



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

**1. How would you distinguish between a government with a constitution and a constitutional government? Why is that distinction important?**

- Why is a constitution considered a higher law? What are the major characteristics of a higher law?
- What are the advantages and disadvantages of a written constitution?

**Suggested follow-up questions:**

- a. What are the advantages and disadvantages of an unwritten constitution?
- b. How would you distinguish between direct and representative democracy?
- c. The Founders believed that direct democracy was more likely to ignore constitutional limits than representative democracy. Do you agree or disagree? Why? What evidence can you offer to support your position?
- d. How would you explain the rule of law and why is it an essential feature of constitutional government?
- e. How would you explain the relationship of a constitution to laws passed by legislatures? To executive and judicial actions?



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

##### 2. Compare the major purposes of government according to classical republicanism with the major purposes according to the natural rights philosophy.

- When classical republicans spoke of the “office” of citizen, what did they mean?
- Classical republican thinkers believed that civic virtue must be learned, therefore all young people must receive moral education. Do you agree or disagree? Why?

##### Suggested follow-up questions:

- a. Is civic virtue as important in the United States today as it was to ancient classical republicans? Why or why not?
- b. How did James Madison refine the ideas of classical republicanism so that they would be practical in the new American republic?
- c. How would you explain social contract theory as set forth in the natural rights philosophy?
- d. What is the relationship, if any, of social contract theory to popular sovereignty and the right of revolution?
- e. What might be the consequences for individuals and society of too great an emphasis on the rights of individuals over the common good? Of the common good over the rights of individuals?



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

- 3. Although the states experimented with various models in writing their new constitutions, all of them included some basic principles. What were those basic principles and why were they important?**
- How would you explain *legislative supremacy* and why did most states favor it?
  - What ideas drawn from the natural rights philosophy were reflected in the new state constitution?

#### Suggested follow-up questions:

- a. Why do you think most state constitutions began with a preamble and a declaration of rights?
- b. How did the Massachusetts Constitution differ from the other state constitutions?
- c. Why do you think the new state constitutions attracted great attention from government officials and students of politics all over Europe?
- d. In what ways, if any, did state declarations of rights influence the later drafting and adoption of the U.S. Bill of Rights?
- e. Why do you think so many state constitutions provided for civilian militia and the right to bear arms?



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

### 1. The Articles of Confederation reflected a distrust of a strong national government. What were the historical and philosophical reasons for this distrust?

- What did the Founders learn from the Articles' inadequacies and how did they correct them in the Constitution?
- Today many people are again expressing a distrust of national government. What are their reasons for distrust and how justified are they? What evidence can you offer to support your response?

#### Suggested follow-up questions:

- a. Why did the Articles of Confederation fail to provide for executive and judicial branches of government?
- b. What do you consider the most important achievements of government under the Articles of Confederation? Why?
- c. What do you consider to be the historical significance of Shays' Rebellion?
- d. George Washington decried what he called a lack of energy in our governments. How would you define *energy in government*?
- e. Do you think our national government is exercising a sufficient amount of "energy" today? What evidence can you offer to justify your position?



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

### 2. Evaluate the rules that the delegates adopted to govern debates in the Philadelphia Convention.

- Define *civil discourse*. Which rules adopted at the Convention furthered it? Which rules hindered it?
- How would you rate the civility of public discourse and debate today and what, if anything, could be done to enhance it?

#### Suggested follow-up questions:

- a. The secrecy rule remains controversial. Thomas Jefferson said it set “an abominable precedent.”\* Others claim it enabled delegates to think out loud, to change their minds, and to compromise. What is your judgment?
- b. Individual delegates could take notes but no official written record was kept. Was that a wise decision? Why or why not?
- c. Some governmental deliberations still are held in secret, such as the deliberations of juries, congressional committees on military intelligence, and those of the Supreme Court. Are these secret deliberations justifiable? Why or why not?
- d. What responsibility, if any, do schools have for teaching and encouraging civil discourse?
- e. At four critical points, the delegates appointed committees to consider difficult issues and recommend solutions. What are the costs and benefits of deferring controversial decisions to committees?

---

\* Thomas Jefferson quoted in Carol Berkin’s *A Brilliant Solution: Inventing the American Constitution* (New York: Harcourt, Inc., 2002), 65.



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

#### 3. How does the Constitution balance state powers with powers granted to the national government?

- How does the Constitution limit each set of powers?
- What issues did the Philadelphia Convention leave unaddressed and what have been the consequences of the failure to address them?

