education/Standards</td>
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<td>Environmental Protection</td>
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<td>Health Care—All Citizens; Health Protection in the Workplace</td>
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<td>Housing, Health Care, Welfare for Poor</td>
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<td>Immigration/ Alien Services</td>
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<td>Individual Rights (i.e., Freedom to Choose; Gay Rights)</td>
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<td>Jobs and/or Unemployment</td>
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<td>Land Use (i.e., Soil, Forests)</td>
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<td>Parks and Recreation</td>
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<td>Streets, Roads, Highways</td>
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<td>Unemployment Benefits; Social Security and Medicare</td>
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<td>Weapons, Arms, Militias</td>
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SESSION II – PRIVACY and STATE and FEDERAL CONSTITUTIONS  
[Time: 1 hr & 45 min]  

Concepts and Topics: federalism, popular sovereignty  

Lesson  
Comparing Sate and Federal Constitutions - Focus on Privacy  

Handouts  
Privacy Under the Constitution & State Privacy Provisions [box insert, p. 23]  
If your state constitution has a right to privacy provision, provide copies for participants.  

NOTE: This Session and Session III, which follows, draw from the same curriculum material.  
This Session focuses on privacy as explored in Activity 2 of the accompany material. Session  
111 treats protection of the environment (Activity 1) and court interpretations of constitutional  
provisions (Activity 3).  

Procedure  
Opening  
(1) Welcome [5 minutes]  
• Refer the highpoints of the focus on federalism during last session  
• Review session agenda  

(2) Warm Up [10 minutes]  
Start with the brainstorm on privacy described under #2.  

Curricular Focus  
(3) Focus on Privacy under Activity 2. [80 minutes]  
Follow the instructions as given—with some adjustments. For example, it would be highly  
advisable to review the cases and state provisions with the participants prior to launching into the  
activity described under #4. It is also possible that students will have questions regarding these  
cases and provisions so be prepared for such queries.  

Before launching Activity 2, determine how much time you plan to allot for each step. However,  
be prepared to make adjustments as the lesson unfolds keeping your eye on what you want to  
have covered by the conclusion of this session.  

Closing  
(4) Debrief and Wrap Up [10 minutes]  
Challenge participants with a query such as this: “If someone were to ask you ‘Where does our  
right to privacy come from?’ What would be your answer?”  
Ask a final question about participants’ perspectives such as, “Have your thoughts or ideas about  
privacy changed? What new information informed your perspective.”
(5) Look Ahead
Inform the participants that the next session will continue this exploration of federal and state constitutional provisions.

(6) Adjourn – remind participants when and where they will meet next!
## PATHWAY 2: POWER AND EMPOWERMENT

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<tr>
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SESSION III – STATE AND FEDERAL CONSTITUTIONS: Focus on Environment and Court Interpretations
[Time: 1hr & 45 min]

Concepts and Topics: federalism, popular sovereignty

Lesson
Comparing State and Federal Constitutions (continued)

Handouts
For Activity 1:
- Protection of the Environment [box insert, p. 21]
- Bill of Rights of U.S. Constitution
- If your state constitution has a right to privacy provision, provide copies for participants.
  [Suggested addition: Provide copies of any local environmental ordinances to be considered along with your state provision, if available.]

For Activity 3
- Constitutional Provisions & Case Summaries [narrative, p. 22]

Procedure
Opening
(1) Welcome [5 minutes]
- Refer to the treatment of privacy in previous session
- Review session agenda

(2) Warm Up [10 minutes]
Open with a brainstorm session focusing on the environment [see “Brainstorming” rules, Resource Guide, page 14]. Use an open-ended question such as, “What goes into making an environment safe and clean?” or “How can we assure that we have a safe and clean environment?” [Allow time for a range of responses then turn to the activity.]

Curricular Focus
(3) Activity 1: Focus on Protection of the Environment [40 minutes]

- Steps 1 & 2: If you have a copy of your state’s provision [and local ordinance] for protection of the environment distribute along with the handout and assign a small group to represent your state.
- Step 3: The students’ arguments should focus on the power plant (e.g., removal, clean up, repair, etc) as an aspect of “a right to a clean and safe environment” under their assigned provision.
- Steps 4 - 6: follow the guidelines given.

(4) Activity 3: Focus on Interpretations of Courts [45 minutes]
• Begin by reviewing the handout with participants. Explore the constitutional provisions, the issues addressed and decisions in the cases, and the states’ provisions.

• Continue with the Activity steps as outlined.

Closing
(5) Debrief and Wrap Up [5 minutes]
Remind the participants that [as noted in the lesson for Session 1] “The framers of the Constitution placed sovereignty with ‘We the People of the United States’ as citizens of both the individual states and the United States.” Ask how did the people’s sovereignty express itself in the activities we just completed? What role do people have in determining governmental power?

(6) Look Ahead

(7) Adjourn – remind participants when and where they will meet next! Are you planning on meeting off-site for Session IV?
Many state constitutions limit government and protect individual rights with provisions very similar, if not identical, to those in the federal Constitution. This is not surprising, since many state constitutions were modeled directly upon the federal one. As the prior article demonstrates, however, state constitutions may provide very different protections for individual rights than does the federal document. In drafting their constitutions, some states looked to the documents of their sister states as models and ignored the federal Constitution.

The Supreme Court has interpreted the U.S. Constitution to provide only the minimum—or basic floor—of individual rights. Although states cannot provide less protection than the federal Constitution guarantees, they may provide greater or different protections. The following activities are intended to make students aware of three important ways in which state and federal constitutions may differ and how these differences may affect individual rights:

1. In the first situation, the state constitution may contain language which expressly protects some individual right. The federal Constitution does not state that such a right exists, either expressly or by judicial interpretation. This occurs, for example, in the area of environmental protection, described below.

2. In the second situation, the state constitution may contain language which expressly protects a particular right. Although the federal Constitution does not expressly protect that right, the courts have implied such a right through interpretation. This situation occurs in the area of privacy, discussed below.

3. In the third situation, both the state and the federal Constitution may have provisions which guarantee a particular right, but the courts have interpreted those provisions differently. The right to distribute leaflets at shopping centers, discussed below, illustrates this difference.

**Suggested Activity 1**

**Objective:** By exploring the subject of environmental protection, students will learn that their state's constitution may provide greater protection for individual rights than does the federal Constitution.

**Materials:** A handout containing the Bill of Rights to the federal Constitution, as well as the provisions from state constitutions and hypothetical included in the box on page 31.

**Activity**

1. Have the class read the handouts.
2. Divide the class into small groups, each to be “residents” of one of the states listed on the handout and one to be residents of the nation as a whole.
3. Give each group up to twenty minutes to discuss and decide what arguments it can make up for a right to a clean and safe environment based on the provisions of the constitution they have been assigned.
4. Select a representative from each group to present their arguments to the class.
5. After the arguments have been completed, ask the class to vote on which group had the best argument.
6. Questions for a follow-up class discussion:
   a. Which constitution was the best support to argue that the chemical plant was violating the constitutional rights of citizens in the community?
   b. If you were a judge deciding this case, would you be more persuaded by arguments made under a state or the federal Constitution in favor of a right to a clean environment? Why?
   c. What are some of the costs and benefits of having specific, rather than general, constitutional rights set forth in a constitution?
   d. Can you think of any advantages or problems with general constitutional provisions, such as the Fourteenth Amendment's guarantee of "equal protection," which may not address specific situations, such as whether citizens have a right to a clean environment?
   e. Aside from constitutions, what other ways can you think of to ensure a pollution-free environment?
   f. Do you think laws other than constitutions might be better ways to ensure a clean environment? Why?

**Suggested Activity 2**

**Objective:** Students will understand that an individual’s rights to privacy may be given different protection depending on whether the federal or a state constitution is used to enforce those rights.
Privacy has been defined as freedom from observation or intrusion in a person's private affairs; the right to protect certain personal information from being disclosed to others; and the freedom to act without outside interference.

1. Explain to the class that the federal Constitution does not have specific language guaranteeing a right of privacy, although the Supreme Court has interpreted it to protect privacy. Some state constitutions, by contrast, do have an express right of privacy. (These states are Alaska, California, Florida, Hawaii, Louisiana, Massachusetts, Montana, South Carolina and Washington.) The difference may have important consequences, as the following exercise will show.

2. Divide the class into small groups and have them spend five minutes or so brainstorming areas of their lives where privacy is important, like the contents of their lockers, the books they read at home, their medical records, etc. Ask someone from each group to make a list of the ideas generated.

3. Distribute the handout on page 23 describing Supreme Court rulings on the implied right of privacy under the federal Constitution and the express privacy provisions of some state constitutions.

4. After reading the handout, have the groups discuss whether they think each right on their brainstorming list would be protected by the privacy guarantee as defined by the Supreme Court rulings on the handout list, and why. Have them record their answers on the brainstorming sheet. Then have them go through the list a second time to decide whether each of the items on the list should be among those protected by the privacy rights contained in the state provisions.

5. Have each group draft a “model” privacy provision, to be implemented in their state’s constitution.

6. After each group has completed its model provision, and written it on a large sheet of paper, pin the provisions up around the classroom.

7. Reconvene the class. Record some of the privacy rights and responses of each group’s brainstorming session on the blackboard.

8. Subjects for class discussion:
   a. After reviewing the results of your work, do you think the federal Constitution is an adequate source of protection for privacy rights? If not, why not?
   b. If your state is not among those that have express constitutional protections for privacy rights, do you think it should be? If your state’s constitution does protect privacy, do you think it goes far enough?
   c. Discuss the similarities and differences between the model provisions. Ask members from each group to report on the reasons for certain aspects of the provisions. Ask the class which of the models best protects the privacy rights that are most important to them. Why?
   d. Discuss whether the language of a constitutional privacy provision should be very general, such as “citizens of this state have the right to privacy as well as to liberty, property, the pursuit of happiness” or define specific situations it is designed to cover, such as the right to have medical information protected from being turned over to police or the FBI? General language may be more readily interpreted by courts to cover new situations not contemplated at the time the provision was drafted. For example, the vast information-sharing possibilities created by computer technology could not have been contemplated at the time the federal Constitution was drafted, even assuming it contained an express privacy provision. On the other hand, specific provisions assure that the right in question will be applied by the courts to the specific situations the legislature determined were important.
   e. Which of the items from the brainstorming sessions are protected by the model provisions? Are some of the important privacy rights left out? If so, how could the language of the model provisions be altered to cover these rights?

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Protection of the Environment

ILLINOIS (Art. XI, Section 2): “Each person has the right to a healthful environment” and “[e]ach person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation.”

