

Chapter 2: FEDERALISM

Abstract

The U.S. Constitution created a structure of government in which some powers are held exclusively at the federal level, some are reserved to the states, and still others are held concurrently by both the federal and state governments. This system – the product of one of the many compromises made during the Constitutional Convention of 1787 – was designed to address the need for a more powerful central government, while at the same time protecting the right of states to self-governance and of citizens to individual liberty. As part of *Constitutionally Speaking's* inquiry into the question: “How Does the Constitution Keep Up with the Times?” the materials that follow explore the role of the U.S. Supreme Court in the evolution of the balance of powers between the federal government and the states.

Relevant *Constitutionally Speaking* Videos

A Lesson in Compromise

Speakers: David H. Souter, U.S. Supreme Court Justice (Retired)
William Chapman, Esq., Shareholder, Orr & Reno

Duration: 4 min 37 sec

Synopsis: Justice Souter and Attorney Chapman emphasize the critical role of compromise in the Constitution's adoption. The representational make-up of the House and Senate – as well as counting slaves as three-fifths of a person in state population tallies – are cited as examples. Reference is made as well to the Articles of Confederation; the well-educated elite who attended the Constitutional Convention in 1787; and colonial charters as precedent for a written Constitution.

When Laws Conflict

Speaker: Michele Martinez Campbell, Associate Professor, Vermont Law School

Duration: 8 min 43 sec

Synopsis: Professor Martinez Campbell addresses the intersection of states' rights and federalism in criminal law, focusing on the 2012 legalization of the recreational use of marijuana in Colorado and Washington states. Her discussion also references California's medical marijuana law, as well as the U.S. Constitution's Commerce and Supremacy clauses.

Rights Retained by the People

Speaker: Calvin R. Massey, Professor, UNH School of Law

Duration: 7 min 34 sec

Synopsis: Professor Massey examines in detail the powers reserved to the states and the rights reserved to the people by the Ninth and Tenth Amendments, and delves into the role of the Supreme Court as the proper interpreter of the federal government's powers.

A Precious Right

Speaker: Carol Nackenoff, Professor, Swarthmore College

Duration: 8 min 3 sec

Synopsis: Professor Nackenoff surveys the 100-year-plus legislative and court-mandated expansion of voting rights, dating from the late 19th century. She also probes more recent case law to determine whether voting is a fundamental right protected by the Constitution.

Chapter Outline

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Learning Objectives

Goal Students will be able to analyze how the interpretation of the U.S. Constitution over time impacts the balance of power between the federal and state governments within the United States.

Students will understand that....

- Compromise played a central role in the creation of the Constitution.
- The Constitution created a federal system of government where power is shared between the federal government and the states.
- The Commerce Clause and the Necessary and Proper Clause can be interpreted to give Congress broad authority to create national laws.
- The Supreme Court's interpretation of the Constitution plays a central role in determining how much power states have to govern themselves.
- Voting rights in the United States are controlled by federal and state laws that allow for wide variation in the rules and procedures for voting.
- The Supreme Court's interpretation of the Constitution – specifically the power of the federal government over the states – changes over time.

Essential Questions

- How is power shared by the federal government and the states under the Constitution?
- Why did the founders choose a federal system of government for the United States? What are the positive and negative effects of a federal system?
- What authority does the federal government have under the Commerce Clause and the Necessary and Proper Clause and how has that power changed over time?
- How are voting rights and regulations affected by the changing balance of power between the federal government and the states over time?

Students will know...

- Important terms regarding federalism.
- Key facts about the changing interpretation of the power of the federal government versus the states over time.
- Key Supreme Court cases on constitutional federalism.
- The history, content, and effects of the Voting Rights Act of 1965.

Students will be able to...

- Recognize, define and use federalism vocabulary in context.
- Read, comprehend and analyze the text of the U.S. Constitution.
- Interpret, compare and evaluate Supreme Court analysis of the Constitution over time.
- Express their learning orally during class discussions and in writing.
- Collaborate successfully with their peers to improve and express their learning.

Relevant U.S. Supreme Court Cases

Each case is followed by a link to the full-text majority opinion at Cornell University's Legal Information Institute as well as a link to a case summary at Oyez.org unless otherwise indicated.

