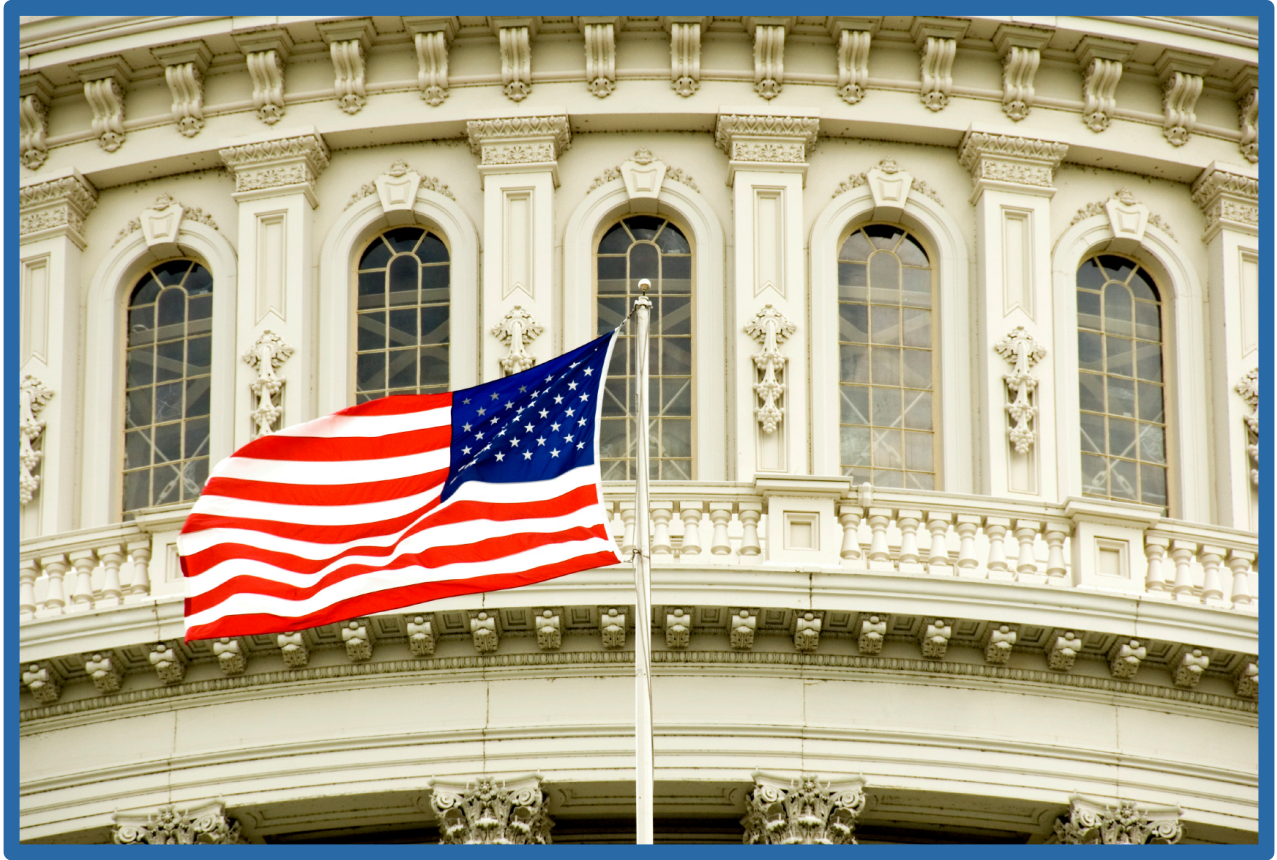




12th Grade Federalism Inquiry

Who Has the Power?



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Supporting Questions

1. How are federal and state powers constitutionally delineated?
2. What do experts say about the balance of power between the state and federal government?
3. How are public attitudes toward federalism changing?
4. Should state government have the power to legislate what is best for its citizens?



12th Grade Federalism Inquiry

Who Has the Power?

New York State Social Studies Framework Key Idea & Practices	12.G1 FOUNDATIONS of AMERICAN DEMOCRACY: The principles of American democracy are reflected in the Constitution and the Bill of Rights and in the organization and actions of federal, state, and local government entities. The interpretation and application of American democratic principles continue to evolve and be debated. ✔ Gathering, Using, and Interpreting Evidence ✔ Civic Participation
Staging the Question	Watch a seven-minute clip about Brittany Maynard and discuss the issue of assisted suicide in the United States.

Supporting Question 1	Supporting Question 2	Supporting Question 3	Supporting Question 4
			Research Opportunity
How are federal and state powers constitutionally delineated?	What do experts say about the balance of power between the state and federal government?	How are public attitudes toward federalism changing?	Should state government have the power to legislate what is best for its citizens?
Formative Performance Task	Formative Performance Task	Formative Performance Task	Formative Performance Task
Research and annotate a Venn diagram illustrating the unique and shared powers of the state and federal government.	Write 1–2 sentence summaries of experts’ arguments on the balance of power between the state and federal government.	Conduct a class survey that mirrors the Pew and Cato public-attitude surveys and discuss the results.	Develop a claim about whether state government should have the power to decide what is best for its citizens.
Featured Sources	Featured Sources	Featured Sources	Featured Sources
Source A: Venn diagram on federalism Source B: Excerpts from United States Constitution Source C: Excerpts from New York State Constitution	Source A: Featured articles by political experts debating the role of state and federal government	Source A: Excerpt from <i>Views of Government: Key Data Points</i> Source B: Excerpt from <i>Public Attitudes toward Federalism</i>	Possible case study sources for the following issues: <ul style="list-style-type: none"> • Legal Drinking Age • Environmental Protection

Summative Performance Task	ARGUMENT Who has the power? Construct an argument (e.g., detailed outline, poster, essay) that addresses the compelling question using specific claims and relevant evidence from contemporary sources while acknowledging competing perspectives. EXTENSION To better understand the local community context, poll school and neighborhood populations on a controversial issue (e.g., same-sex marriage, legalized marijuana) and who has the power to legislate it.
Taking Informed Action	UNDERSTAND Investigate the challenges arising since the state of Colorado passed marijuana legislation in opposition to federal law. ASSESS Debate whether the Colorado state law is in the best interest of the citizens of Colorado and whether New York state law regarding marijuana legalization should change. ACT Write a letter to a state representative that argues for or against New York state legalizing marijuana regardless of whether the federal government legalizes it.

Overview

Inquiry Description

This inquiry leads students through an investigation of the perennial power struggle between federal and state governments to legislate. By investigating the compelling question “Who has the power?” students will consider the role of state government in initiating the best legislation for its citizens, even in cases where state law conflicts with federal law. In investigating evidence from historic and contemporary sources, students develop an interpretation of federalism and begin to evaluate both the historic and contemporary arguments and issues that are, in the words of Chief Justice John Marshall, “perpetually arising, and will probably continue to arise, as long as our system shall exist.”

In addition to the Key Idea listed earlier, this inquiry highlights the following Conceptual Understandings:

- (12.G1b) The Constitution created a unique political system that distributes powers and responsibilities among three different branches of government at the federal level and between state and federal governments. State constitutions address similar structures and responsibilities for their localities.
- (12.G1e) The powers not delegated specifically in the Constitution are reserved to the states. Though the power and responsibility of the federal government have expanded over time, there is an ongoing debate over this shift in power and responsibility.

NOTE: This inquiry is expected to take five to seven 40-minute class periods. The inquiry time frame could expand if teachers think their students need additional instructional experiences (i.e., supporting questions, formative performance tasks, and featured sources). Teachers are encouraged to adapt the inquiries in order to meet the needs and interests of their particular students. Resources can also be modified as necessary to meet individualized education programs (IEPs) or Section 504 Plans for students with disabilities.

Structure of the Inquiry

In addressing the compelling question “Who has the power?” students work through a series of supporting questions, formative performance tasks, and featured sources in order to construct an argument with evidence while acknowledging competing perspectives.

Staging the Compelling Question

To stage the compelling question, teachers should show a seven-minute clip that details the assisted suicide case of Brittany Maynard. After the video, teachers should help facilitate a student discussion. Teachers may want to direct students by asking them questions such as:

“What is the issue?”

“Why is this controversial?”

“Whose rights are being protected or sacrificed?”

“Is Oregon’s law legal?”

Teachers may want to pair the video with an article from *Frontline* entitled “The Kevorkian Verdict” (<http://www.pbs.org/wgbh/pages/frontline/kevorkian/law/>) that discusses the legal issues associated with assisted suicide. Eventually, students may begin to debate the larger issue of whether or not assisted suicide is a state or federal issue. Teachers may want to end the discussion with students naming other controversial issues and debating whether they should be determined by state or federal institutions.

Supporting Question 1

The first supporting question—“How are federal and state powers constitutionally delineated?”—helps students establish a foundational understanding of federalism, or the sharing of power between national and state governments. The formative performance task calls on students to use the United States and New York State Constitutions to annotate a Venn diagram illustrating the constitutionally delegated, reserved, and concurrent powers of the state and federal governments. Using the second and third featured sources—selections from the United States and New York State Constitutions—students trace each power in the diagram by denoting or annotating its constitutional origins. For example, next to “postal system” under *Delegated Powers of the Federal Government*, students could write, “the Postal Clause/Postal Power: Article I, Section 8, Clause 7 of the US Constitution empowers Congress to establish the post office.”

Supporting Question 2

By answering the second supporting question—“What do experts say about the balance of power between the state and federal government?”—students begin to see that the lines between state and federal power are often blurred and appear to be perpetually changing. The formative performance task calls on students to write 1–2-sentence summaries about the balance of power using the perspectives of seven political experts. The featured sources for this exercise come from a special feature of the *New York Times*, “Room for Debate.” In the feature, the newspaper’s editorial staff asks the question “Do state politics now matter more than national politics?” and seven political experts weigh in on the subject, providing abbreviated scholarly insights into the debate between state and federal power sharing.

