



## We the People THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education and funded by the U.S. Department of Education under the Education for Democracy Act approved by the United States Congress.

### STATE HEARING QUESTIONS 2009 – 2010

#### Unit One: What Are the Philosophical and Historical Foundations of the American Political System?

1. **What are the major differences between classical republicanism and natural rights philosophy?**
  - How might those differences affect thinking about the purposes and goals of government?
  - What might the consequences be for individuals and society of placing too great an emphasis on the common good over the rights of individuals? Of emphasizing the rights of individuals over the common good?
2. **Three principles were contained in the Magna Carta: the rule of law, basic rights, and government by agreement or contract. How and why did those principles prove to be important in the development of constitutional government?**
  - What is the relationship, if any, between the rule of law and limited government?
  - What is the relationship, if any, between the idea of government by agreement or contract and basic rights?
3. **Evaluate the arguments the American colonists made against British policies of 1763–1776.**
  - Why did the colonists finally decide to declare independence?
  - What were the main ideas and arguments of the Declaration of Independence?



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#### Unit Two: How Did the Framers Create the Constitution?

**1. Compare the New Jersey and Virginia Plans. What were the strengths and weaknesses of each plan?**

- James Madison and others argued that membership in both houses of Congress should be based on the numbers of people represented. States should not be represented as states. Do you agree or disagree? Why?
- What was the Great Compromise and how did it make it possible for both sides to claim some victories?

**2. The office of president of the United States was a new office invented at the Philadelphia Convention. What was new about it, and why did the delegates think such a new office was needed?**

- Evaluate the arguments advanced for a single executive and those for a plural executive.
- How did the delegates try to achieve a balance between an energetic executive and limited government?

**3. “Although the Anti-Federalists failed, they are entitled to their just shares of credit in the making of the Constitution.... The Anti-Federalists forced the Constitution’s supporters to engage in this dialogue and to explain and justify the new charter clause by clause. In resisting the Constitution, they compelled the American people to think more deeply than any other people, before or since, about what the basic principles of their government should be and how they should be put into effect.”\* Do you agree or disagree with this appraisal? Why?**

- What basic principles were at the core of the debate between the Federalists and the Anti-Federalists?
- How was this debate widened to include the American people, not just delegates to the ratifying conventions? Why was widening the debate important?

\* Richard B. Bernstein. *Are We to Be A Nation? The Making of the Constitution* (Cambridge, Mass: Harvard University Press, 1987), 229–230.



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#### Unit Three: How Has the Constitution Been Changed to Further the Ideals Contained in the Declaration of Independence?

1. **“Throughout American history courts have played a major role in the development of public policy through the exercise of the power of judicial review.”\*** What is judicial review and how have the courts used this power to develop public policy?

- “The single most important post-1787 addition to checks and balances is judicial review.”\*\* Do you agree or disagree with this view? Why?
- Why has judicial review continued to be controversial?

\* Jack C. Plano and Milton Greenberg. *The American Political Dictionary*, 11<sup>th</sup> ed. (Fort Worth: Harcourt College Publishers, 2005), 290.

\*\* Richard A. Brisbin, Jr. “The Judiciary and the Separation of Powers,” in *The Judicial Branch*, Kermit Hall and Kevin T. McGuire, eds. (New York: Oxford University Press, 2005), 95.

2. **Reacting to the Supreme Court’s decision in *Dred Scott v. Sandford* (1857), Abraham Lincoln said, “But we think the *Dred Scott* decision is erroneous. We know that the Court that made it has often overruled its own decisions and we shall do what we can to have it overrule this. We offer no resistance to it.”\*** Why did Lincoln believe that the Supreme Court’s decision was wrong?

- Why and how did Lincoln and others work to see that the *Dred Scott* case was overturned?
- Why do you think Lincoln said he would support no “resistance” such as mass demonstrations or other “revolutionary” behavior to overturn *Dred Scott*?

\* Abraham Lincoln, “His Speech on the *Dred Scott* Decision, Springfield, Illinois, June 26, 1857,” in *The Words of Abraham Lincoln: Speeches, Letters, Proclamations, and Papers of Our Most Eloquent President*. Martin Lubin, ed. (New York: Tess Press, 2005), 43.

3. **How is the right to vote related to the concepts of popular sovereignty and the consent of the governed?**

- The Constitution does not expressly provide a right to vote, but could such a right be implied by the Preamble and other provisions of the Constitution? Why?
- Although Americans fought hard to remove legal barriers to the vote, their turnout at elections remains low compared to other Western democracies.\* Why? How might turnout be improved?

