

# CONSTITUTION

## MODULE 7

# THE LEGISLATIVE BRANCH: HOW CONGRESS WORKS



## THE LEGISLATIVE BRANCH: HOW CONGRESS WORKS

The Constitution grants Congress—our nation’s legislative branch—the power to make laws. The legislative branch is outlined in Article I of the Constitution. The Constitution divides Congress into two houses—the U.S. House of Representatives and the U.S. Senate. The House of Representatives is composed of representatives proportionate to each state’s population. At the same time, the Senate is organized under the principle of equal state representation—with each state, regardless of its population, receiving two senators.

In this module, students will examine primary and secondary sources to learn about the legislative branch’s structure, functions, and powers as granted by the Constitution and defined by the courts over time. Students will also explore the legislative process and the role that civil dialogue and political compromise play in crafting national laws.

### Learning Objectives

At the conclusion of this module, you should be able to:

1. Explain the founders’ vision for Congress and explore the key debates and compromises at the Constitutional Convention.
2. Describe the role that Congress plays in the national government.
3. Identify the powers that the Constitution grants to Congress.
4. Discuss how the Supreme Court has interpreted the powers of Congress over time.
5. Compare the founders’ vision for Congress with how Congress works in practice.

### 7.1 Activity: How Does Congress Work?

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#### Purpose

In this activity, you will explore how Congress works and learn about how the founders expected it to work. You will discuss the value of using a slow and deliberative process to make national laws. However, you will also debate the trade-offs of this system.

#### Process

What is the first thing that comes to your mind when you hear the word Congress? Next, review the [Visual Info Brief: Political Cartoon](#) image and explain what the political cartoonist is trying to

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say about Congress. Finally, list three words or terms that you hear people say about Congress outside of this class. Think about the ways that the news portrays Congress.



After reviewing the image, answer the following questions:

- What is the cartoonist trying to say about Congress?
- List three action words that explain what you hear people saying about Congress.

Now, review the following quotes about Congress's lawmaking process by a leading scholar of the founding era and of the constitutional thought of James Madison and Alexander Hamilton, *Federalist No. 70*:

"Madison's overall aim was not to stymie the will of the majority, but rather to place obstacles in the path of factions, including majority faction. At the same time, he sought to facilitate the development of a just majority, or in other words, the reason of the public. . . . Too swift and facile political communication allows the mere will of the majority, or sheer power, to rule in the regime. The slow, measured process of the communication of ideas, however, refines and modifies the will of the society, subjecting power to the test of right reason." — Colleen Sheehan Professor, School of Civic and Economic Thought and Leadership, Arizona State University

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“The differences of opinion, and the jarrings of parties in [Congress], though they may sometimes obstruct salutary plans, yet often promote deliberation and circumspection, and serve to check excesses in the majority.” — Alexander Hamilton, *Federalist* No. 70

Reflect on the quotes and record your answers to the following questions:

- What is the scholar trying to say about Congress and the value of a demanding political process?
- List three ideas that explain how Congress is supposed to work.

### Activity 7.1 Notes & Teachers Comments

#### Launch

Ask the students the first thing that comes to mind when they hear the word “Congress.” Write ideas on the board and note any patterns.

Give students time to analyze the political cartoon and as a group answer the guiding questions.

What is the cartoonist trying to say about Congress? The goal of this analysis is to address the impressions that students may already have—that Congress is dysfunctional, with a lot of partisan fights. The system can be nasty. It can be slow. Often, Congress struggles to get anything done—even when it seems to many Americans like there are serious problems worth addressing.

Then, you can pivot to the founders’ vision and the benefits of the system. Give students time to analyze the scholarly quotes about the value of a demanding political process and as a group answer the guiding questions.

The Colleen Sheehan quote is from the following article: [A Madisonian Constitution for All](#).

#### Activity Synthesis

Now, share the following big idea: What if I told you that the founders wanted to slow down the political process in Congress? Discuss the idea of deliberation and the benefits and drawbacks of a slow process for making national laws. The goal is to get the students to see (and/or debate) the benefits of a slow, demanding process. When the process works, it is designed to promote deliberation, debate, compromise, and (ideally) better laws. However, the founders hoped that this demanding process would also ease public passions, curb bad laws, guard against government abuses, protect minority rights, and avoid government by faction (or, in today’s terms, parties).

- What are the benefits of a slow, deliberative process? Why do you think that the Founding generation designed it this way?
- What are the drawbacks of such a system?
- How can such a process benefit a growing (and diverse) society with different needs and viewpoints?
- What are some of the challenges of such a system in this context?

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#### Activity Extension (Optional)

Now that students have a better understanding of the debate, ask the following question:

- What are examples of the advantages and disadvantages of a slow lawmaking process?

## 7.2 Activity: Structure, Powers, and Limits of Congress

### Purpose

Article I establishes the national government’s legislative branch—Congress.