PENNSYLVANIA (Art. I, section 28): “The people have a right to clean air, pure water, and to the preservation of the natural, scenic, historic and aesthetic values of the environment.”

VIRGINIA (Art. XI, section 1): “The General Assembly may undertake the conservation, development or utilization of natural resources, the acquisition and protection of historic sites and buildings, and the protection of the Commonwealth’s atmosphere, lands, and waters from pollution, impairment, and destruction.”

NEW YORK (Art. XIV, section 4): The “policy of the state shall be to conserve and protect its natural resources and scenic beauty.”

RHODE ISLAND (Art. I, section 17): The people “shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values.”

Hypothetical: Imagine that there is a chemical plant located near your school. The plant is polluting the environment through smokestacks which spew poisonous gas into the air and through burying toxic wastes in the ground, which have seeped into the underground wells and infected the neighborhood’s drinking water. Many of the residents in the neighborhood surrounding the school have gotten sick recently and you suspect that the pollution from the plant is to blame. Complaints to local, state and federal government authorities, as well as to management of the chemical plant, have brought no response. You decide to sue the owners of the plant, as well as the county, state and federal governments, for their failure to take actions to stop further pollution and remedy the harm that has already taken place.
f. Since your state's constitution is for the benefit of the citizens of your state, can you think of reasons why your model provision should or should not also protect non-residents of the state?

Suggested Activity 3

Objective: Students will learn that courts may interpret the same constitutional provision differently, leading to different protections.

Distribute the following information to the class in a handout. It contains constitutional provisions and case summaries.

CONSTITUTIONAL PROVISIONS

The First Amendment to the U.S. Constitution provides, in part: "Congress shall make no law...abridging the freedom of speech..."

Many state constitutions, including California’s, state that its citizens “shall have freedom of speech...”

The Fifth Amendment to the U.S. Constitution provides, in part: "No person shall...be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation..."

CASE SUMMARIES

Lloyd v. Tanner, 407 U.S. 551 (1972). In this case, the Supreme Court decided that it is permissible under the federal Constitution for a privately owned shopping center to prohibit the distribution of handbills on its property when the handbilling does not relate to the shopping center’s operations.

Prune Yard Shopping Center v. Robins, (447 U.S. 74, 1980). This case involved a shopping center’s refusal to allow a group of high school students to distribute leaflets in the mall. One Saturday afternoon, a group of students set up a card table in the corner of the shopping center’s central courtyard, where they distributed pamphlets opposing a United Nations resolution against Zionism and asked passers-by to sign petitions, which were to be sent to the president and members of Congress. A security guard told them they would have to leave because the activity violated shopping center regulations prohibiting any visitor or tenant from engaging in any publicly expressive activity that is not directly related to the center’s commercial purposes. The group immediately left the premises and later brought suit against the shopping center and its owner seeking the right to circulate their petitions. The Supreme Court held that, even though the First and Fourteenth amendments to the U.S. Constitution permit private shopping centers to prohibit such activities on their property, state constitutions might provide expanded rights of free speech and association.

Since the time the Prune Yard case was decided, California, Washington, Massachusetts, Pennsylvania and New Jersey have allowed leafletting at shopping malls and private universities. New York, Connecticut and Michigan have upheld the rights of owners to prohibit such activities on their property.

In a very recent case decided by New York’s highest court, two anti-nuclear groups had been barred by security guards from distributing literature opposing the Shoreham nuclear power plant at the Smith Haven Mall in Long Island, New York. The groups had not blocked the entrances to the mall nor had they disrupted its operations. The mall had always permitted events that related to consumer interest but had uniformly barred all political activities. The court held that the free speech and assembly guarantees of the New York Constitution only protected people against government action, not restrictions imposed by private property owners. The mall was permitted to retain its ban.

ACTIVITY

1. Divide the class into small groups, and divide these in half, one-half to play the owners of shopping malls and the other to play groups wishing to distribute leaflets. Assign each group a state of residence, based on those listed in the handout above.
2. Give each side 5-10 minutes to determine their identity (for example, what those leafletting are protesting or concerned about; where the shopping center is located and what its reasons are for not wanting the protesters on its property are) and their arguments in favor or in opposition to allowing the leafletting.
3. Have the groups debate whether the “leafletters” should be allowed to distribute their handbills under the law of the territory in which they “reside.”
4. Reconvene the class and have each group present its arguments in front of the class. Ask the students how they think the case would be decided under the federal Constitution and then under the constitution of the state where the group “resides.” Why?

5. Questions for discussion:
   a. Which constitutions provide the greatest protection for the freedom of speech?
   b. Which constitutions provide the greatest protection for the rights of property owners?
   c. Why doesn’t the federal Constitution protect the rights of protesters to distribute their pamphlets in shopping centers?
   d. Should the right of free expression mean different things, depending on what constitution the guarantee is found in?
   e. Is it fair that citizens of one state have greater or lesser protection for their individual rights than citizens of another state?
   f. Should there be a difference between state and federal constitutions in the level of protection given to the same individual rights?
   g. Should the federal and state constitutions give different levels of constitutional protections to individual rights or should there just be one uniform standard given to all rights, regardless of what constitution they are found in?
   h. Should shopping centers be considered public places, which would require that they permit free expression, such as the right to leaflet on the premises?

Lucinda J. Peach is an attorney-educator who is Assistant Staff Director for the American Bar Association’s Commission on Public Understanding About the Law.
Privacy Under the Constitution

The oldest privacy right in the federal Constitution is contained in the Fourth Amendment's protection against unreasonable searches and seizures. This guarantee is very specific, however, and is most often used to challenge police searches in criminal cases. The Supreme Court has extended the right to privacy far beyond this express guarantee against unreasonable searches and seizures, yet it has stopped short of saying that the federal Constitution contains a general right to privacy. The late Supreme Court Justice Louis Brandeis once expressed the right to privacy as "the right to be let alone—the most comprehensive of rights and the right most valued by civilized man" (dissent in Olmstead v. U.S., 277 U.S. 438 (1928)), but the justices have been selective in finding this right under the Constitution.

They have only found a constitutional right to privacy in certain, specific areas, as the following cases reveal.

Family Matters: The Court has held that the Constitution prevents states from passing laws requiring schools to teach only in English (Meyer v. Nebraska, 262 U.S. 390 (1923)); requiring students to attend public rather than private schools (Pierce v. Society of Sisters, 268 U.S. 510 (1925)); requiring Amish children to attend school after the age of 14 (Wisconsin v. Yoder, 406 U.S. 205 (1972)); prohibiting persons from different races from getting married (Loving v. Virginia, 388 U.S. 1 (1967)); requiring poor people to pay a court fee before being able to get a divorce (Boddie v. Connecticut, 401 U.S. 371 (1971)); or restricting the ability of poor people to get married (Zobell v. Redholl, 343 U.S. 374 (1974)).

On the other hand, the Supreme Court upheld a state zoning law which prohibited non-family members from living together in a residential, suburban community (Village of Belle Terre v. Boraas, 441 U.S. 1 (1974)).

Sexual and Reproductive Matters: The Supreme Court has invalidated laws which require that persons sentenced to prison more than twice for "morally offensive" crimes be sterilized (Skinner v. Oklahoma, 316 U.S. 535 (1942)); statutes prohibiting abortion in all cases except where the mother's life was in danger (Roe v. Wade, 410 U.S. 113 (1973)); statutes requiring parental consent for all abortions of women under age 16 (Planned Parenthood v. Danforth, 428 U.S. 52 (1976) and restricting the right of both married persons (Griswold v. Connecticut, 381 U.S. 479 (1965)) and unmarried persons to obtain contraceptives (Eisenstadt v. Baird, 405 U.S. 438 (1972))).

Although the Court has interpreted the constitutional privacy right to protect the sexual activity of married persons, it has refused to extend this protection to cover private homosexual conduct between consenting adults ( Doe v. Commonwealth's Attorney, 425 U.S. 901 (1976)). It has upheld the right of individuals to read pornographic materials in the privacy of the home (Stanley v. Georgia, 394 U.S. 577 (1969)), although not in public places (Paris Adult Theatre v. Slaton, 413 U.S. 49 (1973)).

Informational Matters: The Court has ruled that the federal Constitution does not provide individuals with a right of privacy in the records, checks and deposit slips kept by their banks (United States v. Miller, 425 U.S. 435 (1976)). Banks can be required to record information about their customers and their banking activities and hand such information over to state and federal authorities (California Bankers Ass'n v. Shultz, 416 U.S. 21 (1974)). Doctors can be required to give state authorities the names of all patients receiving prescriptions containing certain narcotics (Whalen v. Roe, 429 U.S. 898 (1977)). The Supreme Court also upheld as constitutional a search by police (with a warrant) of a newspaper's offices to look for photographs of demonstrators who had severely beaten police officers (Zurcher v. Stanford Daily, 436 U.S. 547 (1978)).

STATE PRIVACY PROVISIONS

ALASKA (Art. I, Section 22): “The right of the people to privacy is recognized and shall not be infringed.” The Alaska Supreme Court has interpreted this provision to protect the right of an individual to smoke marijuana in the privacy of the home (Ravin v. State, 537 P.2d 494 (1975)).

CALIFORNIA (Art. I, Section 1): “All people are by nature free and independent and have an inalienable right to...pursuing and obtaining...privacy.” The California courts have decided that this provision does not guarantee its residents the privilege of smoking a possibly harmful drug such as marijuana, even in the privacy of their homes (National Organization for Reform of Marijuana Laws v. Gain, 100 Cal. App. 3d 368, 161 Cal. Rptr. 181 (1979)).

FLORIDA (Art. I, Section 23): “Right of Privacy—Every natural person has the right to be let alone and free from governmental intrusion into his private life except as otherwise provided herein.”

MONTANA (Art. II, Section 10): “The right of individual privacy is essential to the well being of a free society and shall not be infringed without the showing of a compelling state interest.”