Supporting Question 3

The third supporting question—“How are public attitudes toward federalism changing?”—asks students to examine current public opinion on government performance and whether current policy issues should be determined by the state or federal government. The formative performance task calls on students to develop a class survey that mirrors the public attitude surveys included in the featured sources and to administer that survey

to class members. Students should compare their findings with the national results and have a class discussion noting similarities and differences in the findings and the extent to which public opinion matters. The featured sources include an excerpt from a Pew Research Foundation study titled *Views of Government: Key Data Points* and key charts published by the Cato Institute examining public attitudes toward a variety of contentious issues such as environmental protection, same-sex marriage, and the legalization of marijuana.

Supporting Question 4

For the final supporting question—“Should state government have the power to decide what is best for its citizens?”—students build on their understandings of the tension inherent in federalism by researching three case studies that show clear divisions between state and federal governments. The case studies focus on a) the national drinking-age law, and b) environmental protection legislation. The formative performance task requires students to develop an evidenced-based claim about whether or not a state has the power to decide what is best for its citizens. For the national drinking-age law, the featured sources are a fact sheet issued by the Department of Transportation in 1999 and two articles from the *New York Times*. The featured sources focusing on environmental protection include a video segment from PBS’s *Constitution USA*, an excerpt from constitutional scholar Laurence Tribe’s testimony before the House Energy and Commerce subcommittee, and an article from *MSNBC* that reports on state governments’ fight with the Environmental Protection Agency. Teachers may want to have students conduct additional research beyond the scope of the featured sources and employ a jigsaw strategy to cover the material more efficiently.

Summative Performance Task

At this point in the inquiry, students have examined the constitutional powers of the United States and New York state governments. Students have also reviewed expert opinions and public attitudes on the continuing debate around federalism and the rights of states to legislate what is best for their citizens, and they have examined case studies of the legal drinking age and environmental protection. Students should now be able to demonstrate a breadth of understanding and ability to use evidence from multiple sources to support distinct claims. In this task, students construct evidence-based arguments responding to the compelling question “Who has the power?” It is important to note that students’ arguments could take a variety of forms, including a detailed outline, poster, or essay.

Students’ arguments likely will vary, but could include any of the following

- Federalism allows states the power to make change, because states have been able to pass legislation that is more progressive than federal legislation.
- Federalism does not allow states the power to make change because federal law still applies to the whole nation and state laws only go as far as the state line.
- Federalism does allow states some power in initiating change, but the federal government still has the final say in determining the legality of laws.

Students could extend these arguments by examining the political climate of their school and neighborhood communities. To begin, students could work together to create a survey that asks participants about their feelings on one or more controversial issues and whether the state or the federal government should be responsible for determining the legality of those issues. Once the questionnaire is completed, students could have school staff and/or other trusted adults complete it. With the data collected, students could look for trends in respondents' views.

NOTE: Teachers may find it easier to have students create the questionnaire using a web interface such as SurveyMonkey and passing out web links to potential participants. This approach is listed as an alternative because of limited access to the Internet in some parts of the state.

Students have an opportunity to Take Informed Action by drawing on their knowledge of the complex power relationship between the state and federal government. In order to demonstrate that they *understand*, students investigate the challenges facing the state of Colorado since passing marijuana legislation in opposition to federal law. Students might begin by researching Colorado citizen Brandon Coats, who had been allowed to use medical marijuana as part of a Colorado state law, but who subsequently lost his job after failing a federally mandated drug test. Students should examine and *assess* possible outcomes of the case and whether the Colorado state law is in the best interest of the citizens of Colorado. Finally, students should consider whether New York State should legalize marijuana whether or not the federal government passes legislation on the matter. Students can then *act* by writing letters to a local state representative to express their views.

Staging the Compelling Question

Featured Source

Source A: Brittany Maynard, video about assisted suicide, *Brittany's First Video*, 2015

NOTE: Teachers and students can view the video entitled, *Brittany's First Video*, by clicking on this link: <http://www.thebrittanyfund.org/category/videos/>.



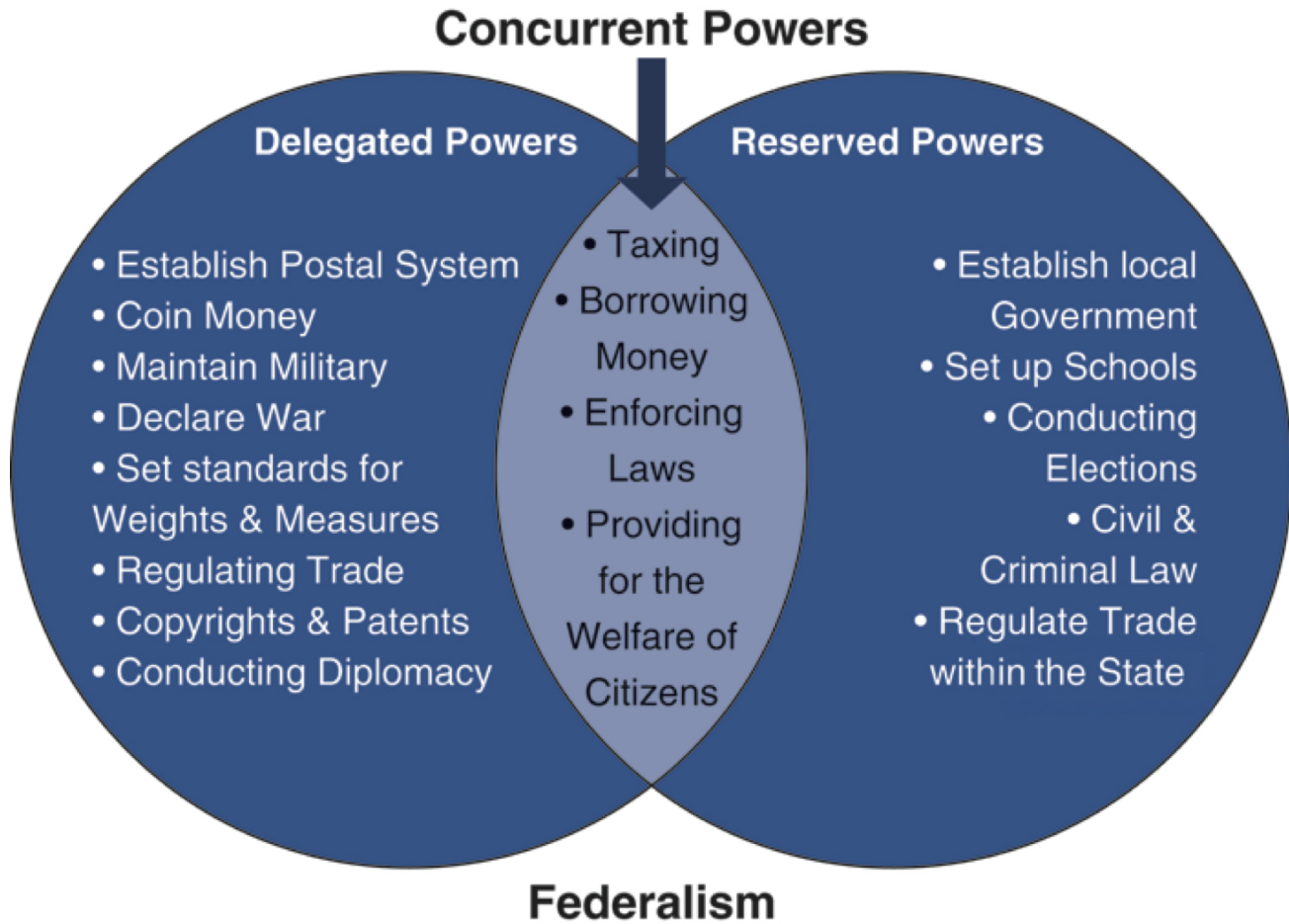
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Supporting Question 1

Featured Source

Source A: Venn diagram of delegated, reserved, and concurrent powers under federalism, 2015



Created for the New York State K–12 Social Studies Toolkit by Binghamton University and Agate Publishing, Inc., 2015.



Supporting Question 1

Featured Source

Source B: Constitutional Convention, United States Constitution (excerpts), 1787

NOTE: The best source for the United States Constitution is an interactive exhibit from the National Archives: http://www.archives.gov/exhibits/charters/constitution_transcript.html.

THE CHARTERS OF FREEDOM

MAKING OF THE CHARTERS THE DECLARATION THE CONSTITUTION THE BILL OF RIGHTS IMPACT OF THE CHARTERS

the *Charters of Freedom*
"A NEW WORLD IS AT HAND"

MAKING OF THE CHARTERS IMPACT OF THE CHARTERS

back

Constitution of the United States

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The Constitution of the United States: A Transcription printer-friendly version

Note: The following text is a transcription of the Constitution as it was inscribed by Jacob Shallus on parchment (the document on display in the Rotunda at the National Archives Museum.) Items that are hyperlinked have since been amended or superseded. The authenticated text of the Constitution can be found on the website of the Government Printing Office.

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article. I.

Section. 1.

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

United States Constitution (Excerpts)

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

Article I

Section 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 7

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Section 8

The Congress shall have Power

- To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;
- To borrow Money on the credit of the United States;
- To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;
- To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;
- To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;
- To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;
- To establish Post Offices and post Roads;
- To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;
- To constitute Tribunals inferior to the supreme Court;
- To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;
- To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;
- To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;
- To provide and maintain a Navy;
- To make Rules for the Government and Regulation of the land and naval Forces;
- To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

- To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;
- To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And
- 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.

Section 10

- No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.
- No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing its inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.
- No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

Article II

Section 1

The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress: but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.

Section 2

The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall

appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The President shall have Power to fill up all Vacancies that may happen during the Recess of the Senate, by granting Commissions which shall expire at the End of their next Session.

Article III

Section 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

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.

Article IV

Section 1

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Section 2

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Section 3

New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or Parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.

The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State.

Section 4

The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened), against domestic Violence.