Article I is the longest part of the Constitution. That’s because the Founding generation expected Congress to be the most powerful—and most dangerous—branch of government. Article I also sets out the powers of Congress and lists certain limits to those powers.

In this activity, you will explore the structure, powers, and limits of Congress.

### Process

As a group, read and review the [Article I, Section 8 text](#), on the Powers of Congress from the *Interactive Constitution*. Then, read the Common Interpretation essay [Article I, Sec. 8: Federalism and the Scope of National Power](#) by Randy Barnett and Heather Gerken and answer the questions in the [Activity Guide: Powers and Structure of Congress worksheet](#).

Next, your group will then be assigned an additional *Interactive Constitution* Common Interpretation essay on Congress. Read the assigned essay and complete the final section of the [Activity Guide: Powers and Structure of Congress](#) worksheet for your group.

As a class, read the following article:

- [Article I, Section 8, Text, IC Essay on Federalism and the Scope of National Power](#)

Then, read the following sections:

- **Group 1:** Article I, Section 1—Legislative Power
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- **Group 2:** Article I, Section 2—U.S. House
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- **Group 3:** Article I, Section 3—U.S. Senate
  - [Text of the Constitution](#)
  - [Common Interpretation](#)

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- **Group 4:** Article I, Section 4–Elections
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- **Group 5:** Article I, Section 7–Lawmaking Process
  - [Text of the Constitution](#)
  - [Common Interpretation](#)

When finished, work with your groups to create a class poster that shows how Congress works.

- Define the structure, powers, or limits on a Post-it note and add it to the correct circle.
- Add elements to the poster to support main ideas and contribute details, for example, drawings, videos, or QR codes.
- Add combination jobs to the center of the diagram.

#### **Activity 7.2 Notes & Teachers Comments**

##### **Launch**

Review the overall summary of how Congress works and the flow/process of its lawmaking functions.

- Role of Congress: Students define the role of Congress in the national government.
- Parts of Congress: Students define the different parts of Congress and their roles and authority.
- Defined powers: Students list the powers of Congress and tag it as a role of the House, the Senate, or both. Include how Congress checks the other branches.
- Defined limits: Students list the limits of Congress's power. Also define the other branches that set those limits.

Split the class into groups and assign part(s) of Article I. Then, ask students to complete the [Activity Guide: Powers and Structure of Congress](#) worksheet for your assigned group.

Each group will contribute to a full class poster that shows how Congress works. The poster will be a large Venn diagram that will list structure, powers, and limits, and students will define the structure, power, or limit on a Post-it note and add it to the correct circle. Combination jobs will be added to the center.

##### **Activity Synthesis**

Have students explain their contribution to the poster and summarize how Congress works.

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### Module 7: The Legislative Branch: How Congress Works Lesson Plan

#### 7.3 Video Activity: Powers of Congress

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##### Purpose

In this activity, you will explore how Article I of the Constitution sets out the powers of Congress and also establishes limits on those powers. You will also explore how Supreme Court cases have interpreted those powers over time.

##### Process

Watch [the video](#) about the powers of Congress.

Then, complete the [Video Reflection: Powers of Congress](#) worksheet.

Identify any areas that are unclear to you or where you would like further explanation. Be prepared to discuss your answers in a group and to ask your teacher any remaining questions.

#### **Activity 7.3 Notes & Teachers Comments**

##### Launch

Give students time to watch the video and complete the worksheet.

Hand out the [Video Reflection: Powers of Congress](#) worksheet and ask students to organize the decisions by the Supreme Court and the effects on congressional power over time.

##### Activity Synthesis

Have students share their responses with one or two students and then review as a class.

##### Activity Extension (Optional)

Now that students have a better understanding of the powers of Congress, ask students to find a current news article about Congress.

#### 7.4 Activity: Tests of Congressional Power

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##### Purpose

In this activity, you will explore how various Supreme Court cases have interpreted the scope of congressional power in the Supreme Court's own words. Examine these three cases to understand how the Court's rulings shaped these powers over time.

##### Process

Work in your group to review one of the following cases:

- [Primary Source: McCulloch v. Maryland \(1819\)](#)
- [Primary Source: Wickard v. Filburn \(1942\)](#)
- [Primary Source: United States v. Lopez \(1995\)](#)

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After you review the case brief, complete the [Case Brief: Tests of Congressional Power](#) worksheet.

After you have completed the worksheet, create a podcast (3–5 minutes) with your group covering the following topics:

- What is the main topic of the case?
- What is the constitutional question in the case?
- What happened? Who are the people in the case?
- How did it affect the powers of Congress back then and today?

### **Activity 7.4 Notes & Teachers Comments**

#### **Launch**

Divide the class into three groups and assign a case to each group to review and answer the questions in the worksheet. Then, the group will create a podcast about their case.

Looking for some support on how to do a podcast in class? Check out this list of helpful websites to support this fun and educational learning experience for your students.