Other states which have express protections of privacy in their state constitutions include: Arizona, Hawaii, Louisiana, South Carolina and Washington. Privacy rights which have been upheld under state constitutions include informational privacy, sexuality, bodily integrity (for instance, the right not to be given tests for alcohol or drug use without consent), refusal of life-saving medical treatment for chronically or terminally ill patients, and individual choice for decisions relating to abortion.
**PATHWAY 2: POWER AND EMPOWERMENT**

<table>
<thead>
<tr>
<th>SESSION</th>
<th>LESSONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>The Conundrum of Federalism</td>
</tr>
<tr>
<td>II</td>
<td>Comparing State and Federal Constitutions</td>
</tr>
<tr>
<td>III</td>
<td>Comparing State and Federal Constitutions (continued)</td>
</tr>
<tr>
<td>IV</td>
<td>It’s My Life</td>
</tr>
<tr>
<td>V</td>
<td>Claim Your Powers</td>
</tr>
<tr>
<td>VI</td>
<td>A Clash of Giants</td>
</tr>
<tr>
<td>VII</td>
<td>Weights and Measures</td>
</tr>
<tr>
<td>VIII</td>
<td>Will the Court Hear This Case?</td>
</tr>
</tbody>
</table>
SESSION IV –  FEDERAL, STATE, LOCAL LAWS & YOU
[Note: If you are meeting in a community site, you will want to adjust this lesson to involve hosting agents and learn about the agency.]

[Time: 1hr & 45 min]

Concepts and Topics: federalism, popular sovereignty

Lesson
It’s My Life

[NOTE: An activity such as this is a good way to personalize and make concrete the federalism issues participants have been studying. The accompanying lesson should be considered a catalyst for you to extend and enrich the suggestions offered here. For example, although it specifically mentions state and federal constitutions, participants’ insights will be greatly enriched by adding consideration of case law and local ordinances/regulations. Holding your session in a local governmental agency would enhance focus on local government and local issues.]

Resource Persons
Consider inviting an attorney or judge to be available to offer insights into case law affecting individuals’ lives and commentary on legal issues.

Provide as Handouts or Have Available for Consultation
Constitution
Bill of Rights
State Constitution
Selected Local Ordinances and Regulations

Materials
Chart paper and markers for small group work

Procedure
Opening
(1) Welcome [5 minutes]
   • Briefly review treatment of federalism in previous 3 sessions
   • Review today’s agenda

(2) Warm Up [10 minutes]
   To get participants started thinking about life events, have participants turn to a neighbor and tell each other about one significant event in each of their lives. Ask for a few examples and turn to the lesson.

Curricular Focus
(3) Consider altering the Procedure by first forming small groups assigned to different periods of life, e.g., twenty year periods. Have them identify and record on chart paper major milestones or
events for their period and be prepared to report these to the whole group. As each group
reports, record their events above the “life line” you have drawn, invite any additional input from
others. [20 minutes]

(4) Continue by following the Procedure described in the lesson. [60 minutes]

Monitor your time to insure that you get to the end of the “life line” with analysis by the group
and your resource person/s.

Closing

(5) Debrief and Wrap Up [10 minutes]

Turn the discussion under Procedure #9 into this query: “What are some examples of citizen
action that underlie the laws/regulations facilitating the achievement of significant events along
our lifeline?”

(6) Look Ahead

Tell participants that having explored federalism and relations among federal and state
government, in the next several sessions they will be delving more deeply into the workings of
the federal government.

(7) Adjourn – remind participants when and where they will meet next!
At what times do life’s changes naturally happen? What are these changes? Where does government intervene? Is this intervention fair? What are the governmental reasons for intervention? Are these good reasons? Where does government receive the authority to do this? What would happen if government didn’t intervene?

The Constitution spells out possible governmental action that has been deemed necessary for the preservation of basic American values: justice, fairness, equality, freedom, etc. However, most students believe that only lawyers and judges concern themselves with the Constitution. This activity is an attempt to relate the Constitution and state and federal action to the lives of all students in the classroom.

*It's My Life* is an activity that has been used by lawyers in many Minnesota classrooms. Although the focus of the activity presented here is government power, the activity is also a very good way to introduce the wide variety of laws that exist, to teach about the legal implications of becoming an adult, to discuss the need for additional laws and the changes in existing laws, etc.

**Objectives**

1. Introduce governmental regulation of individual activities.
2. Consider the authority for governmental action: state and federal constitutions.
3. Consider the rationale for governmental action.
4. Compare individual rights with the public good.
5. Compare natural occurrence of life’s events with the times of governmental action. (For example, the inability to continue working with mandatory retirement.)

This activity will take one class period (more if students are to analyze Constitution, Bill of Rights, etc.) It should be done as a general discussion with the entire class.

**Procedure**

1. Draw a long line on the blackboard. At one end write birth, at the other write death.
2. Instruct the students to brainstorm various events in their lives. Enter these events in chronological order at the top of the line. (Examples are learn to walk and talk, go to school, retire.)
3. Underneath the line, enter the various ways in which law has intervened in the life events. (For example, the law says children cannot get married before age 16.) Compare intervention with non-intervention. (For example, age at which a girl can become a mother.) Consider the reasons for intervention: public policy, possibility of successful intervention, etc.
4. Discuss the impact of technology on life events (birth, death, child bearing) and the frequent failure of law to keep pace with technology. (For example, invitro fertilization, life sustaining measures.)
5. Consider life without governmental intervention. Questions to ask:
   a. Does law unnecessarily interfere with the right to live one’s life as one chooses?
   b. Does law protect some people’s rights (minority rights to equal employment)?
   c. When does the public need and welfare override individual rights?
6. Discuss the “right to pursue happiness” as stated in the Declaration of Independence. Look over the line, identify the times when the government interferes with one’s pursuit of happiness. What does happiness mean? What did the signers of the Declaration of Independence mean by the word? Has the meaning changed over 200 years?
7. Look at the Constitution. Find sections that give government authority for its actions. Discuss the historical development of the public’s need and governmental response. (For example, students realize that when they begin working they find they are paying income taxes. Discuss with them the development of taxes.)
8. Considering technological developments and legal trends, brainstorm the picture of a life line in the year 2187.
   a. What new laws might be necessary?
   b. Will governmental intervention be more or less? 
   c. What individual rights might be in jeopardy?
   d. What individual rights might receive more protection?
9. Discuss possible citizen action that can help ensure a “happy” life line in the future.

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<table>
<thead>
<tr>
<th>SESSION</th>
<th>LESSONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>The Conundrum of Federalism</td>
</tr>
<tr>
<td>II</td>
<td>Comparing State and Federal Constitutions</td>
</tr>
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<tr>
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<td>Claim Your Powers</td>
</tr>
<tr>
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<td>A Clash of Giants</td>
</tr>
<tr>
<td>VII</td>
<td>Weights and Measures</td>
</tr>
<tr>
<td>VIII</td>
<td>Will the Court Hear This Case?</td>
</tr>
</tbody>
</table>
SESSION V – FEDERAL GOVERNMENT: SEPARATION OF POWERS
[Time: 1hr & 45 min]

Concepts and Topics: separation of powers

Lesson
Claim Your Powers?

Handouts
U.S. Constitution (annotated)

Material
Large sheets of chart/butcher paper, markers
Projected/posted copy of blank scoring sheet AND “Situations”

Procedure
Opening
(1) Welcome [5 minutes]
   - Refer to earlier focus on federalism
   - Review today’s agenda

(2) Warm Up [15 minutes]
Start with a “Claim Your Branch” exercise. Post the words Judiciary, Legislative, Executive in
separated spots in front of the room. Begin by pointing to each in turn asking: “What does this
branch of the government do? Who are the institutions and people involved?” Don’t probe
deeply, just get participants thinking about each branch then ask: “Which would you want to be
a part of?” and direct them to stand under their chosen branch. Get some responses as to why
they chose as they did. Tell them that for the rest of the session they will learn more about what
they would be doing in their chosen roles.

If the groups are more-or-less even, keep them together for the rest of the exercises. If not, you
may need to negotiate some changes.

Curricular Focus
Follow the Procedure for the two activities outlined. Carefully monitor your time.

(3) The three groups identify and discuss the powers of the three branches of government. [45
minutes]

(4) Claim Your Powers. Consider projecting the list of situations and reveal them one by one.
Just reading aloud is not recommended. Post a large scoring sheet to mark as each situation is
claimed. [30 minutes]

Closing
(5) Debrief and Wrap Up [10 minutes]
Close by asking if, after learning more about the three branches, they would still choose to be a part of the branch they chose at first. If so, why? If not, why not?

(6) Look Ahead
Explain that each of the next three sessions will be devoted to learning more about the branches. Next session will focus on the judiciary.

(7) Adjourn – remind participants when and where they will meet next!
Separation of Powers

This motivating game has students interpret Articles I, II, and III of the U.S. Constitution to understand the allocation of powers among the three branches of government. The lesson helps students understand the interaction between the three branches according to the principle of checks and balances of powers.

Procedure

As a preliminary to the main activity, divide the students into three groups, each representing one of the three branches of government. (If the class is larger, two groups may represent each branch.) Give the following instructions: The legislative branch should examine paragraphs 4, 5, and 6 of Section 3 and Sections 7 and 8 of Article I, discussing the powers of Congress to be certain that everyone understands each grant of power. The executive branch should examine Sections 2, 3, and 4 of Article II and discuss the powers of the executive. The judiciary should examine Article III to determine the duties and powers of its branch. Each branch may find a statement of power belonging to another branch contained in its article. If so, this information should be shared with the other branch of government.

Provide each group with a large sheet of butcher paper, marking pens, and a copy of the United States Constitution (preferably an annotated version). Instruct each group to list (in the students’ own words) the powers granted by the Constitution to its branch of government. Post these around the room and discuss the lists to share information and to check on the accuracy of each list. If it is more convenient, ditto masters could be used and copies run off for each student.

For the “Claim Your Powers” activity, divide the class again into the same three groups. Provide each group with two signs: “Claim” and “Do Not Claim.” Each branch will also need the list of its powers developed in the earlier activity.

Establish the purpose of the activity by explaining that the exercise is intended to review and reinforce the student’s knowledge of the first three articles of the Constitution. Tell the class that in this activity they will be acting as a branch of government and that it is their responsibility to maintain the powers granted to them in Articles I, II, or III of the Constitution.

Tell the class that you will read a series of situations, each involving a power of one or more branches of the government. In some instances, a branch will have the sole power; in others, the power may be shared. After each situation is read, each group will have one minute to discuss the situation and decide if the power described belongs to its branch and to find the part of the Constitution justifying that decision. At the end of the minute, the leader will say the word “vote” and each group must hold up a card, either “Claim” or “Do Not Claim.” Every group must vote on each situation. Each group will then explain its reasons for its decision, and the teacher and students representing the other two branches will rule on the accuracy of the choice.

Explain that scoring will be as follows:

a. Two points will be given for correctly claiming and justifying the claim of a power.
b. One point will be given for correctly voting not to claim a power.
c. A zero will be given to a group incorrectly claiming or not claiming a power.