#### Suggested follow-up questions:

- a. In what ways do the limitations on national and state governments protect individual rights?
- b. In what ways do limitations on national and state governments promote the common good?
- c. What ideas drawn from the natural rights philosophy are reflected in the limitations placed on the national and state governments?
- d. What are the major disagreements between the states and the national government today regarding powers to regulate immigration?
- e. What is the supremacy clause and how does it affect the balance between state and national powers?



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

1. “The weakening of the older social hierarchy and the erosion of the traditional belief in elite rule made the rise of political parties both necessary and possible.”\* Do you agree or disagree with this opinion recently expressed by an American scholar? What evidence can you offer to support your position?

- How would you distinguish between a faction and a political party and how important is that distinction? \*\*
- How do political parties in a democracy differ from ideological parties and why are those differences important?

\* Gordon S. Wood, *The Idea of America: Reflections on the Birth of the United States* (New York: The Penguin Press, 2011), 203.

\*\* For the classic definition of a faction, see *Federalist 10*.

#### Suggested follow-up questions:

- a. Why did most of the Founders fear and oppose political parties?
- b. What are the most important functions that political parties perform in the United States today?
- c. Why do you think the United States has remained a two-party system? Why have third parties been unable to successfully challenge the two-party system?
- d. A prominent journalist writes that “it is no accident that, as the Web rises, the traditional political parties decline.”\*\*\* Do you agree or disagree? What evidence can you offer to support your position?
- e. Today the media stress candidates as individuals rather than as party members advocating a party platform. What are the costs and benefits for democracy of this development?

---

\*\*\* Howard Fineman, *The Thirteen American Arguments: Enduring Debates That Define and Inspire Our Country* (New York: Random House, 2008), 17.



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

##### 2. How and why did the Fourteenth Amendment enlarge and extend due process rights?

- The Constitution does not define *due process of law*. How would you explain the meaning of due process of law?
- In what ways are procedural and substantive due process alike? How are they different?

##### Suggested follow-up questions:

- a. What are the historical origins of due process?
- b. How would you explain the idea of *fundamental rights*?
- c. What kinds of controversies have or might arise in determining whether certain rights are fundamental?
- d. What is the relationship, if any, between due process and the concept of limited government?
- e. What is the doctrine of incorporation, and how has it affected the rights of individuals?





## 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 FOLLOW-UP QUESTIONS 2011–2012

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

#### 3. What are the major differences between the adversary and the inquisitorial systems of justice?

- What procedural guarantees embedded in the U.S. Constitution protect the rights of an individual accused of a crime?
- Evaluate the arguments advanced by critics of the adversary system that it is costly, slow, and should be replaced by the inquisitorial system.

#### Suggested follow-up questions:

- a. Which process, adversary or inquisitorial, is more likely to discover the truth in a criminal trial? Why?
- b. If you were the defendant in a criminal trial would you rather be tried under the adversary or the inquisitorial system? Why?
- c. Compare the role played by a judge in the inquisitorial system and the role of the judge in the adversary system.
- d. In a criminal proceeding the standard of proof required is proof beyond a reasonable doubt. How would you explain that standard? What is its importance?
- e. The Fifth and Fourteenth Amendments to the Constitution provide the idea that “*no person*...shall be deprived of life, liberty, or property, without due process of law.” What is the significance of using the word *person* rather than *citizen*? Explain your answer.



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

**1. Compare the U.S. Congress with the British Parliament. In what important ways are they alike? In what important ways are they different?**

- What do you think are the advantages and disadvantages of the congressional system?
- What do you think are the major advantages and disadvantages of a parliamentary system? Why?

**Suggested follow-up questions:**

- a. The Founders were well acquainted with both ancient and contemporary governments. Why do you think they rejected other known forms of government and invented a new system of separated but shared powers?
- b. Unlike the U.S. Congress, there is no requirement that a Member of Parliament be a resident of the district he or she represents. Is that a wise or unwise rule? Why?
- c. Members of Congress and the president serve fixed terms. In a parliamentary system the government “falls” and must resign if it loses popular support. Which is preferable? Why?
- d. The prime minister regularly appears in the House of Commons to answer questions from its members. Would you favor or oppose a similar requirement for the president of the United States to appear and respond to questions in Congress? Why or why not?
- e. What are the advantages and disadvantages of mingling executive and legislative powers such as in the British parliamentary system?