<u>Title (year)</u>	<u>Full Text</u>	<u>Summary</u>
<u>Necessary and Proper Clause</u>		
McCulloch v. Maryland (1819)*	Full Text	Summary
U.S. v. Comstock (2010)	Full Text	Summary
<u>Commerce Clause</u>		
Gibbons v. Ogden (1824)*	Full Text	Summary
Swift v. U.S. (1905)	Full Text	Summary
Schechter Poultry Corp. v. U.S. (1935)	Full Text	Summary
NLRB v. Jones (1937)	Full Text	Summary
Wickard v. Filburn (1942)	Full Text	Summary
U.S. v. Lopez (1995)	Full Text	Summary
U.S. v. Morrison (2000)**	Full Text	Summary
Gonzales v. Raich (2005)**	Full Text	Summary
Affordable Care Act cases (2012)**	Full Text	Summary
<u>Voting</u>		
Harper v. Virginia Board of Elections (1966)	Full Text	Summary
Bush v. Gore (2000)	Full Text	Summary
Crawford v. Marion County Election Board (2008)	Full Text	Summary
Shelby County v. Holder (2013)	Full Text ***	Summary

*Teaching materials – including case summaries and excerpts – are available for these cases at [Landmark Supreme Court Cases of the U.S. Supreme Court](#).

**Additional case summaries and excerpts are available for these cases in [Street Law Inc.'s Resource Library](#).

***The full text opinion of the *Shelby v. Holder* case is available at the Supreme Court's website. The [Washington Post has an excellent summary](#) of the case and the arguments on both sides on its website as well.

Important Terms

commerce	The sale or exchange of goods and/or services.
Commerce Clause	Article I, Section 8, Clause 3 of the U.S. Constitution, which grants Congress the power to “regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” The commerce power is the most cited power used by Congress when creating federal law.
concurrent powers	Powers shared by the federal and state governments under the U.S. constitution.
enumerated powers	Powers explicitly stated in the U.S. Constitution. The powers explicitly granted to the federal government in the U.S. Constitution are called the federal government’s <i>enumerated powers</i> .
Equal Protection Clause	Fourteenth Amendment, Section I, Clause 4 of the U.S. Constitution, which states that “No State shall . . . deny to any person within its jurisdiction the equal protection of the laws.” The Equal Protection Clause protects one group of citizens from having a law applied differently to its members than it is to another group of citizens. When analyzing whether state laws are constitutional under the Equal Protection Clause, the Supreme Court looks at the type of discrimination and what rights are affected. As an example, the right to vote has been ruled a <i>fundamental right</i> by the Supreme Court and thus enjoys strict protection under the Equal Protection Clause. The Supreme Court ruled in <i>Harper v. Virginia Board of Elections</i> in 1966 that a state poll tax violated the Equal Protection Clause because conditioning the right to vote on wealth denied citizens the equal protection of the law.
federalism	A system of government where power is divided between a national government and smaller regional governments (i.e. state governments in the United States). In the United States, the national or <i>federal</i> government has exclusive power in some areas, the state governments have exclusive power in some areas, and the two levels of government share power in other areas. This is called a <i>federal</i> system of government.
literacy tests	In the context of voting, literacy tests were given to potential voters to prove their intelligence and thus their

worthiness to vote. The tests were popular in the Jim Crow South as a way to keep uneducated voters, who were disproportionately black, from voting. Literacy tests were effectively prohibited by the Voting Rights Act of 1965.

Necessary and Proper Clause

Article I, Section 8, Clause 17 of the U.S. Constitution, which grants Congress the power to “make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.”

poll taxes

In the context of voting, a *poll tax* is a tax a citizen is required to pay in order to vote in a political election. Poll taxes were a popular method of discouraging blacks (who were disproportionately poor) from voting in southern elections during the Jim Crow era. Poll taxes were prohibited in federal elections by the Twenty-Fourth Amendment to the U.S. Constitution (ratified 1964) and in state elections by *Harper v. Virginia Board of Elections* (1966).