Public domain. Available from the National Archives: http://www.archives.gov/exhibits/charters/constitution_transcript.html.



Supporting Question 1

Featured Source

Source C: New York State Constitutional Convention, Constitution of the State of New York (excerpts), 1938/2014

NOTE: The best source for the New York State Constitution is from the New York Department of State: <https://www.dos.ny.gov/info/constitution.htm>.

THE CONSTITUTION OF THE STATE OF NEW YORK

As Revised, with Amendments adopted by the
Constitutional Convention of 1938 and Approved
by Vote of the People on November 8, 1938

and

Amendments subsequently adopted by the
Legislature and Approved by Vote of the People.

As Amended and in Force Since January 1, 2014

ARTICLE I Bill of Rights

NEW YORK STATE CONSTITUTION (Excerpts)

We The People of the State of New York, grateful to Almighty God for our Freedom, in order to secure its blessings,
DO ESTABLISH THIS CONSTITUTION.

ARTICLE IV

Executive

[Executive power; election and terms of governor and lieutenant-governor]

Section 1. The executive power shall be vested in the governor, who shall hold office for four years; the lieutenant-governor shall be chosen at the same time, and for the same term. The governor and lieutenant-governor shall be

chosen at the general election held in the year nineteen hundred thirty-eight, and each fourth year thereafter. They shall be chosen jointly, by the casting by each voter of a single vote applicable to both offices, and the legislature by law shall provide for making such choice in such manner. The respective persons having the highest number of votes cast jointly for them for governor and lieutenant-governor respectively shall be elected. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 3, 1953; November 6, 2001.)

[Qualifications of governor and lieutenant-governor]

§2. No person shall be eligible to the office of governor or lieutenant-governor, except a citizen of the United States, of the age of not less than thirty years, and who shall have been five years next preceding the election a resident of this state. (Amended by vote of the people November 6, 2001.)

[Action by governor on legislative bills; reconsideration after veto]

§7. Every bill which shall have passed the senate and assembly shall, before it becomes a law, be presented to the governor; if the governor approve, he or she shall sign it; but if not, he or she shall return it with his or her objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill, it shall be sent together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the governor. In all such cases the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the governor within ten days (Sundays excepted) after it shall have been presented to him or her, the same shall be a law in like manner as if he or she had signed it, unless the legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the governor. No bill shall become a law after the final adjournment of the legislature, unless approved by the governor within thirty days after such adjournment (Formerly §9. Renumbered by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 6, 2001.)

ARTICLE V

Officers And Civil Departments

[Assignment of functions]

§3. Subject to the limitations contained in this constitution, the legislature may from time to time assign by law new powers and functions to departments, officers, boards, commissions or executive offices of the governor, and increase, modify or diminish their powers and functions. Nothing contained in this article shall prevent the legislature from creating temporary commissions for special purposes or executive offices of the governor and from reducing the number of departments as provided for in this article, by consolidation or otherwise. (Amended by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938; further amended by vote of the people November 7, 1961.)

ARTICLE VI

Judiciary

[Unified court system; organization; process]

Section 1. a. There shall be a unified court system for the state. The state-wide courts shall consist of the court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court and the family court, as hereinafter provided. The legislature shall establish in and for the city of New York, as part of the unified court system for the state, a single, city-wide court of civil jurisdiction and a single, city-wide court of criminal jurisdiction, as hereinafter provided, and may upon the request of the mayor and the local legislative body of the city of New York, merge the two courts into one city-wide court of both civil and criminal jurisdiction. The unified court system for the state shall also include the district, town, city and village courts outside the city of New York, as hereinafter provided.

b. The court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court, the family court, the courts or court of civil and criminal jurisdiction of the city of New York, and such other courts as the legislature may determine shall be courts of record.

c. All processes, warrants and other mandates of the court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court and the family court may be served and executed in any part of the state. All processes, warrants and other mandates of the courts or court of civil and criminal jurisdiction of the city of New York may, subject to such limitation as may be prescribed by the legislature, be served and executed in any part of the state. The legislature may provide that processes, warrants and other mandates of the district court may be served and executed in any part of the state and that processes, warrants and other mandates of town, village and city courts outside the city of New York may be served and executed in any part of the county in which such courts are located or in any part of any adjoining county.

[Supreme court; jurisdiction]

§7. a. The supreme court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided. In the city of New York, it shall have exclusive jurisdiction over crimes prosecuted by indictment, provided, however, that the legislature may grant to the city-wide court of criminal jurisdiction of the city of New York jurisdiction over misdemeanors prosecuted by indictment and to the family court in the city of New York jurisdiction over crimes and offenses by or against minors or between spouses or between parent and child or between members of the same family or household.

[Appellate terms; composition; jurisdiction]

§8. a. The appellate division of the supreme court in each judicial department may establish an appellate term in and for such department or in and for a judicial district or districts or in and for a county or counties within such department. Such an appellate term shall be composed of not less than three nor more than five justices of the supreme court who shall be designated from time to time by the chief administrator of the courts with the approval of the presiding justice of the appropriate appellate division, and who shall be residents of the department or of the judicial district or districts as the case may be and the chief administrator of the courts shall designate the place or places where such appellate terms shall be held.

b. Any such appellate term may be discontinued and re-established as the appellate division of the supreme court in each department shall determine from time to time and any designation to service therein may be revoked by the chief administrator of the courts with the approval of the presiding justice of the appropriate appellate division.

c. In each appellate term no more than three justices assigned thereto shall sit in any action or proceeding. Two of such justices shall constitute a quorum and the concurrence of two shall be necessary to a decision.

d. If so directed by the appellate division of the supreme court establishing an appellate term, an appellate term shall have jurisdiction to hear and determine appeals now or hereafter authorized by law to be taken to the supreme court or to the appellate division other than appeals from the supreme court, a surrogate's court, the family court or appeals in criminal cases prosecuted by indictment or by information as provided in section six of article one.

e. As may be provided by law, an appellate term shall have jurisdiction to hear and determine appeals from the district court or a town, village or city court outside the city of New York. (Subdivisions a, b and d amended by vote of the people November 8, 1977.)

[Court of claims; jurisdiction]

§9. The court of claims is continued. It shall consist of the eight judges now authorized by law, but the legislature may increase such number and may reduce such number to six or seven. The judges shall be appointed by the governor by and with the advice and consent of the senate and their terms of office shall be nine years. The court shall have jurisdiction to hear and determine claims against the state or by the state against the claimant or between conflicting claimants as the legislature may provide.

ARTICLE VIII

Local Finances

[Gift or loan of property or credit of local subdivisions prohibited; exceptions for enumerated purposes]

Section 1. No county, city, town, village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking, or become directly or indirectly the owner of stock in, or bonds of, any private corporation or association; nor shall any county, city, town, village or school district give or loan its credit to or in aid of any individual, or public or private corporation or association, or private undertaking, except that two or more such units may join together pursuant to law in providing any municipal facility, service, activity or undertaking which each of such units has the power to provide separately.

Each such unit may be authorized by the legislature to contract joint or several indebtedness, pledge its or their faith and credit for the payment of such indebtedness for such joint undertaking and levy real estate or other authorized taxes or impose charges therefor subject to the provisions of this constitution otherwise restricting the power of such units to contract indebtedness or to levy taxes on real estate.

The legislature shall have power to provide by law for the manner and the proportion in which indebtedness arising out of such joint undertakings shall be incurred by such units and shall have power to provide a method by which such indebtedness shall be determined, allocated and apportioned among such units and such indebtedness

treated for purposes of exclusion from applicable constitutional limitations, provided that in no event shall more than the total amount of indebtedness incurred for such joint undertaking be included in ascertaining the power of all such participating units to incur indebtedness. Such law may provide that such determination, allocation and apportionment shall be conclusive if made or approved by the comptroller.

Bill of rights for local governments.

Section 1. Effective local self-government and intergovernmental cooperation are purposes of the people of the state. In furtherance thereof, local governments shall have the following rights, powers, privileges and immunities in addition to those granted by other provisions of this constitution:

(a) Every local government, except a county wholly included within a city, shall have a legislative body elective by the people thereof. Every local government shall have power to adopt local laws as provided by this article.

(b) All officers of every local government whose election or appointment is not provided for by this constitution shall be elected by the people of the local government, or of some division thereof, or appointed by such officers of the local government as may be provided by law.

(c) Local governments shall have power to agree, as authorized by act of the legislature, with the federal government, a state or one or more other governments within or without the state, to provide cooperatively, jointly or by contract any facility, service, activity or undertaking which each participating local government has the power to provide separately. Each such local government shall have power to apportion its share of the cost thereof upon such portion of its area as may be authorized by act of the legislature.

(d) No local government or any part of the territory thereof shall be annexed to another until the people, if any, of the territory proposed to be annexed shall have consented thereto by majority vote on a referendum and until the governing board of each local government, the area of which is affected, shall have consented thereto upon the basis of a determination that the annexation is in the over-all public interest. The consent of the governing board of a county shall be required only where a boundary of the county is affected. On or before July first, nineteen hundred sixty-four, the legislature shall provide, where such consent of a governing board is not granted, for adjudication and determination, on the law and the facts, in a proceeding initiated in the supreme court, of the issue of whether the annexation is in the over-all public interest.

(e) Local governments shall have power to take by eminent domain private property within their boundaries for public use together with excess land or property but no more than is sufficient to provide for appropriate disposition or use of land or property which abuts on that necessary for such public use, and to sell or lease that not devoted to such use. The legislature may authorize and regulate the exercise of the power of eminent domain and excess condemnation by a local government outside its

(h) (1) Counties, other than those wholly included within a city, shall be empowered by general law, or by special law enacted upon county request pursuant to section two of this article, to adopt, amend or repeal alternative forms of county government provided by the legislature or to prepare, adopt, amend or repeal alternative forms of their own.