\* See U.S. Federal Electoral Commission. [www.fec.gov](http://www.fec.gov).



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#### Unit Four: How Have the Values and Principles Embodied in the Constitution Shaped American Institutions and Practices?

**1. Presidential power has increased dramatically since the early 1930s. What factors have contributed to that growth of power? On balance, is the growth of presidential power a healthy or a detrimental development? Why?**

- How is the system of checks and balances designed to limit the exercise of presidential power and how well does it work?
- How can public opinion affect presidential power?

**2. “The essence of law-making in Congress is the quantity and quality of its deliberation.”\* How would you define deliberation and do you agree or disagree that deliberation should be at the core of law-making? Why?**

- What provisions of the Constitution encourage or discourage deliberation in Congress?
- In addition to its primary responsibility to legislate, what other responsibilities does Congress have and why are they important?

\*Thomas E. Mann and Norman J. Ornstein, *The Broken Branch: How Congress is Failing America and How to Get It Back on Track* (New York: Oxford University Press, 2006), 212.

**3. How does federalism try to avoid the overcentralization of unitary governments and the extreme decentralization of confederations?**

- What governing powers does the U.S. Constitution leave to the states? What powers does it deny to the states?
- What are the major advantages of federalism? The major disadvantages?



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#### Unit Five: What Rights Does the Bill of Rights Protect?

**1. “Free speech is a condition of legitimate government. Laws and policies are not legitimate unless they have been adopted through a democratic process and a process is not democratic if government has prevented anyone from expressing his convictions about what those laws and policies should be.”\* Do you agree or disagree with this assertion? Why?**

- How can Americans most effectively express their convictions about what laws and policies should be?
- What limits, if any, should a democratic government be permitted to place on freedom of expression?

\* Ronald Dworkin, “The Right to Ridicule,” *New York Review of Books*, 53/5 (23 March, 2006), in *Free Speech: A Very Short Introduction*, Nigel Warburton (Oxford/New York: 2009), 3–4.

**2. Justice Antonin Scalia claims that juries are “the spinal column of American democracy.”\* Would you agree or disagree with this characterization of juries? Why?**

- What is the relationship, if any, between the right to trial by jury and limited government?
- The Sixth Amendment guarantees persons charged with crimes a fair trial. The First Amendment guarantees the press and the public the right to attend criminal trials. In what ways, if any, are these rights in conflict with one another?

\* Justice Antonin Scalia, “American Institutions of Democracy,” in *The Judicial Branch*, Kermit L. Hall and Kevin J. McGuire, eds. (New York: Oxford University Press, 2005), 419.

**3. Why does the establishment clause generate the fiercest arguments about religion-related constitutional rights, even though there have been no established state churches in America for two centuries?**

- What are the major differences between the establishment and free exercise clauses of the First Amendment?
- How and why might the establishment and free exercise clauses come in conflict?



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### Unit Six: What Challenges Might Face American Constitutional Democracy in the Twenty-first Century?

1. A scholar recently wrote:

*The Constitution of the United States along with its 27 amendments defines the opportunities, rights, privileges and obligations of its population.\**

**What opportunities does the Constitution offer and why are those opportunities important?**

- Why do you think the scholar speaks of “opportunities, rights, privileges and obligations of its population” rather than just those of the nation’s leaders? Its citizens?
- In what ways, if any, are rights and obligations related?

\* Jean H. Baker. *New Essays on American Constitutional History: Women and the U.S. Constitution 1776–1920* (Washington, D.C.: American Historical Association and The Institute for Constitutional Studies, 2009), vii.

2. **“The Supreme Court commands no armies. Civil Rights could not become effective until both the executive and the legislature had also put their weight behind them.”\* How does Congress “put its weight” behind civil rights?**

- What role does the executive branch play in the enforcement of civil rights?
- How and why are Supreme Court decisions carried into effect, even though the Court “has no armies”?

\* *Concise Oxford Dictionary of Politics*. Iain McLean and Alistair McMillan, eds. (New York: Oxford University Press, 2009), 79.

3. **“Citizenship in a democracy is more than a legal status, it is a character or spirit, an ethos that guides relationships among persons and animates individual commitment to fundamental principles of democracy.”\* Do you agree or disagree with this characterization of democratic citizenship? Why or why not?**

- How does the Fourteenth Amendment define citizenship and what important rights does it confer?
- What is the relationship, if any, between the rights and the responsibilities of citizens in a democracy?

\* *Res Publica: An International Framework for Education in Democracy* (Calabasas, California: Center for Civic Education, 2003), 40.