Assure the students that the activity will not be graded; rather, it will help both the teacher and students to measure students’ understanding of the concept of separation of powers as outlined in the Constitution.

Conclude the activity with a cooperative evaluation of the students’ knowledge and understanding of the concept and a decision to review or proceed to another concept.

 Situations

(These may be read aloud or written on index cards and distributed to each group):

a. A bill is to be considered requiring automobile manufacturers to install seat belts in all new cars.
b. A case is being appealed from the Texas Supreme Court.
c. The United States needs an ambassador to Argentina.
d. There is a vacancy on the Supreme Court and a new justice must be appointed.
e. The United States has decided to recognize the new Republic of Xanadu.
f. The state of Arizona is suing California over water rights.
g. The army wants more money for tanks.
h. A law recently passed by the state of Louisiana has been challenged as being unconstitutional.
i. Ralph Z. has been charged with a federal crime of transporting stolen automobiles from Texas to Oklahoma.
j. Impeachment proceedings have been brought against the president.
k. A bill is being vetoed.
l. A State of the Union message is being prepared.
m. An ambassador from a foreign country has been arrested.

n. A law is declared null and void.

o. War is declared on Transylvania.

p. A federal income tax rebate is being considered.

q. A treaty with a foreign country to import oil is being negotiated.

r. A case has arisen over a collision between a U.S. naval vessel and a privately-owned freighter.

s. There is a dispute over land between two Indian tribes who claim the land was given to each of them under separate treaties.

**Bonus Points**

i. Give the executive branch three bonus points if it claims this power and gives as its reason the power to enforce laws. (The FBI would probably arrest Ralph Z.)

j. Give the judicial branch three bonus points if it claims this power and gives as its reason that the Chief Justice presides during the trial.

**Note:** There are other possible bonus-point situations. If students suggest other reasonable claims to a power, award points accordingly. Since this might throw off the equal sums for each branch (30 possible for each as currently written and scored), the groups could be told that the winner will be the group which comes closest to its total possible points.

*This article is taken from the teacher's guide to The Constitution—Creation, Growth, and Change which was created by Law in a Changing Society and published by the Law Focused Education Project of the State Bar of Texas*
PATHWAY 2: POWER AND EMPOWERMENT

SESSION LESSONS
I The Conundrum of Federalism
II Comparing State and Federal Constitutions
III Comparing State and Federal Constitutions (continued)
IV It’s My Life
V Claim Your Powers
VI A Clash of Giants
VII Weights and Measures
VIII Will the Court Hear This Case?
SESSION VI – FEDERAL GOVERNMENT: CHECKS AND BALANCE
[Time: 1hr & 45 min]

Concepts and Topics: separation of powers and checks and balances, ideals and realities of political power

Lesson
A Clash of Giants

Handouts
- Background information on the case
- Prepare separate copies of the Decision and the Dissent with the headings and introductions removed so students will not know how the Court decided.

Recommendation
Convert the Facts and Issues [re Youngstown Steel] to a worksheet that participants can use as they analyze the case.

Procedure
Opening
(1) Welcome [5 minutes]
- Reflect on the branches claimed by participants in last session
- Review the session

Warm Up
(2) Give students a heads-up on what they will be studying today by drawing from the introduction to the lesson.

Curricular Focus
[Review the options for procedures given under “Strategy: The Case Study Method.” The following is only one possibility.]

(3) Background. [30 minutes] In small groups have students review the facts [see Background] of the case and respond to the questions under “Facts” and “Issues.” Provide a worksheet for this purpose. Bring the groups together to review and discuss their findings.

(4) [The Opinions. Use the Jigsaw strategy [see Resource Guide, pp. 14-15] to facilitate participants’ study of each of the opinions in turn.

- First opinion [30 minutes]--the Decision—without heading and introduction: Establish 4 small groups. Assign portions of the reading thusly: Group 1—paragraphs 1 and 2; Group 2—paragraphs 3 and 4; Group 3: paragraphs 5 and 6; Group 4: paragraphs 7 and 8 (the last two). Allow 10 minutes for each group to study their paragraphs and prepare to share. Form new groups with representatives from each original group and allow 15
minutes for compiling information. Can they summarize in their own words the essence of the opinion?

- Second opinion [30 minutes]—the Dissent, without head and introduction; Form 3 small groups. Group 1—paragraphs 1 – 4; Group 2—paragraphs 5 – 7; Group 3—paragraphs 8 – 9. Allow 10 minutes for study and preparation to share. Form new groups with representatives from each original group and allow 10 minutes for compiling information. Again, challenge them to summarize the opinion.

(5) Conclude by discussing the opinions and reveal the Court’s decision as per the Strategy suggestions. [10 minutes]

Closing
(6) Debrief and Wrap Up [10 minutes]
Explore issues such as: What was the role of each branch of government in this case? How did the principle of checks and balances come into play here? [Who or what was checked? What was balanced?]

(7) Look Ahead
Pique participants’ curiously by telling them that next session will focus on “weights and measures.” Probe for what they think the session will cover? Which branch of government will they examine? “Come next time to find out.”

(8) Adjourn – remind participants when and where they will meet next!
A Clash of Giants/Secondary

This activity gives students extensive background on a major question about the powers of the branches of government. Through the case study method, students have the opportunity to weigh the issues and come to a decision.

The branches of the federal government are separate but far from isolated. Their functions overlap at many points, leading inevitably to friction about which branch is to perform which function. For the most part, the branches co-exist well, but every now and then there is a cataclysmic battle, in which the balance of power is in question.

One such battle took place during the Korean War, when President Harry Truman, acting under powers he said were implicitly given him under the Constitution, nationalized the steel mills to keep them running and keep the nation's fighting forces armed.

Opinion was sharply divided. Some said the president was acting within his powers during a national emergency. Others said that he was usurping the powers of Congress and violating sacred principles of separate powers.

Ultimately, the third branch of the government—the Supreme Court—was called in to settle the dispute under the Constitution.

Background

The Korean War was being fought to a bloody standstill in 1951. Although the war was called a police action under the authority of the United Nations, the United States was the primary source of soldiers and equipment used to fight the North Koreans and their Chinese Communist allies.

A very important part of the war effort was the production of steel for weapons. In the latter part of 1951, a dispute arose between the major steel companies and their employees over terms and conditions that should be included in a new collective bargaining agreement.

Lengthy conferences failed to resolve the dispute, and in mid-December the employees' union gave notice of its intention to strike when the existing labor contracts expired on December 31. The federal government intervened in hopes of bringing a settlement, but all efforts were unsuccessful. On April 4, 1952, the union gave notice of a nationwide strike called to begin at 12:01 a.m. on April 9. Steel was indispensable as a component of substantially all weapons and other war materials. That fact led the president to believe that the proposed work stoppage would immediately jeopardize the national defense and that governmental seizure of the steel mills was necessary in order to assure the continued availability of steel. Reciting these considerations for this action, the president, a few hours before the strike, was to issue Executive Order 10340, which directed the secretary of commerce, Charles Sawyer, to take possession of most of the steel mills and keep them running. The secretary immediately issued his own orders, calling upon the presidents of the various seized companies to serve as operating managers for the United States. They were directed to carry on their activities in accordance with regulations and directions from the secretary. Sawyer would prescribe working conditions and wages, as well as collective bargaining procedures. The mills would be returned to their owners as soon as the labor disputes had been privately settled and continued steel production was assured.

On April 9, and again 12 days later, President Truman sent messages to Congress reporting his action. Congress itself took no official action, but general reaction to the president's order was intense.

Under protest, the steel companies obeyed Secretary Sawyer's orders. At the same time the companies, led by Youngstown Sheet and Tube Co., brought proceedings against him in federal court. The steel companies charged that the seizure was not authorized by an act of Congress or by any constitutional provisions. The district court was asked to declare the orders of the president and the secretary invalid, and to issue preliminary and permanent injunctions restraining their enforcement. Opposing the motion for preliminary injunction, the United States asserted that a strike disrupting steel production for even a brief period would endanger the well-being and safety of the nation, and that the president had "inherent power" to do what he had done—power "supported by the Constitution, by historical precedent, and by court decisions."

Because of the importance of the issues raised and the urgency that they be settled, the case went all the way to the Supreme Court, which heard the case on May 12, 1952.

Decision

The critical question before the Court was whether the seizure order was within the constitutional power of the president. In a 6 to 3 decision, the Court answered no. Mr. Justice Black wrote the majority opinion and explained his concept of the separation of powers. In part he said:

"The President's power, if any, to issue the order must stem either from an act of Congress or from the Constitution itself. There is no statute that expressly authorizes the President to take possession of property as he did here. Nor is there any act of Congress to which our attention has been directed from which such a power can fairly be implied. Indeed, we do not understand the Government to rely on statutory authorization for this seizure. There are two statutes which do authorize the President to take both personal and real property under certain conditions. However, the Government admits that these conditions were not met and that the President's order was not rooted in either of the statutes. The Government refers to the seizure provisions of one of these statutes (201(b) of the Defense Production Act) as "much too cumbersome, involved, and time-consuming for the crisis which was at hand."

Moreover, the use of the seizure technique to solve labor disputes, in order to prevent work stoppages, was unauthorized by any congressional enactment; prior to this controversy, Congress had refused to adopt that method of settling labor disputes. When the Taft-Hartley Act was under consideration in 1947, Congress rejected an amendment which would have authorized such governmental seizures in cases of emergency. Apparently, it was thought that the technique of seizure, like that of compulsory arbitration, would interfere with the process of collective
bargaining. Consequently, the plan Congress adopted in that Act did not provide for seizure under any circumstances. It is clear that if the President had authority to issue the order he did, it must be found in some provisions of the Constitution. And it is not claimed that express constitutional language grants this power to the President. The contention is that presidential power should be implied from the aggregate of his powers under the Constitution. Particular reliance is placed on provisions in Article II which say that "the executive Power shall be vested in a President..."; that "he shall take care that the Laws be faithfully executed"; and that he "shall be Commander in Chief of the Army and Navy of the United States."

The order cannot properly be sustained as an exercise of the President's military power as Commander in Chief of the Armed Forces. The Government attempts to do so by citing a number of cases upholding broad powers in military commanders engaged in day-to-day fighting in a theater of war. Such cases need not concern us here. Even though "theater of war" be an expanding concept, we cannot with faithfulness to our constitutional system hold that the Commander in Chief of the Armed Forces has the ultimate power to such as to take possession of private property in order to keep labor disputes from stopping production. This is a job for the Nation's lawmakers, not for its military authorities.