preclearance

The requirement under Section 5 of the Voting Rights Act of 1965 that states covered by the Act submit any proposed changes to state voting or election laws to the U.S. Department of Justice or the U.S. District Court for the District of Columbia for pre-approval. The requirement was designed to protect minorities from being denied the right to vote through changes to state law without a lawsuit having to be filed after the fact. Examples of changes to state voting and election laws that are required to be pre-cleared under Section 5 include voter eligibility requirements, candidate eligibility requirements, and voter precinct boundaries. Section 4 of the Act, which specified the formula used to determine what states were covered by the Act, was recently ruled unconstitutional by the U.S. Supreme Court in *Shelby County v. Holder*. Until a new formula is approved by Congress and the President, the Section 5 requirement for preclearance can no longer be enforced.

reserved powers

Powers left to the states under the U.S. Constitution. The powers not granted to the federal government under the U.S. Constitution are said to be *reserved* for the states.

suffrage

The right to vote in political elections. Also referred to as *the franchise*. *Universal suffrage* refers to the uninhibited right to vote for all citizens.

Supremacy Clause

Article VI, Section 2, Clause 1 of the U.S. Constitution, which states, “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land”. This clause makes the Constitution, all federal laws and all U.S. treaties legally enacted, superior to any state, county and other local laws within the United States.

Learning Activities & Assessments

Part 1: Introducing the Concept of Compromise and the Constitution

The goal of these activities is to familiarize students with the concept of compromise and explore the role compromise played in the creation of the U.S. Constitution.

Step 1: What is Compromise?

Students will first complete a *Frayer Model* for concept formation for the term *compromise*. The model should include characteristics, a definition, examples, and non-examples. Have the students complete the model individually or in pairs first and then share out to a larger group or the class. Ask the students to reflect on the positive and negative effects of compromise, using examples from their own lives to enrich the discussion.

Note: A template of a *Frayer Model* can be found in the [Vocabulary Strategies section of the NH Social Studies Education Wiki](#).

Step 2: The Role of Compromise in the Constitution's Creation

Show the *Constitutionally Speaking* video *A Lesson in Compromise* to facilitate your students' understanding of the role of compromise in the creation of the U.S. Constitution.

Video Discussion Questions: A Lesson in Compromise

1. According to Justice Souter, what did James Madison believe was the most serious issue facing the Constitutional Convention in 1787? Do you agree or disagree with Justice Souter's assessment? Why?
2. What were some of the compromises made by the delegates at the Constitutional Convention of 1787? Are there any common themes you can identify?
3. "So compromise matters, it's fundamental to debate, to the way we govern. We've seen, I think both at the national level and here in New Hampshire, what happens when people are unwilling to compromise." *William Chapman, Esq., Shareholder, Orr & Reno*

What did Attorney Chapman mean when he stated that compromise is "fundamental to debate, to the way we govern"? Provide a recent example in which government officials were unwilling to compromise and describe how the lack of compromise affected the government and our society.

The readings below are recommended to supplement the material introduced in the video. Have students focus on the following question while reading: *What compromises were made during the creation of the U.S. Constitution and why were those compromises necessary?*

["The Constitution and the Idea of Compromise" at PBS](#)

["A More Perfect Union: The Creation of the U.S. Constitution" at the *National Archives*](#)
["The Constitutional Convention" at *ThisNation.com*](#)

Part 2: Our Constitutional Federal System

The goal of these activities is for students to explore the division of power between the federal government and the states created by the U.S. Constitution.

Step 1: The Concept of Federalism

Review the general definition of federalism with your students (see Important Terms, page 32). Explain to students that one of the major compromises that occurred at the Constitutional Convention was the division of power between the federal and state governments.

Note: For more information on the different variations of federalism students can read ["What is Federalism" at *ThisNation.com*](#). The questions below can be used with the reading:

- What did *federalism* mean under the Articles of Confederation? How did the definition change under the Constitution?
- How is Constitutional federalism an example of compromise?
- Contrast the definitions provided for *dual*, *permissive*, and *cooperative federalism*. What makes each approach to federalism different from the other?

Note: [Federalist No. 39](#) (James Madison) is an excellent primary source to use for a more in-depth and challenging exploration of the idea of a federal system and Madison's view of the difference between a *national* versus a *federal* government.

