



## 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 2010–2011

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

##### 1. What is the rule of law and what is its relationship to limited government and constitutionalism?

- How would you distinguish between rule *of* law and rule *by* law and why is that distinction important?
- What principles established in the Magna Carta were important for the rule of law and the later development of constitutionalism?

##### 2. Recently, an historian wrote that the American colonists believed that

*Just as men had a right to their property, so they held a property in their rights. Men did not merely claim their rights, but also owned them, and their title to their liberty was as sound as their title to the land or the tools with which they earned their livelihood.\* How would you explain the difference between claiming and owning a right and how important is that difference?*

- In what ways, if any, were the colonists' beliefs about rights influenced by the writings of John Locke and other natural rights philosophers?
- Every one of the early state constitutions contained the idea of a social contract. In what ways, if any, is the idea of social contract related to the concept of rights?

\* Jack Rakove. *Revolutionaries: A New History of the Invention of America* (Boston: Houghton Mifflin Harcourt, 2010), 78.

##### 3. Compare and contrast European concepts of the individual and society during the Middle Ages with those during the Renaissance and the Reformation.

- What are some of the advantages and disadvantages of viewing rights and responsibilities as being possessed by individuals rather than groups?
- In what ways, if any, do the ideas about politics and humanity that developed during the Renaissance and Reformation affect our thinking today?



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

- 1. George Washington, like many of the Founders, opposed slavery. He wrote, “There is not a man living who wishes more sincerely than I do, to see a plan adopted for the abolition of it.”\* Why then was a plan on abolition not devised at the Philadelphia Convention?**
    - What constitutional protection to slavery did the Constitution provide?
    - How did slavery encourage different interpretations of the Constitution and the nature of the union?
- \* George Washington, *Letter to Robert Morris* (April 1786), quoted in John P. Kaminski, *The Great Virginia Triumvirate* (Charlottesville and London: University of Virginia Press, 2010), 37.
- 2. In Federalist 48, James Madison argued that in a representative republic the legislative branch is the most powerful and the most likely to abuse its power. Do you agree or disagree? Why? What evidence can you offer to support your position?**
    - Evaluate Madison’s claim that “In a representative republic, the chief executive is carefully limited in both extent and duration of power.” On the other hand, the constitutional powers of the legislative branch “are extensive with imprecise limits.”
    - The antidote Madison prescribes for the “enterprising ambition” of the legislature is for the people to “focus their scrutiny and take all precautions.” How can you and other citizens do that?
  - 3. Why did the Founders choose to establish a representative democracy rather than a “pure” or “direct” version of democracy?**
    - What are the advantages and disadvantages of representative democracy? Of direct democracy?
    - Some people contend that instead of representing states or other geographic areas, representatives should reflect social, economic, or ethnic groups and perhaps even gender groupings. Do you agree or disagree? Why?



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

1. A scholar contends that the Framers, like Goldilocks in the children's story *Goldilocks and the Three Bears*, wanted executive power that was neither too strong nor too weak, but “just right.”\* Evaluate President Lincoln's use of executive power during the Civil War. Was it too strong, too weak, or just right given the critical times?

- Lincoln admitted exceeding the constitutional boundaries of the presidency. Why then did he seek Congressional approval of actions he had already taken?
- A scholar writes that some presidents have drawn heavily on the example of Lincoln for vindication of their use of enhanced executive power.\*\* Do you agree or disagree? What evidence can you offer to support your position?

\* Daniel Farber. *Lincoln's Constitution* (Chicago and London: The University of Chicago Press, 2004), 125.

\*\* Donald E. Fehrenbacher. *Lincoln in Text and Context* (Stanford, California: Stanford University Press, 1987), 122, quoted in William Lee Miller's *President Lincoln: The Duty of a Statesman* (New York: Alfred A. Knopf, 2008), 102.

2. Many antislavery Americans said, “Let the erring sisters go. Depart in peace.” But Abraham Lincoln did not. How and why did Lincoln respond to the idea of secession in his First Inaugural Address?

- What were the South's major arguments for the right to secede?
- A scholar writes that “If secession on demand is unacceptable, perpetual union ‘at all costs’ is also a troublesome idea, . . . a democratic dilemma that has no easy answer.”\* Do you agree or disagree? Why?

\* Daniel A. Farber. *Lincoln's Constitution* (Chicago and London: University of Chicago Press, 2004), 110.