Nor can the seizure order be sustained because of the several constitutional provisions that grant executive power to the President. In the framework of our Constitution, the President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker. The Constitution limits his functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. The Constitution is neither silent nor equivocal about who shall make laws which the President is to execute. The first section of the first article says that "All legislative Powers herein granted shall be vested in a Congress of the United States."

The President's order does not direct that a congressional policy be executed in a manner prescribed by Congress—it directs that a presidential policy be executed in a manner prescribed by the President... The power of Congress to adopt such public policies as those proclaimed by the order is beyond question. It can authorize the taking of private property for public use. It can make laws regulating the relationships between employers and employees, prescribing rules designed to settle labor disputes, and fixing wages and working conditions in certain fields of our economy. The Constitution does not subject this lawmaking power of Congress to presidential or military supervision or control.

It is said that other presidents without congressional authority have taken possession of private business enterprises in order to settle labor disputes. Even if this be true, Congress had not thereby lost its exclusive constitutional authority to make laws necessary and proper to carry out the powers vested by the Constitution "in the Government of the United States, or any Department or Officer thereof."

The Founders of this Nation entrusted the lawmaking power to Congress alone in both good and bad times. It would do no good to recall the historical events, the fears of power and the hopes for freedom that lay behind their choice. Such a review would but confirm our holding that this seizure order cannot stand.

The Dissent

The three justices who dissented emphasized the national defense emergency and the actions of past presidents. In part they said:

In passing upon the question of Presidential powers in this case, we must first consider the context in which those powers were exercised. Those who suggest that this is a case involving extraordinary powers should be mindful that these are extraordinary times. A world not yet recovered from the devastation of World War II has been forced to face the threat of another and more terrifying global conflict. ... As an illustration of the magnitude of the overall program, Congress has appropriated $130 billion for our own defense and for military assistance to our allies since the June, 1950, attack in Korea. ... One is not here called upon even to consider the possibility of executive seizure of a farm, a corner grocery store or even a single industrial plant. Such considerations arise only when one ignores the central fact of this case—that the Nation's entire basic steel production would have shut down completely if there had been no Government seizure. Even ignoring for the moment whatever confidential information the President may possess as "the Nation's organ for foreign affairs," the uncontested affidavits in this record amply support the finding that a "work stoppage would immediately jeopardize and imperil our national defense." ... The Union and the Steel companies may well engage in a lengthy struggle. Plaintiff's counsel tells us that "sooner or later" the mills will operate again. That may satisfy the steel companies and, perhaps, the Union. But our soldiers and our allies will hardly be cheered with the assurance that the ammunition upon which their lives depend will be forthcoming—"sooner or later," or, in other words, "too little and too late."

Accordingly, if the President has any power under the Constitution to meet a critical situation in the absence of express statutory authorization, there is no basis whatever for criticizing the exercise of such power in this case. A review of executive action demonstrates that our Presidents have on many occasions exhibited the leadership contemplated by the Framers when they made the President Commander in Chief, and imposed upon him the trust to "take Care that the Laws be faithfully executed." With or without explicit statutory authorization, presidents have at such times dealt with national emergencies by acting promptly and resolutely to enforce legislative programs, at least to save those programs until Congress could act. Congress and the courts have responded to such executive initiative with consistent approval. Without declaration of war, President Lincoln took energetic action with the outbreak of the Civil War. He summoned troops and paid them out of the Treasury without appropriation therefore. He proclaimed a naval blockade of the Confederacy and seized ships violating that blockade. Congress, far from denying the validity of these acts, gave them express approval. The most striking action of President Lincoln was the Emancipation Proclamation, issued in aid of the successful prosecution of the Civil War, but wholly without statutory authority. In an action furnishing a most apt precedent for this case, President Lincoln directed the seizure of rail and telegraph lines leading to Washington without statutory authority. Many months later, Congress recognized and confirmed the power of the President to seize railroads and telegraph lines and provided criminal penalties for interference with Government operation. This Act did not confer on the President any additional powers of seizure. Congress plainly rejected the idea that the President's acts had been without legal sanction until ratified by the legislature.

Strategy: The Case Method Approach

Why?
The case study allows students to grapple with real issues, to reach and support a decision, and to weigh the consequences of that decision. In approaching a problem through a case study, the student will gain practice in all levels of thinking from simple recall to evaluation.

How?
Provide students with the facts, only, of the case. Use questions and role playing, to identify the issue(s), develop arguments, and reach a decision. Or have students examine the facts of the case and then give them excerpts from the unmarked majority and dissenting opinion in the case. After giving the unmarked opinions, ask the students to summarize the different opinions in this case:

- Which opinion, if any, do they agree with, and why?
- Which opinion do they believe was the majority opinion?
- Which opinion was the minority? Explain.

Identify the majority and dissenting opinions, and ask the following: What is the likely impact of this case? How might the decision affect the balance of power in this
case? How might it affect future presidents?

Next, provide students with the court decision. Use questions and discussion to compare and contrast their decision with that of the Court and to consider the implications of the Court’s decision.

**YOUNGSTOWN STEEL**

**Facts**

What are the important facts? What is the major conflict, and who are the parties to the case? Why were the steel mills nationalized? What national emergency was facing the country? Who nationalized them, and why? What was the response of the owners of the mills? of the unions? What was the involvement of Congress?

**Issues**

What are the legal issues in this case? What constitutional issues are raised? Did the president have the right to nationalize the mills? If so, what law or provision of the Constitution gave him the right? Did this action alter the balance of power among the branches?

**Arguments**

What are the arguments favoring the steel company’s position? What are the arguments favoring the government’s position?

**Decision**

Should the Supreme Court review the case? Why? How would you decide this case?

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This activity has been adapted from the teacher’s guide to The Constitution—Creation, Growth, and Change, which was created by Law in a Changing Society and published by the Law Focused Education Project of the State Bar of Texas.
### PATHWAY 2: POWER AND EMPOWERMENT

<table>
<thead>
<tr>
<th>SESSION</th>
<th>LESSONS</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>The Conundrum of Federalism</td>
</tr>
<tr>
<td>II</td>
<td>Comparing State and Federal Constitutions</td>
</tr>
<tr>
<td>III</td>
<td>Comparing State and Federal Constitutions (continued)</td>
</tr>
<tr>
<td>IV</td>
<td>It's My Life</td>
</tr>
<tr>
<td>V</td>
<td>Claim Your Powers</td>
</tr>
<tr>
<td>VI</td>
<td>A Clash of Giants</td>
</tr>
<tr>
<td>VII</td>
<td>Weights and Measures</td>
</tr>
<tr>
<td>VIII</td>
<td>Will the Court Hear This Case?</td>
</tr>
</tbody>
</table>
SESSION VII – EXERCISING LEGISLATIVE POWER
[Time: 1 hr & 45 min]

Concepts and Topics: separation of power, ideals and realities of political, popular sovereignty

Lessons
Weights and Measures
[This is a long, comprehensive lesson from which a few strategies are selected for use here. Feel free to choose others.]

Handouts
Make copies of the first paragraph on Article 1

Materials
See lists in lesson.

Procedure
Opening
(1) Welcome [5 minutes]
   • Reflect on their mock trial experience.
   • Review today’s agenda

(2) Warm Up [15 minutes].
Distribute the Article 1 paragraph. Probe for basic understanding of “weights and measures” and “standard.” Then turn to the list of categories and brainstorm as a whole group what weights and measures are involved in ... health, what you eat, wear, etc... Stop when a few suggestions have been made then pose the question presented in the first paragraph about congressional powers and weights and measures. Observe that answers to this question will become clearer in today’s explorations.

Curricular Focus
[Selected portions of this lesson: Weights and Measures: Properties of Property, Standards of Fairness, How Has Congress Used Its Power? Should Congress take Action Now?]

Follow the instructions under each section.
(3) Weights and Measures: Properties of Property [15 minutes]

(4) Standards of Fairness [30 minutes]

(5) How Has Congress Used Its Power? [30 minutes]

(6) Should Congress Take Action Now? [15 minutes]

Closing
(7) Debrief and Wrap Up [5 minutes]
The vote and discussion in the final exercise serves well as debrief and wrap up.

(8) Look Ahead
Note that the next and final Session will focus on the judiciary examining how the Supreme Court chooses the cases it will hear.

(9) Adjourn – remind participants when and where they will meet next!
Article 1, section 8 of the U.S. Constitution says: "The Congress shall have Power... to coin Money, regulate the Value thereof, and of foreign Coin, and fix the standard of Weights and Measures." The number of specified congressional powers is very limited. Why was fixing the standard of weights and measures important enough to be included?

In investigating this question, students will discover how the use of weights and measures permeates our daily lives as well as our worlds of industry, commerce, and science. They will also find that the constitutional power to fix a standard of weights and measures relates to two principles fundamental to our form of government—the rights of individuals to property ownership and fair treatment under the laws. They will learn that recognition of the need for fair enforcement of standards of weights and measures is not new, but can be traced from laws of ancient civilizations down through the Magna Carta to our Constitution.

The activities that follow should enable students to:
1. Explain the importance of a standard of weights and measures to people at the time of the Constitution and now.
2. Discuss the relationship of this congressional power to the fundamental constitutional principles of property and fairness.
3. Describe and compare the two systems of weights and measures in use in the United States today.
4. Review major congressional legislation on weights and measures over the past 200 years.
5. Demonstrate awareness of weight and measure laws and inspection and enforcement procedures in their state.
6. Evaluate the need for mandatory legislation on weights and measures today.

What Isn’t Weighted or Measured or Counted?

In his report on weights and measures in 1821, John Quincy Adams wrote:

Weights and measures may be ranked among the necessaries of life to every individual of human society. They enter into the economical arrangements and daily concerns of every family. They are necessary to every occupation of human industry; to the distribution and security of every species of property; to every transaction of trade and commerce: to the labors of the husbandman; to the ingenuity of the artificer; to the studies of the philosopher; to the researches of the antiquarian, to the navigation of the mariner, and the marches of the soldier; to all the exchanges of peace, and all the operations of war.

To help students discover the importance of weights and measures in their own lives, divide the class into small groups. Each group is to "brainstorm" a list of items, in an assigned category, which are in some way affected by weights and measures. Categories might be:

a. You/your health (medical tests and procedures, pharmaceuticals, etc.)
b. What you eat (its growing, processing, cooking, etc.)
c. What you wear (clothing, accessories, etc.)
d. Where you live (structures, building lots, furnishings, utilities, etc.)
e. How you travel (on foot; in cars, boats, planes, etc.)
f. How you play (sports, games, hobbies, reading, etc.)