- [Hello Teacher Lady](#)
- [New York Times: Project Audio](#)
- [Reading Rockets: Creating Podcasts with Your Students](#)

#### **Activity Synthesis**

Have students share their podcast recordings with the rest of the class.

#### **Activity Extension (Optional)**

Now that students have a better understanding of current court cases, ask the following question:

- The Supreme Court has trimmed back a bit on the powers of Congress. Do you think that is a good thing or bad thing?



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#### 7.5 Activity: How a Bill Becomes a Law

##### Purpose

The role of a member of Congress is to craft laws that are consistent with the Constitution and that promote the common good. However, the Constitution itself lays out a demanding process—one that slows politics down, promotes deliberation and debate, and (often) requires compromise. In this activity, you will explore what the Constitution says about how Congress works and get to experience how a bill becomes a law and more importantly how to build consensus.

##### Process

You are a U.S. senator. Work with your team to complete the [Activity Guide: Building Consensus](#) worksheet.

After you write your law, you can begin to work with other teams to persuade, rewrite, and compromise to make a law that is consistent with the Constitution and works for the entire country.

#### Activity 7.5 Notes & Teachers Comments

##### Launch

Break students into groups that represent regions of the United States. Each team will represent a different region (NE, SE, NW, SW, etc.) and their interests, but all groups will be given the same topic to address in a new law. Provide details on how each step of the process works from the [Activity Guide](#). Depending on how much time you have in class, have students brainstorm national issues and pick from the list they develop. Some issues for students to consider are education, taxes, the economy, national security, health care, immigration, the environment, guns, and crime.

A key to productive consensus building is building norms and civil dialogue practices in your classroom. For more information on these classroom tools, check out the [Civil Dialogue Toolkit](#).

##### Activity Synthesis

Have students share their thoughts on engaging in the process of writing a new law. Which parts were the most frustrating? Which parts were the most satisfying? How does the system compare to the founders' vision?

##### Activity Extension (Optional)

Now that students have a better understanding of how to create a new law, have them read the article, [Political Polarization Killed the Filibuster](#) and answer the following questions:

- What are the benefits of having a filibuster? What are the drawbacks?
- What would be the implications of removing the filibuster?

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Lesson Plan

### **7.6 Test Your Knowledge**

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#### **Purpose**

Congratulations for completing the activities in this module! Now it's time to apply what you have learned about the basic ideas and concepts covered.

#### **Process**

Complete the questions in the following quiz to test your knowledge.

- [Test Your Knowledge: The Legislative Branch: How Congress Works](#)



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### Module 7: The Legislative Branch: How Congress Works 7.2 Activity Guide

# POWERS AND STRUCTURE OF CONGRESS

Article I establishes the national government's legislative branch—Congress.

Article I is the longest part of the Constitution. That's because the Founding generation expected Congress to be the most powerful—and most dangerous—branch of government. Article I also sets out the powers of Congress and lists certain limits to those powers.

In this activity, you will explore the structure, powers, and limits of Congress.

Read the text and *Interactive Constitution* essays for Article I, Section 8, plus one additional section of Article I, as assigned to your group by your instructor. As you read the assigned text, circle or highlight key words and phrases. Then, complete the worksheet with your group.

Article I, Section 8—Powers of Congress

- [Text of the Constitution](#)
- [Interactive Constitution Common Interpretation: Federalism and the Overall Scope of Federal Power](#)

Read ONE of the following:

- Article I, Section 1—Legislative Power
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- Article I, Section 2—U.S. House
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- Article I, Section 3—U.S. Senate
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- Article I, Section 4—Elections
  - [Text of the Constitution](#)
  - [Common Interpretation](#)
- Group 5: Article I, Section 7—Lawmaking Process
  - [Text of the Constitution](#)
  - [Common Interpretation](#)

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#### 7.2 Activity Guide

Provision	What words of the <u>text</u> stood out to you?	Paraphrase the <u>text</u>	Notes on the <u>Interactive Constitution Essay</u>
Article I, Section 8 Powers of Congress			
<hr/> <i>(Write your assigned provision.)</i>			

After reading the assigned sections, answer the following questions and be prepared to discuss with the entire class, ensuring that you share your group's findings on your assigned provision.

What is the role of Congress?	
Describe the structure of Congress.	
What are the powers defined? Any limits?	

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#### 7.3 Video Reflection

## POWERS OF CONGRESS

In this activity, you will explore how Article I of the Constitution sets out the powers of Congress and also establishes limits on those powers. You will also explore how Supreme Court cases have interpreted those powers over time.

Watch the [video](#) and complete the questions.

Supreme Court Case	What was the key constitutional question in the case?	How did the Court rule in the case?	What effect did the case have on congressional power over time?
<i>McCulloch v. Maryland</i>			
<i>Wickard v. Filburn</i>			
<i>United States v. Lopez</i>			

Share your worksheet responses in small groups and look for key similarities or differences. Be prepared to discuss your work with the rest of the class.