3. “The Preamble's statement that the primary purpose of the Constitution was to form a more perfect union” offers a way to find answers to “perennial and perennially troubling questions.”\* What were the perennially troubling questions that the Thirteenth, Fourteenth, and Fifteenth Amendments addressed?

- In what ways, if any, have the Thirteenth, Fourteenth, and Fifteenth Amendments contributed to “a more perfect union”?
- All three amendments gave Congress the power to enforce them “by appropriate legislation.” How and why has that power been significant?

\* R. B. Bernstein. *The Founding Fathers Reconsidered* (Oxford and New York: Oxford University Press, 2009), 168.



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### STATE HEARING QUESTIONS 2010–2011

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

1. **From its first session in 1789 to the present day, Congress has organized its work through committees. What important purposes are served by the use of committees?**
  - How does the use of committees promote or undermine the principles of representation, majority rule, and limited government?
  - Some scholars claim that Congressional committees function as “safety valves” or outlets for national frustrations and challenges.\* Do you agree or disagree? What evidence can you offer to support your position?

\* Roger H. Davidson, Walter J. Oleszek, and Frances E. Lee. *Congress and Its Members*, 5<sup>th</sup> Edition (Washington, D.C.: Congressional Quarterly Press, 2008), 197.

2. **In Federalist 74, Alexander Hamilton claimed that “the propriety” of the constitutional provision making the president commander-in-chief of the army and navy “was so evident in itself . . . that little need to be said to explain or enforce it.” Not everyone has agreed. What are the arguments for and against making the president the commander-in-chief?**
  - Article II, Section 2 designates the president as commander-in-chief “of the militia of the several states when called into the actual service of the United States.”\* When and why have presidents used this authority?
  - How and why has the conception of the power of the commander-in-chief been expanding since the time of Abraham Lincoln?

\*The voluntary armed forces of the states, formerly called the militia, are now known as the National Guard.

3. **Federalist 78 made the following predictions:**

*The judiciary will always be the least dangerous to the political rights of the Constitution, because it will have the least capacity to annoy or injure them . . . .  
The judiciary has no influence over either the sword or the purse. It directs neither the strength nor the wealth of society. It can take no active resolution whatsoever.*  
**How accurate have these predictions proven to be? What evidence can you offer to support your position?**

- In what ways, if any, has the Supreme Court acted to protect “the political rights of the Constitution”? How has it acted to restrict them?
- How and why are Supreme Court decisions respected, even though the judiciary has neither “sword nor purse” nor an enforcement arm?



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## STATE HEARING QUESTIONS 2010–2011

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

**1. What is the relationship, if any, between the rights guaranteed in the Bill of Rights and natural rights philosophy?**

- How would you distinguish between positive and negative rights and why are they both important?
- Under what circumstances, if any, should the rights of institutions and classes of individuals be given preference over individual rights? Why?

**2. The First Amendment is stated in absolute terms: “Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.” Does that wording reflect a hostility toward religion? Why or why not?**

- What are the primary differences between the establishment and the free exercise clauses of the First Amendment?
- Under what circumstances, if any, should society’s need for order and tranquility warrant restriction of religious liberty?

**3. Should the right to association in civil society be considered an integral part of the Constitution even though there is no reference to such a right in the First Amendment? Why or why not?**

- In what ways does the right to assemble and petition reinforce and enhance the First Amendment’s protections of political rights?
- Under what circumstances, if any, should the right to freedom of assembly be limited? Why?



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## **STATE HEARING QUESTIONS 2010–2011**

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

- 1. The Constitution as originally ratified used the word “citizen” eleven times, but provided no definition of the word. Why? What were the consequences of that omission?**
  - How is citizenship defined in the Fourteenth Amendment and how has that definition altered the constitutional balance between the nation and the states?
  - Should the Fourteenth Amendment be changed to reflect additional or different criteria for citizenship? Explain and justify your response.
- 2. “Voluntary associations” provide “social energy” and “fuel for change in the practices of states and business.” They also “motivate people to raise their voices in the public sphere.”\* Do you agree or disagree with this appraisal? What evidence can you cite to support your response?**
  - How would you differentiate between voluntary organizations and factions?
  - What is the relationship, if any, between civic participation and civic virtue?
- 3. Why and how have civil rights movements used the Declaration of Independence and the Fourteenth Amendment to effect political and social change in the United States?**
  - Why and how have the enforcement provisions of the Fourteenth and Fifteenth Amendments proved to be significant?
  - Is civil disobedience ever justified? Explain and justify your position.

\* Michael Edwards. *Civil Society* (Malden, Mass.: Polity Press, 2009), 111.