Groups should report their lists to the class as a whole, with additions allowed. From the lists, students should be able to generalize about the importance of weights and measures in everyday life. Ask also for examples of their use and importance in industry, agriculture, the sciences, etc.
Weights and Measures: Properties of Property

Briefly discuss the meaning of the term property. Use examples to illustrate the types of property—real and personal. Discuss how measures are important in delineating real property. Ask for examples of the ways in which they are necessary to creating personal properties (e.g., clothes, foodstuffs, etc.). Explain that fundamental to the Constitution—if not formally expressed—is the right of the individual to own property. Before giving (or letting students discover) some constitutional references to property ownership (e.g., copyrights, eminent domain, contracts, etc., as well as weights and measures), point out that implicit to the right to own property is the right to buy and sell it, or, in other words, the right to engage in trade and commerce.

How weights and measures are interwoven with commerce can be illustrated by having the class pretend that they have been asked to shop for items such as those listed below. Ask if the cost of any of these items will be affected by weight, measure, or number. What weights, measures, or numbers are involved?

- file
- diamond ring
- candy bar
- shoes
- television
- apples
- dry cereal
- a cow
- firewood
- cola drink
- house paint
- aspirin
- notebook paper
- gasoline for car
- chair

Students should recognize that for most items there is a direct correlation between one or more measurements (size, weights, numbers) and the cost.

Standards of Fairness

Why was it important for Congress to establish a standard of weights and measures?

First, ask the class to define “standard.” You might present some definitions. For example, standard can be defined as a representation of a unit of measure established by authority, custom, or general consent with which other measures are compared or to which they must conform. In its definition, the National Bureau of Standards first defines a “unit” as a value, quantity, or magnitude in terms of which other values, quantities, or magnitudes are expressed. A standard is then defined as “a physical embodiment of that unit.” In other words, a foot is defined in terms of meters or inches or feet. The “physical embodiment,” say, for a state government, would be a meticulously calibrated metal bar. For math class problems, a ruler would serve as a replica of that standard.

The class definition should incorporate the concepts that a standard of measure or weights is one (a) whose size, weight, or quantity is fixed and agreed upon and (b) that can serve as a guarantee of exact sameness. The following simulations will help students to discover why standards are important. Materials needed will be:

- a roll of ribbon or yarn
- a yardstick
- a package of dried beans
- small plastic bags
- a measuring cup
- a small scale

Roleplay 1: Select three students to be ribbon salespersons and three to be ribbon purchasers. Each purchaser is to buy a yard of ribbon from a salesperson. The salesperson has no device to measure the ribbon, but must estimate.

After the ribbons are cut, compare them. Are they the same length? Measure each on the yardstick. Is each of the ribbons a yard long? Were any of the buyers or sellers short-changed?

Roleplay 2: Select three students to be cooks and three to be sellers of dried beans. Each student needs to buy a cup of beans for a recipe. Without any kind of measure, have each seller put a “cup” of beans into a plastic bag.

After each transaction has been made, compare the results. Are the amounts of beans similar? Pour each bag of beans into a measuring cup. Compare the results. Were any buyers short-changed? Any sellers?

Roleplay 3: Select three students to be bean purchasers and three to be sellers. Each purchaser wants a half pound of dried beans. Without any kind of measure, each seller must put half a pound of beans into a plastic bag.

Compare the quantities. Are they similar? Now weigh each quantity of beans on the scale. Were any of the guesses accurate? What differences were there?

Results of this exercise should dramatize the need for standards. Without standards, either buyer or seller is likely to be short-changed—treated unfairly. Ask about the fairness of these transactions. Could there be fair trade without standards of weights and measures? In discussing fairness, point out that this is also an underlying principle of our Constitution. Ask students—or cite—some other constitutional protections of fairness. Major examples would be the right to a fair trial and to equal protection under the law.

Weights and Measures: 1787-1987

To understand what Congress has done to “fix standards of weights and measures,” it will be beneficial to look briefly at some of the measurement units in use in the late eighteenth century (and today as well). The measures are of length or size, weight, or capacity (i.e., cubic measures) which are those most used in trade. Measures of time and temperature as well as numerous measures developed by science and technology of energy, magnetism, light, radioactivity, sound, etc., are not—for space reasons—listed here.

Explain that the use of weights and measures goes far back into history. Linear measurements—for building homes or measuring land—generally were based on body parts and were used probably as early as 10,000 BC. The oldest known weights for scales are those found in Egypt, dated about 3800 BC. Scales were probably first used for weighing gold. It is not known exactly when measures of capacity were first used; it is suggested that the first measure may have been a handful of grain. (The term bushel comes from the Celtic word for handful.)

LEARNING ABOUT MEASURES

Activity Sheet 1 gives information about a variety of weights and measures currently in use. Their names—plus a few extra—are listed at the top of the sheet. Students should try to name each unit of measure in the blank that precedes its discussion. When students have
**Activity Sheet 1**

<table>
<thead>
<tr>
<th>1. foot</th>
<th>5. grain</th>
<th>9. mile</th>
<th>13. gallon</th>
</tr>
</thead>
<tbody>
<tr>
<td>2. ton</td>
<td>6. meter</td>
<td>10. barrel</td>
<td>14. hand</td>
</tr>
<tr>
<td>3. pound</td>
<td>7. acre</td>
<td>11. cubit</td>
<td>15. yard</td>
</tr>
<tr>
<td>4. teaspoonful</td>
<td>8. carat</td>
<td>12. kilogram</td>
<td>16. liter</td>
</tr>
</tbody>
</table>

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**a.** This measure of length is associated with the soldiers of the Roman Empire. It originally equaled 1,000 paces. A pace was two steps (of left and right foot) and equal to five feet. Soldiers paced off distances as they marched. This measure's current length—5,280 feet—was set by an English law of 1593. The law is interesting in being similar to one to preserve open space today. It forbade building within three miles from the gates of London. This was to preserve the land for training soldiers and the recreation of Londoners.

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**b.** In early England, the standard size of this measure of capacity depended on what it held. The American measure is the size used in England to hold wine. Its size—231 cubic inches—was set in 1867.

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**c.** In Britain, this weight was once defined in terms of coins. A law, with the colorful name of Assize of Bread and Ale (1266), set its standard as follows: An English sterling penny should weigh 32 grains of wheat taken from the middle of the ear; an ounce should weigh 20 pennies (pennyweights); this weight should weigh 12 ounces.

In 1787 and now, two of these weights are used. One of these, the Troy "________" has 12 ounces, weighs 5,760 grains, and is used to measure precious metals, etc. The other, the avoirdupois "________" has 16 ounces (7,000 grains) and is used to weigh heavier items.

---

**d.** This basic measure of length was adopted by the French government in 1799. It was intended to be 1/10,000,000th of the earth's quadrant between the North Pole and the Equator. Due to the limits of measuring devices of the time, the measurement is not exact. Since 1983, its standard is the length of a path traveled by light in a vacuum at a time interval of 1/299,792,458th of a second. This unit is divided or multiplied by tens.

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**e.** This measure of length can be traced to ancient Greek, Roman, and Egyptian civilizations. Based on a part of the human body, its length has varied from about 13.1 to 10.2 inches. In 1305, the English king Edward I, trying to set standards, defined this unit as 12 inches. He declared the inch to be three grains of dry and round barley.

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**f.** A unit of weight for precious stones. Its name comes from the carob seed, said to have been used as a measure for weighing gold in ancient Egypt. Now, this unit officially equals 200 milligrams or 3.086 grams.

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**g.** A measure of land defined in 1305 as forty rods (5½ yards) in length and 4 rods in width. An earlier definition was the amount of ground a pair of oxen could plough in one day. Currently, this unit is one containing 43,560 square feet.

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**h.** A measure of capacity. If this were in the form of a cube, the height and width of each side would be one-tenth of a meter.

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**i.** It is said that the English king in 1105 set this measure of length as the distance from the tip of his nose to the tip of his outstretched fingers. It has also been said that this unit equaled two cubits or twice the distance from the elbow to the tip of the middle finger. In 1305, the English king Edward I set it at three feet.

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**j.** A measurement used for the height of horses. It equals about 4 inches.

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**k.** A measure of capacity or weight that can be used for liquids or dry products. Its standard volume varies in terms of its contents. For example, for fermented liquors the standard is 31 gallons; for crude oil it is 42 gallons.

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**l.** A unit of capacity used in cooking and equal to 1.6 fluid ounce.

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**m.** A large unit of weight or capacity. Its name probably comes from that of a large container for wine used in early times. A number of these units are used, including a long one (2,240 pounds), a short one (2,000 pounds), and a metric one (2,046.4 pounds).

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**grain—** It is the smallest unit of mass in the American/English system. Seeds and grains were among the earliest weight measures used. They were used to weigh small masses like gold. The National Bureau of Standards sets the weight of a grain at 64.79891 milligrams.

Correct answers to the activity are: 1-e; 2-m; 3-c; 4-1; 5-not on page; 6-d; 7-g; 8-f; 9-a; 10-k; 11-not on page; 12-not on page; 13-b; 14-j; 15-i; 16-h.

For further understanding of weights and measures, have class use the activity sheet to search for answers to the following questions:
1. What units of measure are part of the metric system? 
   (meter, liter, and kilogram) Explain that we use two systems of measures. The one students are most familiar with, which includes feet, pounds, etc., came to us from the British and its units are referred to as "customary measures." The other is the metric system, which was introduced by the French and is now used by almost every nation.

2. For their earliest measures, people frequently used parts of the body. Which of the measures given were based on parts of the body? (hand, yard, foot, cubit)

3. Common items were used as standards of measurement in early times. For which of the measurements given were seeds a standard? (inch, foot, pound, grain, carat)

4. Historically, the earliest measures were for length. Which units of measure are of length? (foot, cubit, meter, mile, hand, yard)

5. Which measures are for weight? (ton, pound, grain, carat, kilogram)

6. Which measures are for capacity? (teaspoonful, barrel, gallon, liter; note these can also be expressed in weights)

7. Which units of measurement were used at the time the Constitution was written? (All but the metric measures)

8. Measurement systems have been built on numerical systems. For example, there is the binary system (dividing units into halves, quarters, etc.) used by ancient Hindus; the decimal system (based on 10s) as we use with our currency; the duodecimal system (based on 12) used by the Romans; and a system based on 60 used by ancient Samarians and Babylonians and today in measuring circles. Of the units given, which is customarily divided by 2 into units? (gallon); by 12: (Troy pound and foot); by 10? (meter, liter, and kilogram)

9. What is the relationship between the pound and foot? Between the kilogram and meter? (There is none between a pound and foot; the kilogram is weight of a cubic decimeter (one-tenth of a meter) of water. A major criticism of our customary weights and measures is their lack of relationships to each other.)