Step 2: A Constitutional Division of Power

In this activity students will create a graphic tool that organizes the powers of the federal government and the state governments under the U.S. Constitution. Students must explore the text of the Constitution in order to identify and record the source of the following:

- (a) enumerated powers of the national government;
- (b) powers reserved to the states
- (c) powers shared concurrently by both the national and state governments;
- (d) powers denied to the national government; and
- (e) powers denied to the states.

A simple chart with one column for *power* and another column for *source* would be sufficient (see APPENDIX C), as would a variation of a Venn diagram. Students can complete the activity individually, in pairs or in small groups. You could assign each group one or more of the categories (a-e) above or use the jigsaw model within each group and differentiate the assignment of categories as needed.

Note: There is an excellent [summary of the breakdown of federal and state power at ThisNation.com](#) that can be used to supplement this activity or aid students who need additional assistance.

Discussion Questions

- When a state passes a law contradicting a federal law, which law has supremacy? Where in the Constitution is this issue addressed?
- Is there a delegation or restriction of power that surprised you? If so, why?
- Are there powers delegated to the federal government that you think should be left to the states? If so, why?
- Are there powers reserved to the states that you think should be exercised by the federal government? If so, why?
- Is a sharing of some powers between the federal and state governments an effective way to govern? Why or why not?

Step 3: Analyzing the Necessary and Proper Clause and the Commerce Clause

In this activity students will analyze the interpretation of the Necessary and Proper Clause and/or the Commerce Clause by the U.S. Supreme Court over time in order to better understand the extent of federal power over the states. Refer to Relevant Cases, page 31, and provide the full text, a summary, excerpts, or a combination of the three, depending on the reading abilities of the students. **Note:** If you are planning to complete Part 3 with your class do not use the *Gonzales v. Raich* case as part of this activity.

Format Options

- Students choose two cases to analyze, then report back to the full class or discuss their findings in small groups that focus on the same *or* different cases.
- Students are divided into groups that analyze one case together and report their findings to the full class.
- Students are divided into groups in which each student analyzes a different case. After completing their analyses, students share their findings with peers who examined the same case, to confirm what they have learned, then report back to their specific groups (a jigsaw cooperative learning model).

Regardless of the activity format, students should focus on the following for each case they analyze:

- a) The facts of the case, including the federal law or action that is at the center of this case.
- b) The central question of the case? (i.e. “The Supreme Court must decide if...”)
- c) The ruling of the Court.

- d) How the text of the Constitution was interpreted to support the Court's ruling.

Discussion Questions

- Has the Supreme Court's interpretation of the Necessary and Proper Clause changed over time? If so, how? Use evidence from the cases to support your conclusions.
- Has the Supreme Court's interpretation of the Commerce Clause changed over time? If so, how? Use evidence from the cases to support your conclusions.
- Why does the Supreme Court's interpretation of the Constitution sometimes change?
- Did you disagree with the Supreme Court in any of the cases? If so, explain what you think the Court's decision should have been and why.
- Is the Supreme Court's interpretation of the Necessary and Proper Clause and/or the Commerce Clause consistent with the federal system of government that the framers of the Constitution intended? Why or why not? Use evidence to support your conclusions.

Part 3: *Gonzalez v. Raich* and the Extent of the Commerce Power

In *Gonzalez v. Raich* the U.S. Supreme Court examined whether the Controlled Substances Act, which among other things prohibited the production of marijuana for personal consumption, was a constitutional exercise of Congress's power to regulate interstate commerce under the Constitution's Commerce Clause. The goal of these activities is for students to explore the modern interpretation of the extent of federal power under the Commerce Clause.

Step 1: Introducing the Topic Using Two Constitutionally Speaking videos

Introduce the topic to your class and show two *Constitutionally Speaking* videos in this order: *When Laws Conflict* and *Rights Retained by the People*. These two videos provide an excellent introduction to Congress's use of the Commerce Power to regulate national marijuana use, as well as to the powers reserved to the states and the rights reserved to the people by the Ninth and Tenth Amendments.