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# MCCULLOCH V. MARYLAND (1819)

## SUMMARY

View the case on the National Constitution Center's Website [here](#).

*McCulloch v. Maryland* involves one of the first disputes in American history over the scope of the new national government's powers: whether Congress could incorporate a Bank of the United States. This was controversial in the 1790s because Southern members of Congress and the executive branch, such as James Madison and Thomas Jefferson, believed that a national bank would benefit only Northern mercantile interests and would create a financial aristocracy; they believed that the new nation should depend on farmers and what they called "agrarian virtue." They generally feared a powerful national government. Alexander Hamilton and others, on the other hand, argued that a national bank was critical to facilitating commerce and the borrowing of money, both of which would be indispensable to the new nation.

[Read the Full Opinion](#)

### **Excerpt: Majority Opinion, Chief Justice Marshall**

**Ours is a government of limited powers, but debates over the scope of those powers continue.** This government is acknowledged by all, to be one of enumerated powers. . . . But the question respecting the extent of the powers actually granted, is perpetually arising, and will probably continue to arise, so long as our system shall exist. In discussing these questions, the conflicting powers of the general and state governments must be brought into view, and the supremacy of their respective laws, when they are in opposition, must be settled.

**When its actions are constitutional, the national government is supreme; just read Article VI's Supremacy Clause.** If any one proposition could command the universal assent of mankind, we might expect it would be this—that the government of the Union, though limited in its powers, is supreme within its sphere of action. . . . [T]his question is not left to mere reason: the people have, in express terms, decided it, by saying, 'this constitution, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,' . . .

**There is no "Charter Bank" Clause in the Constitution; but the national government holds implied powers, not just those explicitly set out in the Constitution.** Among the enumerated powers, we do not find that of establishing a bank or creating a corporation. But there is no phrase in the instrument which, like the articles of confederation, excludes incidental

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or implied powers; and which requires that everything granted shall be expressly and minutely described. . . .

**A constitution sets out the broad outlines of the government's powers.** A constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of the prolixity of a legal code, and could scarcely be embraced by the human mind. . . . In considering this question, then, we must never forget that it is a constitution we are expounding. . . .

**The power to charter a bank may be implied by some of the broad powers explicitly granted to Congress by the Constitution.** The power of creating a corporation, though appertaining to sovereignty, is not, like the power of making war, or levying taxes, or of regulating commerce, a great substantive and independent power, which cannot be implied as incidental to other powers, or used as a means of executing them. It is never the end for which other powers are exercised, but a means by which other objects are accomplished. . . .

**The Necessary and Proper Clause confirms this reading.** But the constitution of the United States has not left the right of congress to employ the necessary means, for the execution of the powers conferred on the government, to general reasoning. To its enumeration of powers is added, that of making '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 thereof.' . . .

**The Constitution is meant to endure, so it sets out broad powers and principles, not all of the details.** This provision is made in a constitution, intended to endure for ages to come, and consequently, to be adapted to the various crises of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur. . . .

**This is one of the most famous passages in constitutional law; it's worth reading closely.** [T]he sound construction of the constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional. . . .



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**Congress has the power to charter a national bank, but does Maryland have the power to tax it?** It being the opinion of the court, that the act incorporating the bank is constitutional; and that the power of establishing a branch in the state of Maryland might be properly exercised by the bank itself, we proceed to inquire . . . [w]hether the state of Maryland may, without violating the constitution, tax that branch? . . .

**The power to tax gives a government the power to destroy; in other words, it gives it the power to set a tax so high that it can tax a given institution or practice out of existence.**

That the power to tax involves the power to destroy; that the power to destroy may defeat and render useless the power to create; that there is a plain repugnance in conferring on one government a power to control the constitutional measures of another, which other, with respect to those very measures, is declared to be supreme over that which exerts the control, are propositions not to be denied. . . .

**Maryland doesn't have the power to tax the national bank; the national government is supreme.** If the states may tax one instrument, employed by the government in the execution of its powers, they may tax any and every other instrument. They may tax the mail; they may tax the mint . . . . This was not intended by the American people. They did not design to make their government dependent on the states. . . .

[Read the Full Opinion](#)

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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7.4 Primary Source

### WICKARD V. FILBURN (1942)

#### SUMMARY

View the case on the National Constitution Center's Website [here](#).

During the Great Depression, Congress passed the Agricultural Adjustment Act of 1938, a law regulating the production of wheat in an attempt to stabilize the economy and the nation's food supply. In particular, this law set limits on the amount of wheat that farmers could grow on their own farms. Roscoe Filburn, a farmer, sued Claude Wickard, the Secretary of Agriculture, when he was penalized for violating the statute. Filburn argued that the amount of wheat that he produced in excess of the quota was for his personal use (e.g., feeding his own animals), not commerce (e.g., selling it on the market), and therefore could not be constitutionally regulated. The Supreme Court upheld the law, explaining that Congress could use its commerce power to regulate such activity because, even if Filburn's actions had only a minimal impact on commerce, the aggregated effect of an individual farmer's wheat-growing exerted a substantial economic effect on interstate commerce. In terms of the Constitution, this holding offered a broad reading of Congress's power under the Commerce Clause.