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

##### 2. How does the role of the American president differ from that of a prime minister?

- In Britain, the prime minister must have served in Parliament prior to assuming that office. Should the U.S. Constitution be amended to require prior government service of candidates for the presidency? Why or why not?
- In parliamentary systems, the roles of *head of state* (a ceremonial official) and *head of government* (an official who makes and implements decisions) are separated. Would you favor or oppose such a separation in the United States? Why?

##### Suggested follow-up questions:

- a. Would you support a constitutional amendment to change the president's term of office from a fixed term to a vote-of-confidence system? Why or why not?
- b. Why can a prime minister be more certain than a president that major legislative proposals he or she favors will be enacted into law?
- c. A prime minister's powers are not limited by a written constitution. What limits does the U.S. Constitution place on the powers of U.S. presidents?
- d. Should the president be required to appear before Congress on a regular schedule to answer direct questions as prime ministers are required to do? Why or why not?
- e. What are the advantages and disadvantages of having the president chosen by the people rather than by the legislature?



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

**3. The Framers “wrestled with the language of Article II, Section 1 to give the president *sufficient* power without giving him *excessive* power, as well as how to free him from excessive dependence on the legislature while at the same time assuring that he did not become an elective monarch.”\* To what extent have the Framers’ hopes been realized? What evidence can you offer to support your position?**

- Article II, Section 1, gives the president *executive power* but does not define what that power is. How would you define *executive power*? What examples can you cite of presidents using their executive power?
- How can Congress check the exercise of the president’s power?

\* Richard Beeman, *Plain, Honest Men: The Making of the American Constitution* (New York: Random House, 2009), 348–349.

#### **Suggested follow-up questions:**

- a. How can the Supreme Court check the exercise of the president’s power?
- b. What role, if any, can public opinion play in checking or limiting the exercise of presidential power?
- c. Has Congress relinquished too much power to the president? Why or why not?
- d. How would you define a “feeble” executive? In what ways might a feeble executive be as dangerous as an overly “energetic” executive?
- e. What factors might explain the growth of the president’s powers during the course of our nation’s history?



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

### 1. How do the Fifth and Sixth Amendments protect the rights of criminal defendants?

- What is the relationship between the right of trial by jury to the natural rights philosophy and to the principle of limited government?
- One of the rights guaranteed in the Sixth Amendment is the right to a public trial in all criminal proceedings. What purposes are served by public trials?

#### Suggested follow-up questions:

- a. The Sixth Amendment guarantees persons charged with crimes a fair trial. The First Amendment guarantees the media and the public the right to attend criminal trials. In what ways, if any, might these rights be in conflict with one another?
- b. Juries are supposed to represent a cross-section of the community. What would a cross-section of your community look like? Why is a cross-section important?
- c. Many courts permit the victim of a crime or his family to make a victim impact statement at the sentencing stage of the criminal proceedings. What are the costs and benefits of allowing victim impact statements?
- d. What is the right to counsel? Why is it important?
- e. Many people today try to avoid jury service. What can be done to encourage and/or require jury service?



**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 FOLLOW-UP QUESTIONS 2011–2012**

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

**2. The First Amendment with its protection of freedom of speech and press has been described as being “at the heart of American democracy.”\* Do you agree or disagree with that description? Why or why not?**

- Why is the right to freedom of expression important to the individual and to the society as a whole?
- Under what circumstances, if any, are limitations on freedom of speech and press consistent with the intent of the First Amendment? Why?

\*Geneva Oberholzer and Kathleen Hall Jamieson, “Afterword” in *The Press in the Institutions of Democracy* Series (New York: Oxford University Press, 2005), 433–441.

#### **Suggested follow-up questions:**

- a. What forms of expression typically fall outside the protection of the First Amendment? Why?
- b. The Supreme Court ordinarily protects political speech including expression that is outside the main stream of political thought. Why do you think political communication receives such special treatment?
- c. In what ways are new forms of communication (i.e., the Internet, Facebook, etc.) giving rise to important First Amendment issues?
- d. Some critics argue that the core news functions are being jeopardized as entertainment displaces “hard” news. Audiences spend less time with content that assists democratic citizenship. Do you agree or disagree? How serious a problem is this and what can be done about it?
- e. Increasingly polls show that the public is choosing its news medium based on ideological preference. Is that a healthy or unhealthy development? Why?



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

#### 3. Why are the rights to assemble, petition, and associate fundamental to constitutional democracy?

- What groups have used these rights to bring about important changes in American political and civic life?
- What limitations, if any, might government place on these rights and how can they be justified?