Video Discussion Questions: *When Laws Conflict*

1. What does Professor Martinez Campbell mean when she says that the federal and state criminal justice systems are "parallel"?
2. What is the difference between a federal and a state crime?
3. What is different about the marijuana legalization laws passed in Colorado and Washington?
4. Does the Constitution give the federal government broad police power? What part of the Constitution gives the federal government power to enact criminal laws?
5. What has the Supreme Court already said about the federal government's power to prohibit medical marijuana? How did the Court use the Constitution's Commerce Clause to justify its decision?

6. When a federal law conflicts with a state law, which law is superior? What part of the Constitution answers this question?

Video Discussion Questions: *Rights Retained by the People*

1. What were the two main concerns of the framers when writing the Constitution?
2. What “unprecedented” device did the framers use to protect liberty in the Constitution (*before* the Bill of Rights)?
3. The following hypothetical was discussed in the video:

Imagine one nation with two states of equal population:

State 1---Urbania---90% of people favor a hunting ban

State 2---Rustica---20% of people favor a hunting ban

If a national hunting ban is passed then 55% of the people in the nation would be happy. If each state was allowed to decide its own hunting laws (and Urbania prohibited hunting while Rustica permitted it) then 85% of people in the nation would be happy.

Given the argument presented in this hypothetical, why do we have national laws at all? Are state or local laws always the most effective way to ensure happiness for the greatest number of people? Why or why not?

4. According to Professor Massey, what idea is “at the heart of the rights retained by the people” in the Ninth Amendment and is “critical to the preservation of liberty”?

Step 2: Analyzing the Majority Opinion in *Gonzalez v. Raich*

In this activity students will analyze the facts and Supreme Court’s reasoning in *Gonzalez v. Raich* to understand the majority’s interpretation and application of the Commerce Clause. Using the full text of the case, excerpts, or a case summary (the version produced by Street Law Inc. is outstanding and is available in website’s [Resource Library](#)), have students in small groups read and identify the following:

1. What federal law is being challenged in this case? How is the federal law being challenged? In other words, what part of the Constitution is being used to challenge the legality of the law?
2. What did the Supreme Court rule? What arguments did the Court use to justify its decision?
3. Did you agree with the Supreme Court’s interpretation of the Commerce Clause and how it was applied in this case? Why or why not?
4. Based on the opinion in this case, what types of activities would fall *outside* of the federal government’s commerce power? Give examples and justify your selections using evidence from the Court’s analysis in this case.

Step 3: Analyzing the Dissents in *Gonzalez v. Raich*

This exercise uses dissents authored by Justices O'Connor and Thomas, presenting their arguments for why the production of marijuana for personal use falls outside of the federal government's commerce power. First, assign the full-text or excerpts of one dissent to pairs of students for analysis. Each pair of students should identify the specific arguments used by the Justice to reach a different conclusion in the case. Second, group two pairs of students together – one pair that was assigned each dissent – and have them compare the Justices' arguments and identify similarities and differences.

Discussion Questions

- Did Justices O'Connor and Thomas agree with the majority on anything? If so, what?
- What did Justices O'Connor and Thomas agree on in their dissents? What did they disagree on?
- What did Justices O'Connor and Thomas fear would occur based on the interpretation of the Commerce Clause given by the majority?
- How did the dissenters use the history of the framers in their arguments? Should the intent of the framers matter when deciding how to interpret the Constitution today?
- Who made the best argument – the majority, Justice O'Connor or Justice Thomas? Use specific evidence from the opinion and dissents to justify your response.

Alternative Activity to Complete Before Step 2

Complete Part 2 of this guide without assigning *Gonzales v. Raich* to any students for analysis. Supply students with the factual background only to *Gonzales* and have them use the case precedents they studied in Part 2 to write opinions on how the case should be decided. Students should use case precedents in their opinions and make clear arguments as to why the Commerce Power does or does not include the power to prohibit the production of marijuana for personal use only. Encourage them to incorporate historical evidence and/or research the intent of the framers as well. Students can formally write their opinions and then participate in a class debate or mock trial before analyzing the Supreme Court's opinion and dissents in *Gonzales*.