10. In what ways do our system of weights and measures seem organized or confusing? Give examples. Speculate on reasons (e.g., diverse origins of measures).

Note that the system is far more complicated than it appears here since there are more everyday measures than cited and also many more scientific measures. In addition, many trades or industries have their own measurement unit (such as points and picas for type; denier for yarn; board foot for lumber). Consider how this profusion affects fairness in exchange of property.

**Enforcing Standards of Weights and Measures**

Scales are the symbol of justice—of fairness. Discuss why this would be so. Ask what qualities does this symbolic use attribute to scales. Integrity? Accuracy? Impartiality?

Ensuring that measures be fair, impartial, and accurate has been concern since they were first used. For example, in the Bible (Deuteronomy 25:13-14), it says "Thou shalt not have in thine bag diverse weights; a perfect and just measure shalt thou have." In other words, under ancient Hebraic law, no false measures were to be carried to be sneaked onto the scales.

A look at English history over the past thousand years shows the continued efforts of the rulers to standardize measures and prevent falsification of weights. Some major laws are referred to in the "Name the Measures" activity. What were punishments in early days? In the reign of Henry III (1265), bakers caught using false...
weights and measures had to put in time standing in the pillory. Brewers, guilty of the same offense, had to stand in the tumbril (a farmer's cart that can be tilted to dump a load) or dung cart. In the eighteenth century, penalties were fines and imprisonment. How are laws regarding weights and measures enforced today?

**ENFORCEMENT**

In general, both federal and state laws pertaining to weights and measures are enforced by state and local officials. Besides providing "standards" for the states, the National Bureau of Standards conducts training for inspectors and offers calibration services. It has also made available model state laws drafted by the National Conferences on Weight and Measures.

To learn about enforcement, students will need to do some research. Have the class or selected teams of students gather information about state law(s) on weights and measures and the agency(s) that enforce them. Information can be requested from the agency(s). Your state's statute(s) should also be examined. Researchers should seek answers to the following questions:

1. What agency (or agencies) is responsible for testing weights and measures in your state? (It is most commonly the department of agriculture.)
2. What kinds of weights and measures are tested (and by whom)? (Consider commercial scales, supermarket scales, fuel pumps, produce and livestock scales, postal scales, pharmaceutical scales, clinical thermometers, airplane scales, etc.)
3. How often are weights and measures in commercial use tested?
4. What happens if a scale or measure is inaccurate?
5. What is the penalty for use of incorrect weights or measures?
6. What is the penalty for failure to dispose of faulty weights and measures?
7. How are inspectors trained and certified?
8. What provision is made for sampling weights of prewrapped packages?
9. What provision is made to deal with deceptive packages?

An inspector or agency representative could also be interviewed or invited to class to discuss these questions. He or she could explain inspection procedures, enforcement actions, and the extent of inaccuracies in measuring devices.

**VOLUNTARY COMPLIANCE**

Developments in food processing (canning, freezing, etc.) and tremendous increases in prepacking foods have created some weights and measures challenges unforeseen in 1787.

The Fair Labeling and Packaging Act of 1966 was a response to some of these problems—the "undue proliferation" of sizes and shapes of packaging and the subsequent confusion to the consumer in determining the value of goods.

Enforcement of the Fair Labeling and Packaging Act was based on voluntary regulation. The National Bureau of Standards was empowered to identify harmful proliferations and work with manufacturers, packers, and distributors to correct the problem by developing voluntary standards. It also was to work with state and local governments to develop laws and regulations to promote and achieve uniformity.

Students may understand this "voluntary" regulation better if they know that, since the late 19th century, industries and trades—nationally and internationally—have voluntarily formed associations to establish product standards. One familiar association is the Underwriters Laboratory, which is concerned with safety standards. Students may be familiar with the UL certification on electrical appliances.

Why have industries accepted and encouraged these standards? Because it is in their self-interest. Standards, which promote simplification, uniformity, and interfacing, are profitable. Have students consider the advantages, for example, of standard-sized school notebooks, beds, and tools.

How well does the Fair Labeling and Packaging Act work? Students can check this out by assuming the roles of inspectors in the following role play. Students, individually or in teams, should each be assigned one line of items to check at the grocery store. Assignments might be jars of instant coffee, cans of pineapples, boxes of laundry detergent, boxes of brownie mix, etc.

For their assignment, they should report on the following questions:

1. Is each container marked as the law requires with the identity of the product, name and address of manufacturer, packer, or distributor, and with net weight?
2. How many sizes of containers are used for the product?
3. Do all containers of a certain size contain the same weight or quantity of the product?
4. Are the sizes or shapes of any containers deceptive? Might a consumer think any contains more than it does? Explain.
5. In your opinion, are there too many sizes of containers for this product? Are there too few? Explain.

Discuss reports. Do results indicate that the Fair Labeling and Packaging Act is being carried out? Why or why not?

**Should Congress Take Action Now?**

While Congress has utilized some of its powers exceedingly (or so some might say), it has never statutorily mandated a standard of weights and measures. Has this infringed on rights to fairness in property exchange? Should Congress, by statute, establish such a standard of weights and measures now?

To answer the latter question have the class weigh such options as:

a. That the customary system of weights and measures (pounds, feet, and such) be made the sole standard of weights and measures.

b. That the metric system be made the sole standard.

c. That no congressional action be taken and things be allowed to stand as they are.
Activity Sheet 2

What's Been Done About Weights and Measures (1787-1987)

1787 The U.S. Constitution empowers Congress to “fix the standard of weights and measures.”

1790--Washington, in his first address to Congress, stated that “uniformity in the currency, weights, and measures of the United States is an object of great importance, and will, I am persuaded, be attended to.”

Thomas Jefferson, then Secretary of State, prepared a report on weights and measures for the House of Representatives. It proposed adopting one of two plans:
1. to “define and render uniform and stable the existing system,” (that is, the system commonly used today).
2. to “reduce every branch to the decimal ratio, already established for coin.” This plan was similar to the metric system, then being considered in France. Jefferson's argument was that “this would bring the calculations of the principal affairs of life within the arithmetic of every man who can multiply and divide plain numbers.”

1790-99 Although a Senate committee recommended Jefferson's second plan, Congress did not act on it. This was despite repeated requests to fix a standard from presidents Washington and Adams.

1799 The French government formally adopted the metric system. In the United States, varying standards of measurements used at different ports were an increasing problem. Congress ordered the surveyor of each U.S. port to “twice a year at least” test the weights and measures in use against standards to be provided for that purpose.

1821 John Quincy Adams submitted a lengthy report to Congress on weights and measures. He recommended:
   a. for the present, fixing standards for the system in use.
   b. for the future, consulting with foreign nations to ultimately establish a system of universal and permanent uniformity.

No congressional action was taken.

1832 Problems because of varying standards of measurements continued in ports. Congress asked the Treasury Department to adopt a system of standard units and measures, including the 36-inch yard. Four years later Congress had sets of standard weights and measures for this system distributed to the custom houses.

1866 Congress passed a law making use of the metric system of weights and measures legal in the United States.

1893 An order of TC, Mendenhall, Superintendent of the Office of Weights and Measures, set the international meter and kilogram as the fundamental standards of length and mass (weight) in the United States. This was for customary as well as metric measures. Since then, the length of the yard has been officially determined in relation to the meter. Similarly, the weight of the pound is determined in relation to the metric kilogram.

1901 Congress established the National Bureau of Standards in the Department of Commerce. It was established at the request of science and industry. The bureau was to provide standards of measurements for the nation's use. It was also to conduct research and standards and measures and to conduct research, standards and measures and to conduct research, standards and measurement devices.

1966 Congress passed the Fair Labeling and Packaging Act. This was because containers of many shapes and sizes made it difficult for consumers to figure out the quantities inside. The Act sought to reduce the number of sizes of containers for each product. It also required that on each package, it should state the identity of the commodity; the name and place of business of manufacturer, packer, or distributor; and the net quantity of contents in weight, measure, or number.

1974 “Education Amendments” were adopted by Congress to encourage schools to prepare students to use the metric system.

1975 Congress passed the “Metric Conversion Act.” This Act stated that it is U.S. policy to plan and coordinate increasing use of the metric system. It established a U.S. Metric Board to coordinate a voluntary changeover to the metric system.

After listing options, list reasons for each. Class should consider:

a. Resistance of people to change;
b. Entrenchment of customary system in terms of distribution of land, buildings, roads, etc.;
c. Costs of training, changing equipment, etc.;
d. Importance of metric system in trade, science, etc.;
e. Use of metric system by almost all other nations, including Britain and Canada;
f. Increasing use of metric system in our society;
g. Ease of using an interrelated, decimal system;
h. Advantages of voluntary vs. mandatory implementation.

Finally have class vote on the options. Discuss the results. Discuss their reasons for their stands.

Remind students that the options posed for today are very similar to those that confronted Congress in the 1970s. How might they have voted then? Would they have voted differently now? Why? Are such options likely to confront the Congress of the 2090s?

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### Pathway 2: Power and Empowerment

<table>
<thead>
<tr>
<th>Session</th>
<th>Lessons</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>The Conundrum of Federalism</td>
</tr>
<tr>
<td>II</td>
<td>Comparing State and Federal Constitutions</td>
</tr>
<tr>
<td>III</td>
<td>Comparing State and Federal Constitutions (continued)</td>
</tr>
<tr>
<td>IV</td>
<td>It's My Life</td>
</tr>
<tr>
<td>V</td>
<td>Claim Your Powers</td>
</tr>
<tr>
<td>VI</td>
<td>A Clash of Giants</td>
</tr>
<tr>
<td>VII</td>
<td>Weights and Measures</td>
</tr>
<tr>
<td>VIII</td>
<td>Will the Court Hear This Case?</td>
</tr>
</tbody>
</table>
SESSION VIII – EXERCISING JUDICIAL POWER
[Time: 1hr & 45 min]

Concepts and Topics: separation of powers, checks and balances, popular sovereignty

Lesson
Will the Court Hear This Case?

Handouts
Access to the Supreme Court
Will the Court Hear this Case?

Procedure

Opening
(1) Welcome [5 minutes]
Reflect on previous session focusing on one aspect of legislative power
Review today’s agenda

(2) Warm Up [10 minutes]
Challenge students to name some recent Supreme Court cases. [Keep a list of these cases for use in the Debrief and Wrap Up.] Then use their responses to launch the lesson by drawing on the first and final paragraphs of the section Access to the Supreme Court starting your comments with: “Very few cases go all the way to the Supreme Court. . .”