ARTICLE XII

Defense

[Defense; militia]

Section 1. The defense and protection of the state and of the United States is an obligation of all persons within the state. The legislature shall provide for the discharge of this obligation and for the maintenance and regulation of an organized militia.

ARTICLE XIV

Conservation

[Forest preserve to be forever kept wild; authorized uses and exceptions] The lands of the state, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands.

ARTICLE XVI

Taxation

[Power of taxation; exemptions from taxation]

Section 1. The power of taxation shall never be surrendered, suspended or contracted away, except as to securities issued for public purposes pursuant to law. Any laws which delegate the taxing power shall specify the types of taxes which may be imposed thereunder and provide for their review.

ARTICLE XVII

Social Welfare

[Public relief and care]

Section 1. The aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)

§3. The protection and promotion of the health of the inhabitants of the state are matters of public concern and provision therefor shall be made by the state and by such of its subdivisions and in such manner, and by such means as the legislature shall from time to time determine. (New. Adopted by Constitutional Convention of 1938 and approved by vote of the people November 8, 1938.)



ARTICLE XVIII

Housing

[Housing and nursing home accommodations for persons of low income; slum clearance]

Section 1. Subject to the provisions of this article, the legislature may provide in such manner, by such means and upon such terms and conditions as it may prescribe for low rent housing and nursing home accommodations for persons of low income as defined by law, or for the clearance, replanning, reconstruction and rehabilitation of substandard and insanitary areas, or for both such purposes, and for recreational and other facilities incidental or appurtenant thereto. (Amended by vote of the people November 2, 1965.)

Done in Convention at the Capitol in the city of Albany, the twenty-fifth day of August, in the year one thousand nine hundred thirty-eight, and of the Independence of the United States of America the one hundred and sixty-third.

In witness whereof, we have hereunto subscribed our names.

Frederick E. Crane,

President and Delegate-at-Large

U.H. Boyden, *Secretary*

Public domain. Excerpts from New York State Constitution via: <https://www.dos.ny.gov/info/constitution.htm>.



Supporting Question 2

Featured Source

Source A: Various authors, seven short articles by political experts debating the role of state and federal government, "Room for Debate," *New York Times*, July 16, 2013

States Matter: American Federal Republic

Lara M. Brown, a political analyst, is the author of Jockeying for the American Presidency.

Updated August 8, 2013, 11: 43 AM

James Madison, a strong federal government advocate in 1787, couldn't have been any clearer in articulating the significant powers delegated to the states under the new Constitution. In Federalist 45, he wrote:

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce....The powers reserved to the several States will extend to all the objects, which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

For a number of good reasons (from extending civil liberties to establishing civil rights to ensuring food safety and basic work conditions), the federal government's powers have grown substantially over the past 225 years. It's also fair to say that the federal government is unlikely to ever seriously relinquish these expanded powers to the states. Whether we live in Washington State or the state of George Washington's home (Virginia), we all live nationally.

Still, we forget the nature of our government when we make all politics national. No one—not even the inhabitants of the District of Columbia or the military personnel stationed overseas—lives exclusively as a national resident.

People live in states. People work in states. People vote in states. People own property in states. People get married and raise families in states. In sum, the vast majority of the laws under which each of us abide are state laws, not federal laws. Unsurprisingly then, as James Madison explained in Federalist 46, "the first and most natural attachment of the people will be to the governments of their respective States."

So while many liberals aren't pleased with the new abortion law passed in Texas, it's also true that many conservatives are displeased with Colorado's new gun-control laws. But again, as James Madison reminds, "Truth, no less than decency, requires that the even in every case should be supposed to depend on the sentiments and sanction of their common constituents."

Both according to our Constitution and in common practice, state politics are more present in and more important to the daily lives of Americans.

"States Matter: America is a Federal Republic," by Lara M. Brown. Copyright © 2013 Lara M. Brown. Dr. Brown is Associate Professor & Director, Political Management Program, Graduate School of Political Management, George Washington University. Used with permission.

Federal Government Is More Powerful Than State Government

John B. Judis is a senior editor of the New Republic and the author of the forthcoming Genesis: Truman, American Jews, and the Origins of the Arab-Israeli Conflict.

July 16, 2013

Any dispute about which is more powerful—the federal government or the states—was settled in 1789 when the Constitution granted the federal government the right to collect taxes, regulate interstate commerce, raise an army and adjudicate legal disputes between states. It's not called the "Supreme Court" for nothing.

States, or alliances of states, have attempted to nullify federal power, but the federal government has eventually prevailed, although in the case of Southern slavery, it took a four-year war for the federal government to do so. Beyond that, states have served as pockets of resistance or innovation, attempting to weaken federal laws, or to advance new legislation that the federal government is not yet ready to consider.

On the left, states during the Progressive Era introduced economic legislation that the New Deal later adopted for the nation. That led Louis Brandeis to dub them "laboratories of democracy." Recently, states have pioneered universal health insurance and climate change regulation. On the right, Republican governors are currently attempting to reduce the scope of the Affordable Care Act and to impose restrictions on abortion that undermine the Supreme Court's ruling in *Roe v. Wade*.

The question about these efforts, like those from the left during the Progressive Era efforts, is whether they can be expanded nationally. That will depend on whether the opponents of the Affordable Care Act, *Roe v. Wade*, or older New Deal reforms can elect a president and a majority in Congress that shares their point of view. Otherwise, like the state attempts to defy *Brown v. Board of Education*, these efforts will become the subject of still another "lost cause."

"Federal Government is More Powerful than State Government," John B. Judis, senior editor, *The New Republic*. Used with permission.

States Get Things Done, Affecting National Policy

Heather K. Gerken is the J. Skelly Wright professor of law at Yale Law School.

Updated October 30, 2014, 10:59 AM

When people debate whether state politics or national politics are more important, they typically fall into camps. The nationalists argue that we are one people, and that national politics are all that should matter. The federalist camp argues that state officials are closer to the people and that state governance gives us the ability to live in a place where the laws match our own preferences (be it Texas or Portlandia).

The federalist camp has the advantage right now of advocating for the one form of politics that is actually active. Political polarization has paralyzed the national government, but it has catalyzed state policy making.

But one segment of government is not more important than the other. National politics fuels state politics, and state politics helps ensure that national politics function properly. The question isn't which matters more; the question is when and how each matters in the first place.



Those offering starry-eyed odes to the value of local participation underestimate how closely state politics are tied to national politics. As the important work of David Schleicher and others has shown, elections for state offices are as much referendums on the national politics as they are about anything else. Most people don't pay much attention to state politics. When they vote for a state legislator, they are voting based on something they know about: national politics. That's why we see a remarkably close connection between votes in most state races and votes in national ones. The close ties between state and federal parties can lead to all kinds of problems by keeping poor-performing state and local officials from getting voted out of office. But oddly enough, the connection can mitigate what ails national politics.

National politics are locked up. Our legislative process has too many obstacles when politics are highly polarized. As a result, issues that matter quite a bit to the American people—gay rights, abortion, immigration, guns—don't get any traction in Congress.

Ambitious members of both parties may not be able to get anything passed in Washington, but they can in the states. That means state officials can challenge national policy—or protest its absence—by passing laws at home. By making policy rather than merely debating it, groups on both sides of the aisle can seize the national agenda and shift the burden of inertia in Congress. Usually all opponents of a policy need to do is kill the bill. When a state passes the policy, however, that strategy doesn't work anymore. Opponents and proponents, then, suddenly agree on one thing—Congress should do something—and they will unite in pushing Congress to act. When national politics are the problem, then, state politics can be the solution.

“States Get Things Done, Affecting National Policy,” Heather K. Gerken, Yale Law School. Used with permission.

States Need More Control Over the Federal Government

Scott Gaylord is an associate professor of law at Elon University School of Law.

Updated July 17, 2013, 8:54 AM

As the old saying goes, all politics are local. State and federal governments affect our daily lives in numerous ways. Yet, in our federal system, there is supposed to be a balance between federal and state power. As James Madison envisioned it in Federalist No. 51, “the power surrendered by the people” would be “divided between two distinct governments,” creating a balance of power that would enable the “different governments [to] control each other.”

Under the United States Constitution, the federal government has broad authority in specific enumerated areas, but its power is not unlimited. State government plays a critical role in all those areas that are not left exclusively to the federal government. As a result, state politics are extraordinarily important because states are charged with protecting the welfare, safety and health of their citizens (which is one reason why roughly 95 percent of criminal court cases are handled in state courts).

At least since the New Deal, however, the balance of power has shifted decisively in favor of federal politics. The expansion of administrative agencies and other federal programs have encroached on state sovereignty, often with little or no resistance from the states themselves.



But the winds of change are blowing in states across the country. Governors and state attorneys general have begun to challenge what they view as the federal government's overstepping its constitutionally prescribed role. In 2010, more than 20 states filed suit against the federal government claiming that the Patient Protection and Affordable Care Act exceeded Congress's power. In addition, state attorneys general have successfully challenged various actions by the Environmental Protection Agency and other federal agencies, using state politics to protect the vertical separation of powers.

Moreover, recent Supreme Court decisions provide a glimmer of hope to those championing state sovereignty. In *National Federation of Independent Business (N.F.I.B.) v. Sebelius*, a majority of the court determined that the individual mandate under the health care act exceeded Congress's commerce clause power. In *Shelby County v. Holder*, the court held that Congress unconstitutionally infringed on state sovereignty by using an outdated formula under the Voting Rights Act to decide which states had to get federal approval before changing their voting laws. In *United States v. Windsor*, the court emphasized that the Defense of Marriage Act was unconstitutional in part because the regulation of domestic relations has always been left to the exclusive province of the states.

Yet even in these cases, federal supremacy lurks in the background, ready to limit the reach of state political power. According to the court, Congress had ample taxing power to enact the individual mandate; Congress can propose a new formula under Section Four of the Voting Rights Act; and state control over domestic relations remains subject to the federal Constitution.