Part 4: Voting Rights and the Constitution

In these activities students will explore the role of the Constitution in determining the sharing of power over voting rights and election procedures in the United States.

Step 1: The Power to Regulate Voting

First brainstorm as a class what it means to *vote* and/or have your students complete a Frayer Model for concept formation for the word *vote*. Pose this question as part of your discussion: *Why do many people believe that voting is one of the most important rights of citizens?*

Show the *Constitutionally Speaking* video *A Precious Right* before or after the activity as an introduction to voting within our federal system. Use the questions below to tease out the video's key points:

Video Discussion Questions: *A Precious Right*

1. Describe how the federal government and states share power over voting and election laws. What differences are found (or have been found in the past) among voting and election laws among the states?
2. How did the Voting Rights Act of 1965 improve access to voting for minorities in the United States?
3. Professor Nackenoff referred to an excerpt from the Supreme Court's majority opinion in *Harper v. Virginia Board of Elections* (1996), written by Justice William Douglas and reprinted below (citations omitted):

Likewise, the Equal Protection Clause is not shackled to the political theory of a particular era. In determining what lines are unconstitutionally discriminatory, we have never been confined to historic notions of equality, any more than we have restricted due process to a fixed catalogue of what was at a given time deemed to be the limits of fundamental rights. Notions of what constitutes equal treatment for purposes of the Equal Protection Clause do change. This Court, in 1896, held that laws providing for separate public facilities for white and Negro citizens did not deprive the latter of the equal protection and treatment that the Fourteenth Amendment commands. Seven of the eight Justices then sitting subscribed to the Court's opinion, thus joining in expressions of what constituted unequal and discriminatory treatment that sound strange to the contemporary ear.

- (a) What is Justice Douglas's central argument?
- (b) To what famous 1896 Supreme Court case was Justice Douglas referring?
- (c) Do you agree with Justice Douglas that the interpretation of the Constitution – including what is considered “unequal and discriminatory treatment” – can change over time? Why or why not?

Have students examine the U.S. Constitution and New Hampshire voting regulations to better understand the connection to federalism and to identify what areas of voting New Hampshire regulates, and what areas are regulated by the federal government. Assign some students to review the Constitution and identify powers and/or rules regarding voting, while others review New Hampshire rules for voting (which can be found on the New Hampshire Secretary of State's website titled [Voting in New Hampshire](#)). Students can share what they have learned in pairs, in small groups, or with the class as a whole.

Discussion Questions

- What does the Constitution say about voting? What rules regarding voting must all states follow?
- What parts of the voting process do states have power to control?
- Which government has more power over voting in the United States, the federal government or the states? Justify your response using evidence from the Constitution and the New Hampshire Secretary of State's *Voting in New Hampshire* website.
- What are the positive and negative effects of allowing states so much control over the voting process?

Learning Extension

Have students compare New Hampshire voting regulations with those of one or more other states in order to analyze differences in state laws and infer how those differences might affect the voting experiences of citizens.

Step 2: Voting Rights and the U.S. Constitution

In this activity students will examine Supreme Court cases and one federal law to analyze how the Constitution shapes voting rights in the United States.

First, divide your students into groups of 5, assigning a different topic from the following list to each of the five members of each group: Voting Rights Act of 1965; *Harper v. Virginia Board of Elections* (1966); *Bush v. Gore* (2000); *Crawford v. Marion County* (2008); *Shelby County v. Holder* (2013).

Use full text, excerpts, or summaries of the Supreme Court cases where appropriate. The Voting Rights Act of 1965 can be used as a full text document or the Department of Justice has an excellent [summary of the Voting Rights Act](#) – including history and the effects of the Act – that would be highly useful for this activity.

Next, have students analyze their topic by answering the questions below (where applicable):

1. How did the case/law change and/or clarify the voting rights of citizens?
2. How did the case/law change and/or clarify the powers of the federal government?
3. How did the case/law change and/or clarify the powers of state governments?

When the analyses are done, congregate the students by topic so they may review and confirm their findings. Then, have all students return to their initial group to share their insights (this is a jig saw cooperative learning model).

Discussion Questions

- What significant changes to voting rights in the United States have occurred in the last 50 years?
- How has the Constitution shaped voting rights in the United States?