Curricular Focus
The accompanying lesson may be taught as outlined. However, the suggestions under (3) should help insure that students better understand the Court’s criteria for hearing cases before launching into the task of responding to “Will the Court Hear This Case?”

(3) Access to the Supreme Court. [30 minutes]
- Form small groups and assign each a portion of the narrative under Access to the Supreme Court. Except for the first and last paragraphs, each paragraph identifies and discusses one criteria. Assign one paragraph to each small group—with this exception: combine the short paragraphs that deal with the “rule of four” and “local” matters. Bring the groups together and have each group identify and explain the criteria they studied. List each criteria on the board and review the completed list.

(4) Will the Court Hear This Case? [45 minutes] Follow the procedure as described.

Closing [5 minutes]
(5) Debrief and Wrap Up
Refer to the cases identified in the Warm Up and probe for what criteria might have been used by the Court in selecting each case to be heard.
Courts and the Constitution

Will the Court Hear This Case?/Secondary

Here is an activity for one class period that will help students understand that the Supreme Court’s jurisdiction is limited.

Procedure
Distribute copies of “Access to the Supreme Court.” After the students have had time to read the handout, form small groups of four to six. Distribute copies of “Will the Court Hear This Case?” Tell the students to complete the activity through group discussion and by following the instructions at the top of the page. Conclude with a brief comparison of the various group responses. Although there are several “right” answers possible for each situation depending upon additional facts assumed, a guide to some expected answers follows. During the discussion of these situations it would be useful to remind the class that most of the limits on access to the Supreme Court are self-imposed or subject to interpretation by that body. The Court has the means to hear almost any case it truly wants to hear and decide.

Access to the Supreme Court
Have you ever heard someone declare, “Why, I’ll take my case all the way to the Supreme Court!”? If you have, you, like the speaker, probably realized that the threat was more an expression of the person’s commitment to the righteousness of his side than it was a statement of likely fact. Very few cases go all the way to the Supreme Court. There are a great many reasons for this. Some are imposed by the Constitution, some by the Court itself, still others by the emotional and economic realities of litigation (the process of carrying on a lawsuit, through which legal rights are sought to be determined and enforced). There are millions of criminal and civil cases begun in the state and federal courts each year. Of these the Court hears oral arguments in less than 180 cases. Each year the justices write formal opinions in 125 to 150 cases. How does the Court decide which cases to hear and decide?

Article III of the Constitution not only creates the Supreme Court but it also describes the kinds of cases that the Court can hear. The Supreme Court has very little original jurisdiction (the authority a court has to be the first to hear a case). That means very few cases are heard first by the Supreme Court. In fact, the Court has exercised its original jurisdiction only about 135 times in its whole history. The vast majority of the Court’s work, then, is appellate (the authority to review the law as applied to a prior determination of the same case). So the first limit on access to the Supreme Court is that a case ordinarily must be tried by one or more state or lower federal courts before the Supreme Court will consider it. The United States Congress may also limit access to the Supreme Court by limiting the kinds of cases that the Court may hear on appeal. An important power of the Congress is to define the type of case which may be appealed to the Supreme Court.

Another limitation is found in Article III, section 2.

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 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.

The Supreme Court, like other federal courts, will only hear “cases” and “controversies.” These are technical terms that refer to real disputes in which the legal interests of two or more persons are in collision. Because of this
rule, President George Washington was denied access to the Supreme Court when he asked the justices to give him advice on a foreign policy problem. Ever since then the Supreme Court has been unwilling to offer its advice or answer hypothetical, academic, or abstract questions in formal advisory decisions. Similarly, the Court will not decide a case that is moot. A moot case is one that involves a pretended controversy or one in which the Court’s judgment would have no practical effect upon the existing controversy. A classic example of a moot question is, “Which came first—the chicken or the egg?”

Access is limited for many people because they lack “standing” to sue. This phrase refers to the long-established rule that one must have a direct, personal interest in a case before he can sue. One may not sue simply to protect the legal rights of the public at large. Rather, to have standing, one must show that he has suffered some direct injury or that the exercise of his personal rights are at issue. With rare exceptions the Court will not hear cases where a citizen claims standing to sue as a taxpayer unhappy with the way his taxes have been spent.

Timing is very important in determining whether the Supreme Court will hear a case. Before one may go to the federal courts for relief, all administrative hearings must have been concluded. The Supreme Court will only hear a case if it is “ripe” for a decision. That means that if the question can be decided by another body, that body must have had the opportunity to settle the issue. Another aspect of the ripeness limitation is that there should be access to lower federal courts unless the threat of harmful governmental action is immediate. The Supreme Court will not hear a case that involves a fear of adverse governmental action against someone in the future.

Another rule developed by the Supreme Court which limits the cases it will hear is the rule against deciding a “political question.” The Court has described a political question as one whose settlement is the constitutional duty of one of the other branches of government, or which presents a problem in a field where one of the other branches has greater knowledge, or which presents an issue which is not one which the courts could handle. One difficulty with the political question limitation is that the Supreme Court has not been consistent in its designation of some issues as political. Also, there is often a thin line between the legal and political aspects of important issues heard by the Supreme Court.

Since 1925 the Supreme Court has had the authority to select the particular cases it will hear. An informal rule of the Court dates from that time. It is the “rule of four” and means that four justices must want to hear a case before it will be reviewed. Although there are some cases which automatically are sent to the Supreme Court by law, most cases are required to pass the rule of four.

When the justices are deciding whether to hear a case, other informal but long-observed rules operate. Cases which involve matters which are purely local in nature, affect only a few people, or fail to raise any serious question of federal or constitutional law are usually dismissed.

The final limits to access to the Supreme Court involve economic and emotional considerations. Even though the Supreme Court has lowered many of the economic barriers to litigation and there are private groups which sponsor and help pay for litigation, the cost of taking one’s case all the way to the Supreme Court remains high. Additionally, there are intangible emotional considerations that often make a litigant end the pursuit of his case even when the outcome is not his liking and there are grounds for appeal. Persuing a case on appeal takes time and effort as well as money. Many litigants decide that whatever might be gained is not worth the effort of continuing the litigation. Other litigants find that they are sufficiently satisfied with the ruling of a lower court and so their appeal is dropped in favor of a verdict which establishes an acceptable compromise solution to the conflict. Still other litigants discover that there are no legitimate legal grounds on which they might appeal.

“I’ll take this case all the way to the Supreme Court!”

Yes, it is possible. However, if the case is decided by the highest court in the United States, it will be the exception. The Supreme Court hears only a very few cases when measured against all the cases begun each year, but the cases it does decide are the toughest and its decisions resolve, if but for a time, the most important legal questions before the nation.

Will the Court Hear This Case?

Read each item below. Discuss it and decide whether the Supreme Court would likely hear such a case. If the answer is no, decide which of the limits on access to Supreme Court review applies and write that rule or reason in the space provided.

I. A man says he was denied his Sixth Amendment right to have a lawyer when he was arrested and convicted of burglary. He was released from prison after the completion of his sentence last year.

II. A disgruntled woman is tired of hearing about welfare cheaters. She wants the Court to hear her case, arguing that her tax money should not go to people whom she believes ought to be forced to take a job.

III. An employee of the Internal Revenue Service was fired. Not believing that he could receive a fair hearing within the agency, he wants to appeal his firing directly to the Supreme Court.

IV. A state has banned the killing of an animal found only in that state. A group of hunters object to the law. They want the Supreme Court to declare the law unconstitutional.
V. Several members of Congress request the Supreme Court’s opinion on the wisdom of a proposed treaty with a foreign country.

VI. A publisher wants to appeal the case he lost in all the courts in his state. He says the law under which he is being punished makes it a crime to criticize the state’s governor. The publisher believes the law is an unconstitutional violation of his First and Fourteenth Amendment rights to free speech and press.

VII. A case involving the Fourth Amendment’s guarantees against unreasonable search and seizure has captured the interest of two Supreme Court justices. The other seven, however, say that the issue raised in this current case was decided by the Court several years ago.

VIII. The Supreme Court has been requested to decide whether a newly-independent country ought to be recognized by the United States.

IX. A middle-class couple would like to continue their appeal but no interest groups or other organizations want to support their appeal. Three of the couple’s children are in college and must be supported financially.

X. A woman believes she should not have been fined for double parking on a downtown street of a major city. She wants to take her case all the way to the Supreme Court.

XI. Congress has passed a law forbidding the Supreme Court to hear appeals concerning school integration. A group of parents has lost its suit challenging segregation in a local school district. They want the Supreme Court to decide the issue.

XII. A new law has been passed that will require banks to routinely send all records of their customers’ checking accounts to the Internal Revenue Service. Even though he has no checking account and the law will not go into effect for three months, a young man sues in hopes that the Court will declare the law to be an unconstitutional violation of his rights to privacy and protection against self-incrimination.

XIII. Texas has sued Oklahoma over water rights. The states believe that the Supreme Court should decide the issue.

SUGGESTED ANSWERS

I. No. The case became moot when the man finished his sentence.

II. No. The woman lacks standing to sue.

III. No. The case is not ripe.

IV. No. No substantial federal or constitutional question is likely involved.

V. No. The Court will not give an advisory opinion.

VI. Yes. This presents an important constitutional question. A case may be appealed directly to the Supreme Court after the highest state court has heard it. Still there is no absolute guarantee that the Court will agree to hear the case.

VII. No. The rule of four would doom this case even though it involves an important constitutional question.

VIII. No. This is a political question. Only the president can recognize another nation by receiving its diplomatic representatives.

IX. No. The economic realities of further litigation would probably force the couple to accept the lower court’s judgment.

X. No. For many reasons the Court would not likely hear this case. The reasons could include no substantial federal or constitutional issue, lack of ripeness, the rule of four, as well as whether the woman would really want to devote as much money and time and effort as would be required to continue the appeal.

XI. No. Congress has the constitutional right and power to limit the Supreme Court’s appellate jurisdiction (See Article III, Section 2, Clause 1).

XII. No. The issue is not ripe.

XIII. Yes. If the Court wants to exercise its original jurisdiction, it could be the first and only court to hear this case. The Supreme Court’s original jurisdiction is not, however, exclusive; and many cases which come under this category are heard by lower federal courts.

This article is taken from the teacher’s guide to The Supreme Court—A Vital Institution in American History which was created by Law in a Changing Society and published by the Law Focused Education Project of the State Bar of Texas.