As evidenced by the court's 5–4 decisions in *N.F.I.B.*, *Shelby County* and *Windsor*, the Supreme Court has been the last arbiter of the balance between state and federal power, and that balance is dictated by the narrowest of margins. Consequently, federal politics, including the next Supreme Court appointment, may determine the scope of state sovereignty for years to come.

"States Need More Control over the Federal Government," Scott Gaylord, Elon University School of Law. Used with permission.

Washington Must Redress State Injustice

Michael C. Dawson is the John D. MacArthur professor of political science and the director of the Center for the Study of Race, Politics and Culture at the University of Chicago. He is the author of Not In Our Lifetimes: The Future of Black Politics.

Updated October 22, 2014, 1:56 PM

Since the nation's founding, "states rights" has been the rallying cry and mechanism of authority for those who wished to systematically disenfranchise and exploit large segments of their population. That this continues to be the case is profoundly demonstrated by politics of North Carolina and other states.

States are still the most active political arenas for trying to maintain an ever weakening, but still potent, system of white control, as is shown by the wave of new legislation limiting voting rights that state legislatures are pushing through in the wake of the Supreme Court voting decisions.

State legislation has injured communities of color, whether it is North Carolina's repeal of the Racial Justice Act, which was designed to combat racial discrimination in death penalty cases, Arizona's draconian restrictions on immigrant rights or Florida's Stand-Your-Ground travesty.



Racial minorities are not the only groups under attack by politicians in North Carolina, Texas and elsewhere. In North Carolina, unemployed workers and public school students have been subjected to draconian cuts that expand extreme inequality and put the economic future of those states at risk. In Texas and other states, legislatures have drastically rolled back the reproductive rights of women. The volume and inhumanity of the attacks in North Carolina have led to a series of protests involving the N.A.A.C.P. and others. These “Moral Monday” protests have led to the arrest of more than 700 citizens who took to the streets, as people did a generation ago, to focus a bright light on political processes that are fundamentally unjust.

We need to remember, however, whether we examine the history of Reconstruction after the Civil War, or the victories of the civil rights movement a generation ago, that the federal government is the place of last resort to protect citizen rights when states trample on the rights and lives of the groups that local politicians disdain. Whether we are considering racial justice, reproductive rights or worker rights, local movements focusing on local injustices have often been most successful when they have been able to bring the power of the national government to bear in the name of decency, dignity and justice.

“Washington Must Redress State Injustice,” Michael C. Dawson, John D. MacArthur professor of political science and director of the Center for the Study of Race, Politics and Culture at the University of Chicago. Used with permission.

The Repercussions of Big Money

Bob Hall is the executive director of Democracy North Carolina, a nonprofit organization that tracks money in politics.

July 16, 2013

State or national politics? If you’re filthy rich, spend your money right and are lucky, you can have a big impact on both. Take the case of mega-millionaire James Arthur “Art” Pope of Raleigh, N.C.

Like the Koch brothers, Pope inherited his daddy’s business and a yen for right-wing politics. He runs a chain of discount stores and through the family foundation and company, he’s pumped more than \$40 million over the past decade into a network of North Carolina think tanks, advocacy groups and hard-line conservative politicians. His foundation is the second-biggest donor to the Kochs’ Americans for Prosperity, and Pope gives to dozens of national causes. But his focus remains on North Carolina.

Until recently, Pope has had little to show for his investment in moving the state rightward. He’s run unsuccessfully for statewide office, financed attack ads to defeat (and agitate) moderate Republicans and sponsored questionable research through his nonprofits. But in 2010, he finally hit the jackpot. Republicans gained majority control of both chambers in the North Carolina General Assembly for the first time in more than 100 years, thanks to supercharged Tea Party voters, unengaged Obama supporters (especially white Democrats and Independents) and a post-Citizens United splurge in spending. Groups financed with Pope money spent \$2.2 million in 22 swing legislative races and won 18 seats.

What a lucky year to win. When the Census data arrived in early 2011, the new Republican majority proceeded to redraw the state’s 13 Congressional and 170 legislative districts. A national Republican group (backed with Pope money) financed the chief map drawer, and Pope sat at his side to add local knowledge. The final maps divide more precincts than any redistricting plan in North Carolina history. Zigzagging district lines, like walls, separate and crowd blacks into fewer super-Democratic districts while creating many more heavily white, Republican-leaning districts. Call it computerized apartheid.



With the gerrymandered maps in place, the 2012 elections produced bigger Republican majorities in the state legislature and a lopsided 9-to-4 G.O.P. majority for the new Congressional delegation, even though Democratic Congressional candidates received 51 percent of the votes statewide. Art Pope focused his money on “independent” groups that spent millions to ensure G.O.P. victories for the governor and a swing seat on the state Supreme Court that will ultimately rule on those maps.

Once the new governor, Pat McCrory, was in office, he installed Pope as the state's budget director, where he now influences an amazing swath of policy, from education to criminal justice, health care to employment benefits, tax fairness to elections. Pope chose state politics, but thanks to state control of redistricting, he can play federal politics, too.

“The Repercussions of Big Money” Bob Hall, executive director, Democracy North Carolina. Used with permission.

Advertisers Say National, State and Local Politics Matter

Mark Fratrick is a vice president and the chief economist of BIA/Kelsey, a research and consulting firm.

July 16, 2013

There are a number of drivers behind the recent spate of transactions for local TV stations. Buyers are hungry for retransmission fees and economies of scale, and they are motivated by today's relatively low interest rates and a renewed confidence in local stations' positions in local media markets.

Political spending at these television stations in 2012 helped foster that renewed confidence. Many executives and investors expect the 2014 election to bring similar or higher spending. Even as campaigns use more alternative media—like online outlets, social media and local cable systems—local television stations are still a sought-after medium for candidates to get their messages out.

What can media deals and forecasts reveal about political priorities? Certainly campaigns will still need to spend to get those messages out to potential voters. State and local races with viable candidates in two parties will have the most spending, as those general elections can be affected by greater voter education. Other races with only one dominant party may see a significant amount of spending in the primaries, as those elections are often decisive. Further, states with multiple television markets will also have significant spending, because to educate the voters, candidates must place advertisements across many local television stations.

Do ad spending in 2012 and forecasts for 2014 indicate a greater emphasis on national politics, or state and local elections? So far the answer looks like “all of the above.” The markets that will see the most campaign ads in 2014 are those that are competitive at the local, state and federal levels. Some markets may see mostly ads for the presidential and Congressional races; others will be blitzed by state legislative candidates, mayoral campaigns and city council races. From all these sources, ad buys for local TV time will be huge, as campaigns at every level—and interest groups—present their arguments to as many potential voters as possible, through as many media as possible.

“Advertisers Say National, State, and Local Politics Matter,” Mark Fratrick, chief economist, BIA/Kelsey. Used with permission.



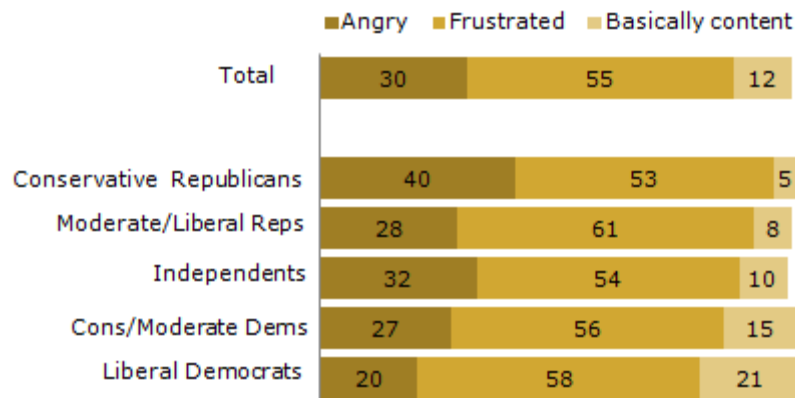
Supporting Question 3

Featured Source

Source A: Pew Research Center, graphs detailing citizens' thoughts on government effectiveness, *Views of Government: Key Data Points*, Pew Research study (excerpt), October 2013

Public anger at the federal government is as high as at any point since the Pew Research Center began asking the question in 1997.

Three-in-Ten Feel 'Angry' at Federal Government



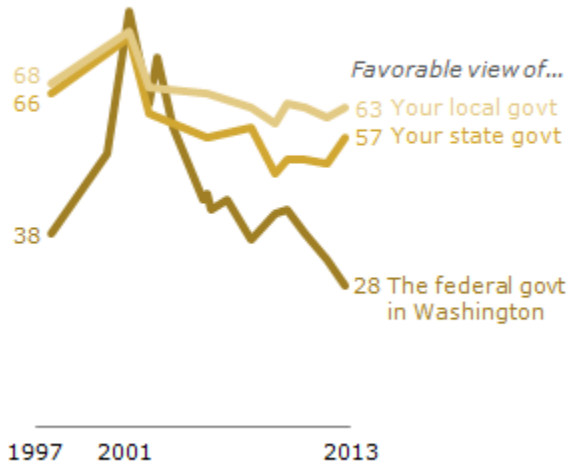
PEW RESEARCH CENTER Oct. 9-13, 2013. Don't know responses not shown.

The share of the public saying they are angry at the federal government stood at 30% in our October survey, up 11 points since January (<http://www.people-press.org/2013/10/18/trust-in-government-nears-record-low-but-most-federal-agencies-are-viewed-favorably/>). Anger is most pronounced among Tea Party Republicans. Fully 55% of Republicans who agree with the Tea Party say they are angry with the federal government—about double the percentage among non-Tea Party Republicans (27%) and Democrats and Democratic leaners (25%).

The more negative view of the federal government has resulted in a growing gap between how Americans see Washington as compared to their state and local governments.



Widening Gap in Views of Federal, State and Local Governments



PEW RESEARCH CENTER March 13-17, 2013.

Ten years ago, roughly two-thirds of Americans offered favorable assessments of all three levels of government: federal, state and local. But in a survey conducted March 2013, public views of the federal government in Washington have fallen to a new low, while the public continues to see their state and local governments in a favorable light. (<http://www.people-press.org/2013/04/15/state-governments-viewed-favorably-as-federal-rating-hits-new-low/>).