[Read the Full Opinion](#)

#### **Excerpt: Majority Opinion, Justice Jackson**

**Old constitutional categories no longer apply; we can't answer Commerce Clause questions by applying wooden formulas.** The Court's recognition of the relevance of the economic effects in the application of the Commerce Clause exemplified by this statement has made the mechanical application of legal formulas no longer feasible. Once an economic measure of the reach of the power granted to Congress in the Commerce Clause is accepted, questions of federal power cannot be decided simply by finding the activity in question to be 'production' nor can consideration of its economic effects be foreclosed by calling them 'indirect.'

...

**We can't just look at Filburn's actions in isolation; if many people acted as Filburn did, that would have a massive effect on the market.** The maintenance by government regulation of a price for wheat undoubtedly can be accomplished as effectively by sustaining or increasing the demand as by limiting the supply. The effect of the statute before us is to restrict the amount which may be produced for market and the extent as well to which one may forestall resort to the market by producing to meet his own needs. That [Filburn's] own contribution to the demand for wheat may be trivial by itself is not enough to remove him from the scope of federal

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regulation where, as here, his contribution, taken together with that of many others similarly situated, is far from trivial.

**Actions like those of Filburn, when combined with the actions of others, affects the price of wheat on the market; Congress can regulate this activity under the Commerce Clause.**

It is well established by decisions of this Court that the power to regulate commerce includes the power to regulate the prices at which commodities in that commerce are dealt in and practices affecting such prices. One of the primary purposes of the Act in question was to increase the market price of wheat and to that end to limit the volume thereof that could affect the market. It can hardly be denied that a factor of such volume and variability as home-consumed wheat would have a substantial influence on price and market conditions.

This may arise because being in marketable condition such wheat overhangs the market and if induced by rising prices tends to flow into the market and check price increases. But if we assume that it is never marketed, it supplies a need of the man who grew it which would otherwise be reflected by purchases in the open market. Home-grown wheat in this sense competes with wheat in commerce. The stimulation of commerce is a use of the regulatory function quite as definitely as prohibitions or restrictions thereon. This record leaves us in no doubt that Congress may properly have considered that wheat consumed on the farm where grown if wholly outside the scheme of regulation would have a substantial effect in defeating and obstructing its purpose to stimulate trade therein at increased prices.

**This may seem unfair to Filburn, but regulations often restrain individuals; it's up to Congress, not the courts, to balance such harms against the benefits to the wider community.** It is said, however, that this Act, forcing some farmers into the market to buy what they could provide for themselves, is an unfair promotion of the markets and prices of specializing wheat growers. It is of the essence of regulation that it lays a restraining hand on the self-interest of the regulated and that advantages from the regulation commonly fall to others. The conflicts of economic interest between the regulated and those who advantage by it are wisely left under our system to resolution by the Congress under its more flexible and responsible legislative process. Such conflicts rarely lend themselves to judicial determination. And with the wisdom, workability, or fairness, of the plan of regulation we have nothing to do. . . .

**Plus, it's not even clear that the program harms a farmer like Filburn.** In its effort to control total supply, the Government gave the farmer a choice which was, of course, designed to encourage cooperation and discourage non-cooperation. The farmer who planted within his allotment was in effect guaranteed a minimum return much above what his wheat would have brought if sold on a world market basis. Exemption from the applicability of quotas was made in favor of small producers. The farmer who produced in excess of his quota might escape penalty by delivering his wheat to the Secretary or by storing it with the privilege of sale without penalty in a later year to fill out his quota, or irrespective of quotas if they are no longer in effect, and he

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could obtain a loan of 60 per cent of the rate for cooperators, or about 59 cents a bushel, on so much of his wheat as would be subject to penalty if marketed. Finally, he might make other disposition of his wheat, subject to the penalty. It is agreed that as the result of the wheat programs he is able to market his wheat at a price 'far above any world price based on the natural reaction of supply and demand.' We can hardly find a denial of due process in these circumstances, particularly since it is even doubtful that appellee's burdens under the program outweigh his benefits. It is hardly lack of due process for the Government to regulate that which it subsidizes.

[Read the Full Opinion](#)

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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## UNITED STATES V. LOPEZ (1995)

### SUMMARY

View the case on the National Constitution Center's Website [here](#).

*United States v. Lopez* reaffirmed certain limits on congressional power. There, Alphonso Lopez was arrested for carrying a concealed weapon into his high school. He was charged under the Gun-Free School Zones Act of 1990, a congressional law that banned people from bringing guns into school zones. Lopez challenged his conviction, arguing that the law exceeded Congress's power under the Commerce Clause. In a 5-4 decision, the Supreme Court agreed with Lopez and struck down the law. This was the first time that the Court struck down a law passed under Congress's commerce power since the New Deal Revolution of 1937. In the end, the Court used *Lopez* to push back against some of the broadest assertions of congressional power under the Commerce Clause—reaffirming that the Constitution creates a national government with limited powers.