#### Suggested follow-up questions:

- a. What are the historical origins of these rights?
- b. How would you define a public forum, and under what circumstances, if any, may government impose restrictions on a public forum?
- c. In addition to formal written petitions, how can Americans exercise their right to petition government for redress of grievances?
- d. The right to associate is not mentioned in the First Amendment. How have the courts justified treating it as a constitutional right?
- e. How might the right to equal protection of the laws come into conflict with the right to associate?



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

**1. How would you explain federalism and why do you think many countries have adopted variations of the American model of federalism?**

- What are the major advantages of federalism? Disadvantages?
- In *Federalist 51*, James Madison argued that the division of power between “two distinct governments” would allow state and federal governments to check each other, providing security to the “rights of the people.” Has history proven him right? What evidence can you offer to support your answer?

**Suggested follow-up questions:**

- a. The Framers claimed that each level of government has distinctive contributions to make to the public good. State governments are better at some things, the national government is better at others. Do you agree or disagree? Why?
- b. In what ways, if any, does federalism contribute to limited—constitutional—government?
- c. Why have the powers granted to the federal government and those granted to the states continue to be points of conflict?
- d. Some countries have considered adopting models of federalism that ensure representation of ethnic or religious groups in the country’s governing structure. What might be the advantages and disadvantages of such an adaptation?
- e. Why do you think the Framers invented the idea of federalism?





## 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 FOLLOW-UP QUESTIONS 2011–2012

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

##### 2. The Bill of Rights has been called “the single greatest contribution of American constitutionalism to the world.” It is deserving of such high praise? What evidence can you offer to support your answer?

- “A bill of rights is what the people are entitled to against every government on earth ... and what no just government should refuse or rest on inferences.”\* In what ways does this claim draw on the natural rights philosophy?
- How and why has the Bill of Rights continued to serve as an inspiration to peoples across the world today?

\*Thomas Jefferson to James Madison. Paris, December 20, 1787. Letter reprinted in *Something That Will Surprise the World: The Essential Writings of the Founding Fathers*, Susan Dunn, ed. (New York: Basic Books, 2006), 281.

##### Suggested follow-up questions:

- a. How important is it that the American Bill of Rights is included in the Constitution and is not just law enacted by the Congress?
- b. Why is it significant that the Bill of Rights has an enforcement mechanism, whereas other bills of rights (e.g., French Declaration of Rights, Universal Declaration of Rights) do not?
- c. What is the relationship between judicial review and the protections of rights in the U.S. Bill of Rights?
- d. An American scholar writes that “the Bill of Rights we have” is “different in many ways from the one the Constitution’s critics wanted. It says nothing about ‘no taxation without representation’ and ‘no standing armies in time of peace.’”\*\* Are there other omissions in the Bill of Rights that you think should be added? Explain.
- e. “American rights and American freedom were not a gift of the country’s ‘founding fathers.’ They are and have always been a work in progress.”\*\*\* Do you agree or disagree with this statement? Why? What evidence can you offer to support your answer?

---

\*\* Pauline Maier, *Ratification: The People Debate the Constitution 1787–1788* (New York: Simon and Schuster, 2010), 467.

\*\*\* *Ibid.*, 467.



## 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 FOLLOW-UP QUESTIONS 2011–2012

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

3. **“For one thing is certain: the greatest threats to constitutional government spring from the paucity (lack) of serious public discourse, and this from an uninformed public.”\***  
**Do you agree or disagree with the opinion expressed here? Why?**

- What rules did the Framers establish to ensure serious, fair discussion at the Philadelphia Convention, and are those rules still useful today?
- What responsibility, if any, do schools have for teaching students how to engage in informed civil discourse? Why?

\*Richard C. Leone in *New Federalist Papers: Essays in Defense of the Constitution*, Alan Brinkley, Nelson W. Polsby, and Kathleen M. Sullivan, eds. (New York: W.W. Norton & Co., 1997), ix.

#### Suggested follow-up questions:

- a. How would you explain what is meant by the term *civil discourse*?
- b. How would you respond to critics who say that civil discourse is “just talk”?
- c. How important is it that a range and diversity of citizens’ voices be heard in public deliberations? Why?
- d. What needs to be done to promote and improve civil discourse in the media and in political life?
- e. The costs of discourse and deliberation are higher than many other forms of participation (e.g., voting) but the benefits are also greater?\*\*\* What are those benefits?

---

\*\*\* See Lawrence Jacobs, Fay Lomas Cook, and Michael X. Delli Carpini, *Talking Together: Public Deliberation and Political Participation in America* (Chicago: University Chicago Press, 2009), 155.