In the 2012 Values survey, 69% of Americans said the federal government should only run things that cannot be done at the local level.

The Federal Government's Reach

The federal government should run only those things that cannot be run at the local level

	1987	2002	2007	2009	2012
	%	%	%	%	%
Total	75	69	74	70	69
Republican	80	75	79	78	84
Conserv Rep	82	79	81	81	87
Mod/Lib Rep	76	71	74	71	79
Independent	73	70	75	72	71
Democrat	73	65	73	64	56
Cons/Mod Dem	76	68	74	66	62
Liberal Dem	67	59	72	63	48
Rep-Dem gap	+7	+10	+6	+14	+28

PEW RESEARCH CENTER 2012 Values Survey. Q30j.

Pew Research study. October 2013. <http://www.pewresearch.org/key-data-points/views-of-government-key-data-points/>.



Supporting Question 3

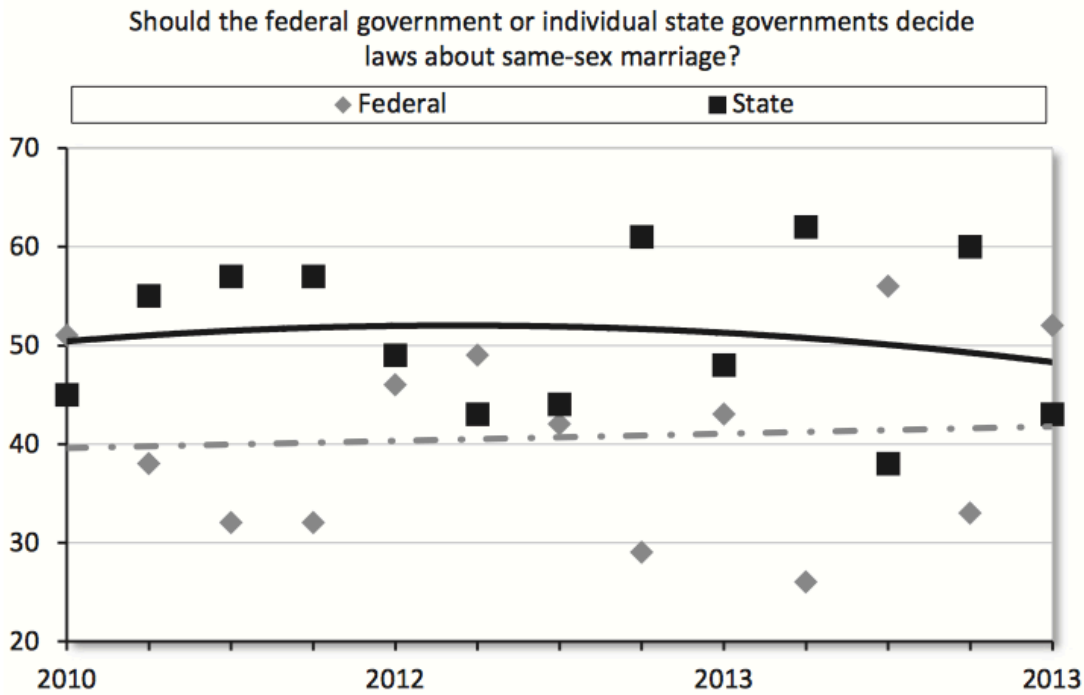
Featured Source

Source B: John Samples and Emily Elkins, graphs detailing public opinion on the role of state and federal governments, “Public Attitudes toward Federalism: The Public’s Preference for Renewed Federalism,” Cato Institute, September 2014

For much of its history, the United States had a notably decentralized government structure. Since the 1930s, the national government has undertaken new efforts to regulate the economy and society and to redistribute resources. Those new efforts have implied a greater centralization of authority in Washington. In the past the public often supported such centralization. Public opinion about federalism has changed. Voters are more supportive of decentralized policymaking on many issues where they previously supported a stronger national role. This shift in the public mood is consistent with other polling data that indicates profound distrust in the capacity of the federal government to act on behalf of the public good. On some issues, like national defense, much of the public continues to support national primacy. Such issues are often assigned to Washington by the Constitution. In contrast, much polling finds that many citizens believe state and local governments are likely to perform better than Washington. Americans support a more decentralized federalism than in the past both on particular issues and as a general matter of institutional confidence.

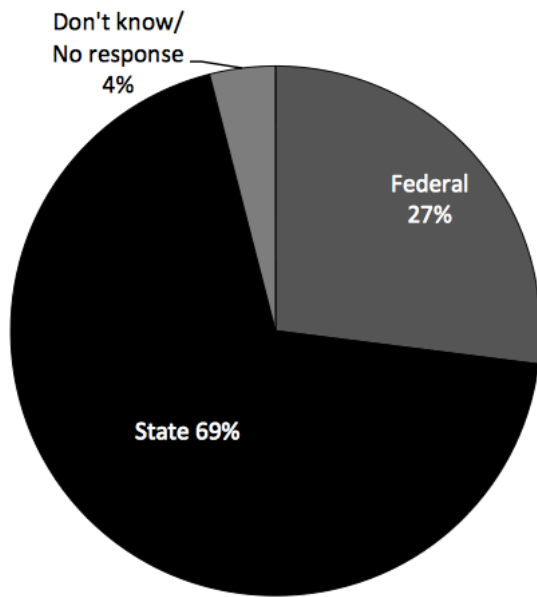
The following figures appear in the Cato report:

Figure 14
Support for Federal Role in Same Sex Marriage, 2010–2013



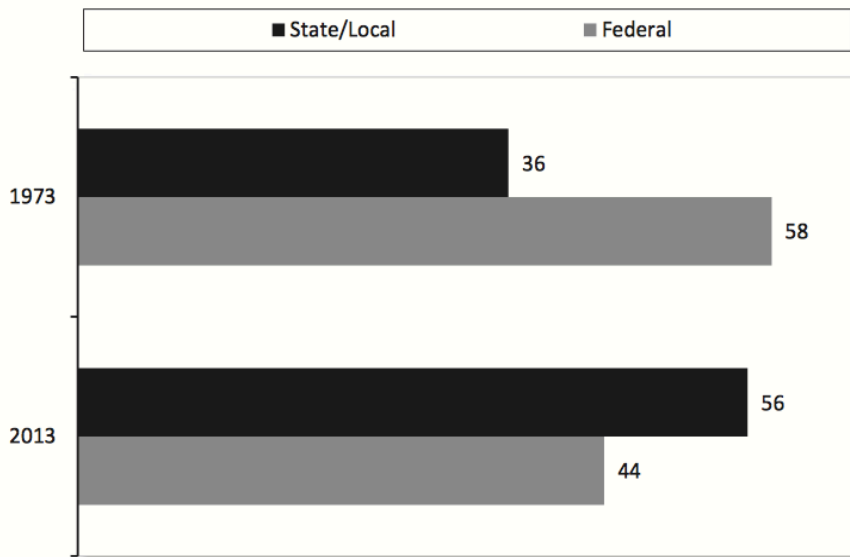
Source: Gallup, Pew Research Center; Public Religion Research Institute; AP/GFK Polls; ABC/Washington Post Poll; NBC/Wall Street Journal Poll; McClatchy/Marist.

Figure 3
Proper Level of Government for Marijuana Regulation, by Percentage of Respondents

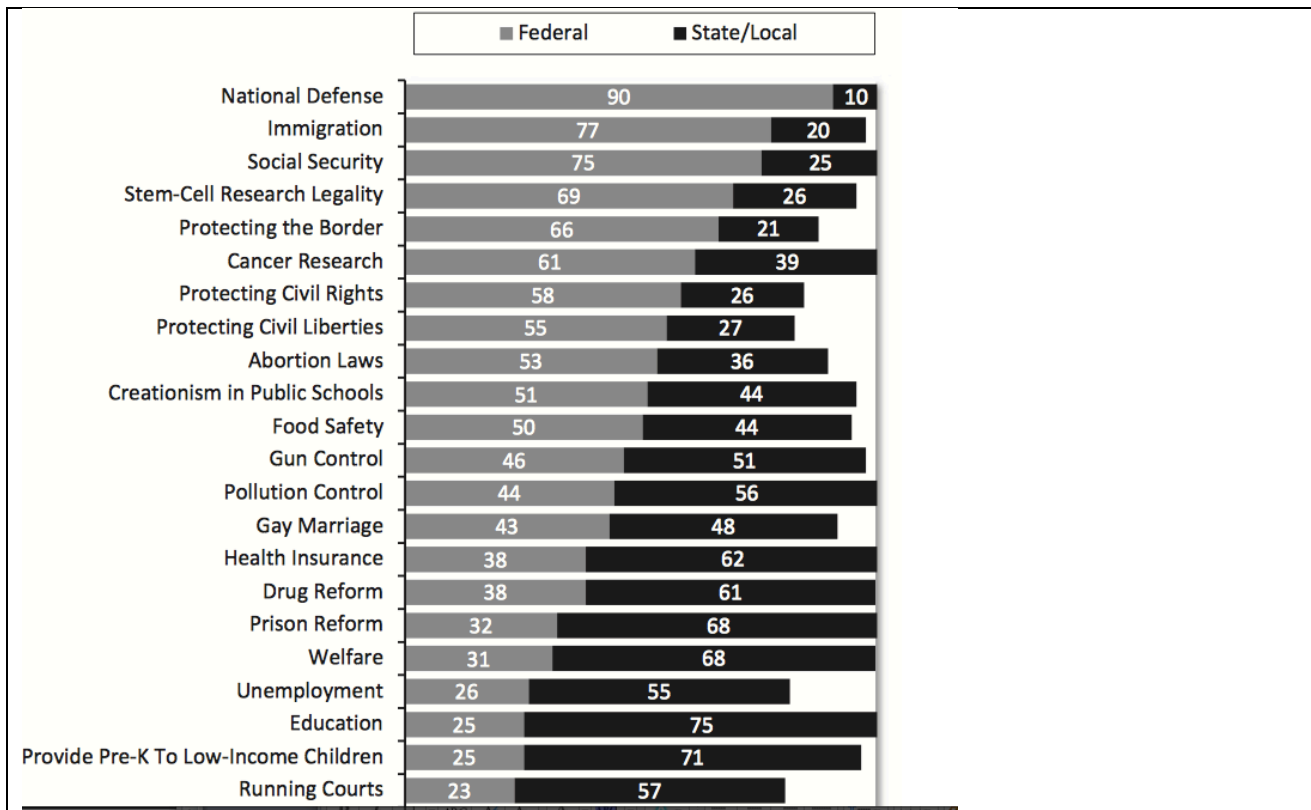


Source: CBS News, 2012.