[Read the Full Opinion](#)

### **Excerpt: Majority Opinion, Chief Justice Rehnquist**

**The Act is designed to keep guns out of school zones; this law is unconstitutional; it extends beyond Congress's power under the Commerce Clause.** In the Gun-Free School Zones Act of 1990, Congress made it a federal offense “for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.” . . . The Act neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce. We hold that the Act exceeds the authority of Congress “[t]o regulate Commerce . . . among the several States . . . .”

**Lopez brought a gun to school.** On March 10, 1992, respondent, who was then a 12th-grade student, arrived at Edison High School in San Antonio, Texas, carrying a concealed .38-caliber handgun and five bullets. Acting upon an anonymous tip, school authorities confronted respondent, who admitted that he was carrying the weapon. . . .

**He was found guilty at trial.** The District Court conducted a bench trial, found him guilty of violating [Gun-Free School Zones Act], and sentenced him to six months' imprisonment . . . .

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**The Constitution creates a national government of limited powers.** We start with first principles. The Constitution creates a Federal Government of enumerated powers. . . . As James Madison 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.” . . . .

**Congress has the power to regulate interstate commerce.** The Constitution delegates to Congress the power “[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” . . . The Court, through Chief Justice Marshall, first defined the nature of Congress’ commerce power in *Gibbons v. Ogden* . . . : “Commerce, undoubtedly, is traffic, but it is something more: it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse. . . .”

**But there are limits to this power.** The *Gibbons* Court, however, acknowledged that limitations on the commerce power are inherent in the very language of the Commerce Clause. . . .

**Congress can only regulate interstate commerce.** Comprehensive as the word “among” is, it may very properly be restricted to that commerce which concerns more States than one . . . . The enumeration presupposes something not enumerated; and that something, if we regard the language, or the subject of the sentence, must be the exclusively internal commerce of a State. . . .

**The Court didn’t deal with many cases defining Congress’s commerce power prior to the Civil War.** For nearly a century thereafter, the Court’s Commerce Clause decisions dealt but rarely with the extent of Congress’ power, and almost entirely with the Commerce Clause as a limit on state legislation that discriminated against interstate commerce. . . . Under this line of precedent, the Court held that certain categories of activity such as “production,” “manufacturing,” and “mining” were within the province of state governments, and thus were beyond the power of Congress under the Commerce Clause. . . .

**Congress became more active in the late 1800s, and the Court set some limits on Congress’s commerce power.** In 1887, Congress enacted the Interstate Commerce Act . . . , and in 1890, Congress enacted the Sherman Antitrust Act . . . . These laws ushered in a new era of federal regulation under the commerce power. When cases involving these laws first reached this Court, we imported from our negative Commerce Clause cases the approach that Congress could not regulate activities such as “production,” “manufacturing,” and “mining.”

**The New Deal Revolution set aside these limits and read Congress’s commerce power broadly.** *Jones & Laughlin Steel, Darby, and Wickard* [key New Deal-era decisions from 1937 to 1942] ushered in an era of Commerce Clause jurisprudence that greatly expanded the

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previously defined authority of Congress under that Clause. In part, this was a recognition of the great changes that had occurred in the way business was carried on in this country.

**The economy changed, and more business crossed state lines.** Enterprises that had once been local or at most regional in nature had become national in scope. But the doctrinal change also reflected a view that earlier Commerce Clause cases artificially had constrained the authority of Congress to regulate interstate commerce.

**However, even these expansive decisions acknowledged some limits to Congress's commerce power.** But even these modern-era precedents which have expanded congressional power under the Commerce Clause confirm that this power is subject to outer limits. . . . Since that time, the Court has . . . undertaken to decide whether a rational basis existed for concluding that a regulated activity sufficiently affected interstate commerce.

**There are three broad categories of activity that Congress can regulate under its commerce power.** Consistent with this structure, we have identified three broad categories of activity that Congress may regulate under its commerce power. . . . First, Congress may regulate the use of the channels of interstate commerce. . . . Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. . . . Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce . . . .

**In *Lopez*, the Act can only be upheld as the regulation of an activity that substantially affects interstate commerce.** We now turn to consider the power of Congress, in the light of this framework, to [the Gun-Free School Zones Act]. The first two categories of authority may be quickly disposed of: [the Act] is not a regulation of the use of the channels of interstate commerce, nor is it an attempt to prohibit the interstate transportation of a commodity through the channels of commerce; nor can [the Act] be justified as a regulation by which Congress has sought to protect an instrumentality of interstate commerce or a thing in interstate commerce. Thus, if [the Act] is to be sustained, it must be under the third category as a regulation of an activity that substantially affects interstate commerce.