- What are the challenges facing states today when it comes to regulating the voting process? What are the challenges facing the federal government?
- Do state governments have more or less power to regulate voting today than they did 50 years ago?
- Does the federal government have more or less power to regulate voting today than they did 50 years ago?
- Is voting in the United States today more or less fair than it was 50 years ago? 10 years ago?

Short Answer/Essay/Debate Prompts

- How and why did the Supreme Court's interpretation of the extent of federal government authority change over time?
- Does the federal government have too much power under the Constitution? Why or why not?
- Do current federal laws invade the rights reserved to the states under the Constitution? Why or why not?
- Has the U.S. Supreme Court expanded federal authority beyond what was intended by the framers of the Constitution? Why or why not?
- Is the federal system of government created by the Constitution the most efficient way to govern the United States of America? Why or why not?
- Has the federal system of government created by the Constitution kept up with the times? Why or why not?

Summative Assessments

- Create a graphic tool that illustrates how the division of power in our constitutional federal system has been clarified and/or changed over time by the Supreme Court and/or federal law. Include an explanation of how the division of power was clarified or changed by each case and/or law. Students could complete additional research to add depth to the material covered in class.
- Prepare a position paper on and debate the question: *Has the Supreme Court's interpretation of the balance of power between the federal and state governments kept up with the times?* Additional research could be required to add depth to the position papers and debate.
- Compare two or more Supreme Court cases on the extent of federal government authority, specifically describing the facts and holding of each case, the reasoning used by the Court, and how the extent of federal power was clarified and/or changed as a result of the later case.
- Write a letter to a federal government official that explains why you agree or disagree with the extent of the power exercised by the federal government over the states over time *or* recently in one specific case. The letter should include

evidence based in the Constitution and its interpretation by the U.S. Supreme Court that supports your conclusion(s).

- Research the Affordable Care Act and argue for or against its passage as a valid exercise of the authority granted to the federal government by the Constitution. Use Supreme Court cases, historical documents and other evidence to support your reasoning. Analyze the Supreme Court's determination of the constitutionality of the Affordable Care Act in 2013 and compare and contrast the Court's holding and reasoning in those cases to your own arguments.

Additional Resources

Federalism

[A More Perfect Union: The Creation of the U.S. Constitution](#)

[Annenberg Classroom's *Best Civics Sites for Teachers*](#)

[Articles of Confederation](#)

[Constitution of New Hampshire \(1776\)](#)

[*Constitution USA: Federalism* \(PBS\)](#)

[Executive Order 13132 - "Federalism"](#)

[Federalist No. 44: Restrictions on the Authority of the Several States \(Madison\)](#)

[Federalist No. 46: The Influence of the State and Federal Governments Compared \(Madison\)](#)

[iCivics game *Power Play*](#)

[National Constitution Center's blog posts on federalism](#)

[The *New York Times* Room for Debate series: State Politics vs the Federal Government](#)

[*Our Constitution*, an eBook on the U.S. Constitution from Annenberg Classroom](#)

[*Our Constitution*, an iBook with commentary from Annenberg Classroom](#)

[*The Pursuit of Justice*, an eBook on powerful Supreme Court cases from Annenberg Classroom](#)

[Presidential Memorandum Regarding Preemption](#)

[Teaching the Constitution resources at Annenberg Classroom](#)

[*Your Bill of Rights* videos at Time Magazine](#)

Marijuana laws and policy

[Colorado marijuana legalization law \(full text\)](#)

[How safe is recreational marijuana?](#)

[Medical marijuana debate at ProCon.org](#)

[Medical marijuana laws by state](#)

[New Hampshire medical marijuana law \(HB 573\)](#)

[Office of National Drug Control Policy's Marijuana Resource Center](#)

[Recent Gallup poll on marijuana use and legalization](#)

[Washington marijuana legalization law \(full text\)](#)

Voting Rights

[Full Text of the Voting Rights Act of 1965 at the Avalon Project \(Yale\)](#)

[*The Right to Vote* in Annenberg's eBook *Our Rights* \(pdf\)](#)

[The Voting Rights Act of 1965 at *Our Documents*](#)