Proper Level of Government for Environmental Protection, by Percentage of Respondents, 1973 and 2013



Source: Cato Institute Poll December 2013, Harris Survey 1973.



Public Attitudes toward Federalism: The Public's Preference for Renewed Federalism" by John Samples and Emily Ekins, CATO Institute, September 2014. Copyright © 2014. Used with permission.

Supporting Question 4

Featured Source

Legal Drinking Age Case Study: United States Department of Transportation, description of drinking age laws, "National Minimum Drinking Age Act Fact Sheet," 1999

NOTE: The image below is a screen shot of the first page of the fact sheet. Teachers will want to pull up the entire source on a screen or make copies for student use.

FACT SHEET MINIMUM DRINKING AGE LAWS

What is the national age 21 drinking law?

The National Minimum Drinking Age Act of 1984 required all states to raise their minimum purchase and public possession of alcohol age to 21. States that did not comply faced a reduction in highway funds under the Federal Highway Aid Act. The U.S. Department of Transportation has determined that all states are in compliance with this act.

The national law specifically requires states to prohibit purchase and public possession of alcoholic beverages. It does not require prohibition of persons under 21 (also called youth or minors) from drinking alcoholic beverages. The term "public possession" is strictly defined and does not apply to possession for the following.

- An established religious purpose, when accompanied by a parent, spouse, or legal guardian age 21 or older;
- Medical purposes when prescribed or administered by a licensed physician, pharmacist, dentist, nurse, hospital, or medical institution;
- In private clubs or establishments; and
- In the course of lawful employment by a duly licensed manufacturer, wholesaler or retailer.

State Issues

Article XXI of the United States Constitution, which repealed prohibition, grants states the right to regulate alcohol distribution and sale. State laws are unique, but each allows local communities to regulate youth access to alcohol through local ordinances and law enforcement. State laws address youth-related violations separately. These include:

- Sales to minors. Prohibits vendors or any other persons from selling, giving, or otherwise providing alcohol to minors.
- Purchase. Prohibits or limits minors from obtaining alcohol from vendors or other sources.
- Possession. Generally prohibits or limits minors from carrying or handling alcohol. Some state laws contain various exemptions, such as handling alcohol in the course of employment and possession with parental possession.
- Consumption. Prohibits or limits minors' drinking of alcoholic beverages.
- Misrepresentation of age. Provides for penalties against minors who present false identification or otherwise represent themselves as being of legal purchase age.

Public domain. US Department of Transportation, National Highway Traffic Safety Administration.
www.nhtsa.gov/people/injury/alcohol/community%20guides%20html/pdfs/public_app7.pdf



Supporting Question 4

Featured Source

Legal Drinking Age Case Study: Rick Bragg, observation about Louisiana's defiance of federal law, "Louisiana Stands Alone on Drinking Age at 18," *New York Times*, March 23, 1996

Louisiana Stands Alone on Drinking at 18

By RICK BRAGG

BEAUMONT, Tex.— People who live here call it the "low, flat nothin.'" It is the stretch of country due east of the refineries that light up the night around Beaumont, and due west of the vast rice fields on the Louisiana line. Interstate 10 runs dead straight for miles and miles through here, a lost highway decorated, here and there, with a stark, white cross.

The crosses are almost always alongside the westbound lanes, and mark the places where teen-agers, weaving home from honky tonks and bars across the Louisiana border, run off the road, crash and die. Wanda Grimes, a substitute teacher in Beaumont whose 19-year-old son was killed by a drunken driver coming home from Louisiana in 1992, calls it "our Blood Border."

For years, she and other advocates worked to sew shut the loophole in a Louisiana law that protected bar owners from prosecution for selling alcohol to those between 18 and 20, even as it barred those teen-agers from buying alcohol. They won last year, or at least they thought so, when the Legislature banned the sale of alcohol to those under 21.

But then last week, the Louisiana Supreme Court ruled that the state's drinking age of 21 is a form of age discrimination, and tossed out the 1995 law as well as the 1986 law that barred those under 21 from buying alcohol. Louisiana has become the only state in the nation with a drinking age of 18.

"I wonder how many more people will have to bury their children now," Mrs. Grimes said.

In Louisiana, the court's ruling brought joy to bar owners and teen-age drinkers, but embarrassed others who are tired of seeing the state regarded as a third-rate banana republic with its own law and own ways of doing things. To Mrs. Grimes and other advocates, it was as if the state unfurled a banner over its borders with Mississippi, Arkansas and Texas to welcome teen-agers there to drink.

Though many in Louisiana view the decision as woefully short on common sense, in New Orleans, the 4-to-3 ruling was the judicial equivalent of a keg party. Within a few hours of the decision, beer was flowing into the mouths of 18-year-old college students and high school seniors in the French Quarter and in the bars near Tulane University, and some club owners celebrated with \$2 pitchers and cut-rate crawfish.

The Louisiana Attorney General, Richard Ieyoub, has asked the Supreme Court to reconsider its ruling; Gov. Mike Foster has asked the Legislature to hurry through a constitutional amendment to lift the law to 21 again. Meanwhile, Mr. Ieyoub blocked any further sale of alcohol to 18-to-20-year-olds, pending his request for a rehearing.

Less than a week after the decision, the Clinton Administration warned Louisiana to find a way to reverse the ruling. The state will lose \$17 million in Federal highway money if it does not comply with the 1986 National

Minimum Drinking Age Act, which requires states to set their legal drinking age at 21.

"It's an embarrassment to our state," said State Representative James Donelon, Republican of Metairie. He said the loophole was intentional and had been a magnet for teen-age drinkers from border states and all over the nation. But the court's ruling will make matters worse, he said. The state officially has opened its door to teen-age drinkers and drivers. "It will be horrible."

Statistics are hard to find, because accident reports often miss the details of where the young people had been and what they had been doing. But Mrs. Grimes recounts one startling statistic, a result of her own research. In 1993, in the westbound lane of the 50-mile stretch of I-10 between her home and Lake Charles, there were 64 accidents in which people 21 or under were injured or killed. All of them involved drinking.

There were only 16 accidents in the same year in the eastbound lane of Interstate 10.

Drinking is almost a point of pride in Louisiana, where young people slurp down Jello shots laced with hard liquor and carry "To Go" cups back to their cars from the bars. New Orleans has drive-up daiquiris.

The liquor lobby is one of the most powerful in the state's government, which explains why the loophole—as blatant as it was—took nine years to kill, said Catherine Morgan, the director of victims' services for Mothers Against Drunk Driving in Baton Rouge.

The legal case began last year in Evangeline Parish, when four men challenged the 21-and-over law in the local court. Two of the men, Burke Pierotti and Wendell Manuel, owned bars, and were joined in the lawsuit by Mr. Manuel's son, Jody, and a friend, Stacey Foret, both of whom were under 21.

"I was in the Navy during World War II, in charge of a 31-man gun crew in the Pacific," said Mr. Pierotti, 71, who runs the Kazan Hotel Bar in Mamou. "I had just turned 21 but half my crew was under 21, and when we went back to our home port, those boys couldn't come in a bar with me and have a drink. Well, I believe that if a man is old enough to fight and die for his country, then a bunch of white-haired monkeys in Washington, D.C., got no right to tell him he can't have a drink. And that's how I feel about it."

Mr. Manuel, who runs a bar just a few miles away, said: "We don't want to see anyone killed. They're gonna drink. It's better that they drink inside than in their cars."

Lawyers for the bar owners argued that before the state can discriminate against 18-to-20-year-olds in its effort to reduce drunken driving, it would first have to apply "other non-discriminatory methods, including public education," and allowing a tax credit to retailers to provide free non-alcoholic drinks for designated drivers.

Ultimately the case landed before the State Supreme Court, where four judges—one is a temporary fill-in—ruled that the lawyers had a point.

The state considers 18-year-olds to be adults, and they cannot be stripped of any right accorded other adults, the court ruled. Writing for the majority, Justice Catherine D. Kimball said the state failed to prove that the 21-and-over law "substantially furthers the important governmental objectives of improving highway safety."

Louisiana residents, who already pay the 10th highest auto insurance in the nation and would see the rate go higher if that decision stands, were confused by that.

In Louisiana, drivers 18 to 20 make up just five percent of the total number of drivers, but account for 10 percent of fatal car crashes involving alcohol, according to statistics from the National Highway Traffic Safety Administration.

Of all fatal car crashes involving 18-to-20-year-olds in Louisiana, 71.7 percent of the drivers had been drinking.

The state ranks well above the national average in just about every category involving cars, death, injury, booze and teen-agers. It is fourth in the nation in fatal crashes involving people 18 to 20.

The four members of the state court who struck down the requirement apparently ignored evidence that a 21-and-over law saved lives, said Judith Stone, the president of the Advocates for Highway and Auto Safety, based in Washington.

"There was a reason why that drinking age was passed," she said.

Federal highway officials say that since 21 became the minimum drinking age about 10 years ago, an estimated 10,000 lives have been saved.

Mrs. Grimes's son, Jeramy, died after the age limit was raised across the nation, everywhere except Louisiana.