**The Court has upheld many regulations in this category; they generally involve the regulation of economic activities.** First, we have upheld a wide variety of congressional Acts regulating intrastate economic activity where we have concluded that the activity substantially affected interstate commerce. Examples include the regulation of intrastate coal mining; . . . intrastate extortionate credit transactions, . . . restaurants utilizing substantial interstate supplies, . . . inns and hotels catering to interstate guests, . . . and production and consumption of homegrown wheat . . . . These examples are by no means exhaustive, but the pattern is clear.

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Where economic activity substantially affects interstate commerce, legislation regulating that activity will be sustained.

**The Act here is a criminal law that doesn't have anything to do with commerce; it doesn't regulate an economic activity.** [The Gun-Free School Zones Act] is a criminal statute that by its terms has nothing to do with “commerce” or any sort of economic enterprise, however broadly one might define those terms. [The Act] is not an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated. It cannot, therefore, be sustained under our cases upholding regulations of activities that arise out of or are connected with a commercial transaction, which viewed in the aggregate, substantially affects interstate commerce.

**There is no specific language that limits the law's reach to activities that have an explicit connection to or an effect on interstate commerce.** Second, [the Act] contains no jurisdictional element which would ensure, through case-by-case inquiry, that the firearm possession in question affects interstate commerce. . . . [The Act] has no express jurisdictional element which might limit its reach to a discrete set of firearm possessions that additionally have an explicit connection with or effect on interstate commerce.

**The government argues that the Act is constitutional because a firearm in a school zone may lead to violent crime, and violent crime, in turn, substantially affects the national economy.** The Government's essential contention . . . is that we may determine here that [the Act] is valid because possession of a firearm in a local school zone does indeed substantially affect interstate commerce. . . . The Government argues that possession of a firearm in a school zone may result in violent crime and that violent crime can be expected to affect the functioning of the national economy in two ways. First, the costs of violent crime are substantial, and, through the mechanism of insurance, those costs are spread throughout the population. . . . Second, violent crime reduces the willingness of individuals to travel to areas within the country that are perceived to be unsafe. . . . The Government also argues that the presence of guns in schools poses a substantial threat to the educational process by threatening the learning environment. A handicapped educational process, in turn, will result in a less productive citizenry. That, in turn, would have an adverse effect on the Nation's economic well-being. As a result, the Government argues that Congress could rationally have concluded that [the Act] substantially affects interstate commerce.

**The government's argument goes too far; it sets virtually no limits on congressional power; plus, law enforcement is an area traditionally left to the states.** We pause to consider the implications of the Government's arguments. The Government admits, under its “costs of crime” reasoning, that Congress could regulate not only all violent crime, but all activities that might lead to violent crime, regardless of how tenuously they relate to interstate commerce. . . . Similarly, under the Government's “national productivity” reasoning, Congress



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could regulate any activity that it found was related to the economic productivity of individual citizens: family law (including marriage, divorce, and child custody), for example. Under the theories that the Government presents in support of [the Gun-Free School Zones Act], it is difficult to perceive any limitation on federal power, even in areas such as criminal law enforcement or education where States historically have been sovereign. Thus, if we were to accept the Government's arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.

**The dissent can't identify any meaningful limits on Congress's commerce power under the government's theory.** Although JUSTICE BREYER argues that acceptance of the Government's rationales would not authorize a general federal police power, he is unable to identify any activity that the States may regulate but Congress may not. . . .

**It may sometimes be difficult to determine whether an activity within a single state is commercial or non-commercial, but constitutional law often raises difficult line-drawing questions; we must do our job and police the outer limits of Congress's power.**

Admittedly, a determination whether an intrastate activity is commercial or noncommercial may in some cases result in legal uncertainty. But, so long as Congress' authority is limited to those powers enumerated in the Constitution, and so long as those enumerated powers are interpreted as having judicially enforceable outer limits, congressional legislation under the Commerce Clause always will engender "legal uncertainty." . . . The Constitution mandates this uncertainty by withholding from Congress a plenary police power that would authorize enactment of every type of legislation. . . . Any possible benefit from eliminating this "legal uncertainty" would be at the expense of the Constitution's system of enumerated powers.

**Lopez doesn't involve an economic activity that might substantially affect interstate commerce.** The possession of a gun in a local school zone is in no sense an economic activity that might, through repetition elsewhere, substantially affect any sort of interstate commerce. Respondent was a local student at a local school; there is no indication that he had recently moved in interstate commerce, and there is no requirement that his possession of the firearm have any concrete tie to interstate commerce.

**If we let the government win here, then we are saying that there are no meaningful limits on Congress's commerce power; but ours remains a government of limited powers.** To uphold the Government's contentions here, we would have to pile inference upon inference in a manner that would bid fair to convert congressional authority under the Commerce Clause to a general police power of the sort retained by the States. Admittedly, some of our prior cases have taken long steps down that road, giving great deference to congressional action. . . . The broad language in these opinions has suggested the possibility of additional expansion, but we decline here to proceed any further. To do so would require us to conclude that the Constitution's enumeration of powers does not presuppose something not enumerated . . . and that there

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never will be a distinction between what is truly national and what is truly local . . . . This we are unwilling to do.