"I don't care about the age limit, but you have to make it the same everywhere," she said. "The danger is in the traveling."

Louisiana bar owners are already reaching out to young people in Texas with radio advertisements telling of this new development, enticing them. And it is not a matter of whether some of them will drive home drunk, only how many will die on their way, Mrs. Grimes said. When the law closing the loophole passed last year, someone took a saw and cut down the cross she had put up for her son beside the interstate.

In New Orleans, ground zero for hangovers, bar owners said that of course they were happy with the ruling. Outside in the French Quarter, two teen-age girls, swaying arm in arm, teetered along the cobblestones with plastic "To Go" cups in their hands, as the music leaked out from the doorways of bars.

Uptown, a bartender in a hotel lounge said that all the talk of age limits is moot in the culture of Louisiana, where looking the other way is tradition. After the Supreme Court's decision came down, a young man came into his bar and asked if the drinking age was indeed 18. "Son," said the bartender, who asked not to be named, "if you can count to 18, I'll give you one drink."

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Supporting Question 4

Featured Source

Legal Drinking Age Case Study: Associated Press, description of change in Louisiana drinking age law, "Louisiana Court Upholds Drinking Age at 21," *New York Times*, July 3, 1996

Louisiana Court Upholds Drinking Age of 21

AP

NEW ORLEANS, July 2— The Louisiana Supreme Court today upheld a state law that sets the minimum drinking age at 21, reversing a ruling that caused an uproar in March.

The decision keeps Louisiana from being the only state with a drinking age under 21 and preserves Federal highway money for the state.

In March the court ruled 4 to 3 that laws setting the drinking age above 18 were unconstitutional age discrimination. The ruling evoked cries of horror from groups that advocate tougher action against drunken driving and brought the threat of a loss of \$17 million in Federal highway money, because the National Minimum Drinking Age Act of 1986 requires states to set their legal drinking age at 21.

Attorney General Richard P. Ieyoub asked the court to reconsider, and shifts on the court since March contributed to today's 5-to-2 vote in favor of the drinking age of 21.

Judge Burrell Carter, a temporary appointee to the court when the last ruling was made, was not on the court this time, and the court's newest justice, Joe Bleich, voted with the new majority. Chief Justice Pascal F. Calogero switched sides.

Faced with the loss of Federal highway money under the drinking age act, the Louisiana Legislature reluctantly passed a law in the 1980's that made it illegal for people ages 18 through 20 to buy alcohol. But that law did not make sales to people of those ages illegal, a loophole that the police often said made enforcement difficult.

In 1995, under heavy pressure from advocacy groups, legislators outlawed the sale of alcohol to people of those ages. Court challenges of that law eventually resulted in the March ruling.

Exceptions to the law allow possession of alcoholic beverages for religious purposes, at nonprofit events, for those accompanied by parents, for medical purposes and in private residences.

Today's decision also effectively cancels a planned statewide vote on the issue. The Legislature recently voted to let people vote on a constitutional amendment to raise the drinking age, but lawmakers included a provision that would cancel the vote if the Supreme Court reversed its March decision.

© Associated Press. <http://www.nytimes.com/1996/07/03/us/louisiana-court-upholds-drinking-age-of-21.html>.



Supporting Question 4

Featured Source

Environmental Protection Case Study: Jody Freeman, video segment describing federal fuel efficiency standards, *Constitution USA: Federalism*, Public Broadcasting System, 2013

NOTE: Teachers and students can watch the video segment on fuel efficiency standards by clicking on this link: <http://www.pbs.org/tpt/constitution-usa-peter-sagal/federalism/#.VLko3FolkjY>.



Supporting Question 4

Featured Source

Environmental Protection Case Study: Excerpt of Johnathan H. Adler testimony before House Energy and Commerce Subcommittee, *Washington Post*, 2014

Both the federal and state governments play a role in environmental protection. Each has a comparative advantage in addressing particular types of environmental concerns. Apart from such policy considerations, however, the U.S. Constitution also constrains the sorts of environmental policies that may be adopted by each level of government. It is a fundamental principle of our constitutional order that the federal government is one of limited and enumerated powers and that those powers not delegated to the federal government are reserved to the states and the people. All federal laws, no matter their value or purpose, must be enacted pursuant to the federal government's enumerated powers and may not transgress other constitutional constraints. This is as true for environmental protection as it is for national security or health care.

The constitutional system of “dual sovereignty” limits federal power and recognizes the “separate and independent autonomy” of the states. At the same time, our federalist system constrains what states may do, through both express and implied structural limits on state authority. As a consequence, not every level of government may enact every potentially desirable for environmental protection. Rather, our constitutional structure leaves both the federal and state governments with realms in which they may operate to advance environmental goals while simultaneously providing for some degree of interjurisdictional competition among and between the several states.

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Supporting Question 4

Featured Source

Environmental Protection Case Study: Ron Nixon, article describing EPA rulemaking on water use, “EPA’s Proposed Rules on Water Worry Farmers.” *The New York Times*, March 13, 2014.

E.P.A.’s Proposed Rules on Water Worry Farmers

By RON NIXON

Water rarely flows in one of the streambeds — it really seems to be little more than a small ditch — that Dean Lemke points out to a visitor on his 800-acre farm in Dows, Iowa.

“I wouldn’t even call it a stream,” he said. “There is only water flow in it when it rains.” Mr. Lemke is a former Iowa state government official who supervised water-quality programs. He is also a fifth-generation farmer who grows corn and soybeans on his acreage, about 75 miles north of Des Moines, and he has never worried that the government would be concerned about that small ditch.

But that may soon change.

The Environmental Protection Agency is set to issue regulations that farmers like Mr. Lemke say may require them to get permits for work for which they have long been exempt. The E.P.A. says the new rules are needed to clarify which bodies of water it must oversee under the federal Clean Water Act, an issue of jurisdiction that the agency says has been muddled by recent court rulings. Opponents say the rules are a power grab that could stifle economic growth and intrude on property owners’ rights.

There is no timetable for when the rules will be released. But if the agency expands its jurisdiction over streams like the one on Mr. Lemke’s farm, he and other farmers say, the move could prove costly by requiring farmers to pay fees for environmental assessments and to get permits just to till the soil near gullies, ditches or dry streambeds where water only flows when it rains. A permit is required for any activity, like farming or construction, that creates a discharge into a body of water covered under the Clean Water Act or affects the health of it, like filling in a wetland or blocking a stream.

The proposed regulations have also raised concerns among industries beyond agriculture, and objections have been filed by several groups.

To coordinate the opposition efforts, those groups joined forces nearly three years ago with several agriculture trade organizations, like the American Farm Bureau Federation, to create the Waters Advocacy Coalition to lobby against increased environmental regulation.

In a letter last month to the White House and members of Congress, the coalition said the agency’s decision to move forward on the new rules failed to comply with regulatory requirements and relied on a flawed economic analysis concerning its effect on industry. The coalition also said the scientific report the agency and the Army Corps of Engineers relied on to justify the new rules had not been reviewed by other scientists.

Several members of Congress have also weighed in. Representative Bill Shuster, a Pennsylvania Republican and chairman of the Transportation and Infrastructure Committee, said in a March 6 letter to the White House and Gina McCarthy, the E.P.A. administrator, that the new water regulations were part of a “pattern of an imperial presidency that seeks to use brute force and executive action while ignoring Congress.”



Representative Lamar Smith, a Texas Republican, said the regulations “could be the largest expansion of E.P.A. regulatory authority ever.”

Conservation groups, which have pushed for the regulations, say farmers’ concerns are overblown.

Jan Goldman-Carter, a lawyer who works with the National Wildlife Federation on water issues, said the proposals outlined regulatory exemptions that have been in place for decades for plowing, planting, harvesting and maintaining drainage ditches. She said a copy of the draft regulations that was leaked last year clearly shows that to be the case.

“The draft guidance is clear that irrigation ditches, drainage ponds and even groundwater are not considered waters of the U.S. Nor are gullies, rills, swales and other erosional features,” she said. “This has been explained over and over again.” Industry claims that ditches or groundwater might be covered under the new regulations are “just wrong,” she said.

Mrs. Goldman-Carter said the draft copy showed that the regulations would increase the E.P.A.’s jurisdiction over streams by about 3 percent. That is hardly a power grab, she said.

Nancy Stoner, the E.P.A.’s acting assistant administrator for water, said the agency had been working with the agriculture industry to make sure its concerns about the proposed rules were addressed. “Our goal is to clarify the types of waters that are covered by the Clean Water Act, offer increased certainty to regulated entities, and keep in place exemptions and exclusions for farming, ranching and forestry,” Ms. Stoner said.

Don Parrish, senior director of regulatory relations with the American Farm Bureau Federation, acknowledges that the draft regulations do detail exemptions for agriculture. But he said the E.P.A. and the Army Corps of Engineers have a lot of authority to interpret the rules as they choose, despite reassurances from Tom Vilsack, the agriculture secretary, and agency officials that farm work will not be curtailed.

Mr. Parrish said studies financed by the American Farm Federation showed that the agency’s estimate of its new jurisdiction was flawed because it was based on the current number of landowners who are required to get permits to operate near streams and did not examine those who might be affected in the future. “They can say farmers won’t be impacted by this expansion of authority, but the truth is we just don’t know,” he said. “And from what we have seen from the draft of the regulations, it’s really hard to tell.”

That is what worries farmers like Mr. Lemke.

He said there were dozens of streams and ditches on his farm that carried water only certain times of the year or when it rains, and it is not clear from the draft copy whether they would be covered by the new regulations.

And, Mr. Lemke added, planting seasons could be delayed while the agency goes through the lengthy process to decide if a permit is needed to plow or plant near those usually dry water beds. “Everything we do as farmers is based on timing,” he said. “If I have to go to the E.P.A. to figure out if I need a permit because a ditch I’m planting next to sometimes has water in it, that’s time I’m not planting. And if I’m not planting, I’m not making money.”

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