#### **Excerpt: Dissent, Justice Breyer**

**This law is constitutional under well-established precedent.** The issue in this case is whether the Commerce Clause authorizes Congress to enact a statute that makes it a crime to possess a gun in, or near, a school. . . . In my view, the statute falls well within the scope of the commerce power as this Court has understood that power over the last half century. . . .

**Three principles guide me here; first, Congress may regulate local activity as long as it significantly affects interstate commerce.** In reaching this conclusion, I apply three basic principles of Commerce Clause interpretation. First, the power to “regulate Commerce . . . among the several States” . . . encompasses the power to regulate local activities insofar as they significantly affect interstate commerce.

**Second, to determine whether an activity has such effects, we may look at the cumulative effects of similar actions.** Second, in determining whether a local activity will likely have a significant effect upon interstate commerce, a court must consider, not the effect of an individual act (a single instance of gun possession), but rather the cumulative effect of all similar instances (i. e., the effect of all guns possessed in or near schools). . . .

**Third, we should give Congress some flexibility in this area; it involves empirical judgments better left to the elected branches than the courts.** Third, the Constitution requires us to judge the connection between a regulated activity and interstate commerce, not directly, but at one remove. Courts must give Congress a degree of leeway in determining the existence of a significant factual connection between the regulated activity and interstate commerce—both because the Constitution delegates the commerce power directly to Congress and because the determination requires an empirical judgment of a kind that a legislature is more likely than a court to make with accuracy. The traditional words “rational basis” capture this leeway. . . . Thus, the specific question before us, as the Court recognizes, is not whether the “regulated activity sufficiently affected interstate commerce,” but, rather, whether Congress could have had “a rational basis” for so concluding. . . .

**Even if we uphold this law, there are still limits to Congress’s commerce power; here, violence can disrupt education and this, in turn, would harm the national economy.** To hold this statute constitutional is not to “obliterate” the “distinction between what is national and what is local” . . . ; nor is it to hold that the Commerce Clause permits the Federal Government to “regulate any activity that it found was related to the economic productivity of individual citizens,” to regulate “marriage, divorce, and child custody,” or to regulate any and all aspects of education. . . . First, this statute is aimed at curbing a particularly acute threat to the

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educational process—the possession (and use) of life-threatening firearms in, or near, the classroom. The empirical evidence . . . unmistakably documents the special way in which guns and education are incompatible. . . . This Court has previously recognized the singularly disruptive potential on interstate commerce that acts of violence may have. . . . Second, the immediacy of the connection between education and the national economic wellbeing is documented by scholars and accepted by society at large in a way and to a degree that may not hold true for other social institutions. It must surely be the rare case, then, that a statute strikes at conduct that (when considered in the abstract) seems so removed from commerce, but which (practically speaking) has so significant an impact upon commerce.

**I am simply applying well-established constitutional doctrine to a new law.** In sum, a holding that the particular statute before us falls within the commerce power would not expand the scope of that Clause. Rather, it simply would apply pre-existing law to changing economic circumstances. . . . It would recognize that, in today’s economic world, gun-related violence near the classroom makes a significant difference to our economic, as well as our social, well-being.

**The majority’s ruling conflicts with existing doctrine.** The majority’s holding—that [the Gun-Free School Zones Act] falls outside the scope of the Commerce Clause—creates three serious legal problems. First, the majority’s holding runs contrary to modern Supreme Court cases that have upheld congressional actions despite connections to interstate or foreign commerce that are less significant than the effect of school violence. . . .

**This Act touches on a local activity with massive effects on the national economy.** Businesses are less likely to locate in communities where violence plagues the classroom. Families will hesitate to move to neighborhoods where students carry guns instead of books. . . . And (to look at the matter in the most narrowly commercial manner), interstate publishers therefore will sell fewer books and other firms will sell fewer school supplies where the threat of violence disrupts learning. Most importantly, . . . the local instances here, taken together and considered as a whole, create a problem that causes serious human and social harm, but also has nationally significant economic dimensions. . . .

**The Court’s new approach will be difficult to apply over time.** The second legal problem the Court creates comes from its apparent belief that it can reconcile its holding with earlier cases by making a critical distinction between “commercial” and noncommercial “transaction[s].” . . . That is to say, the Court believes the Constitution would distinguish between two local activities, each of which has an identical effect upon interstate commerce, if one, but not the other, is “commercial” in nature. As a general matter, this approach fails to heed this Court’s earlier warning [in *Wickard v. Filburn*] not to turn “questions of the power of Congress” upon “formula[s]” that would give “controlling force to nomenclature . . . and foreclose consideration of the actual effects of the activity in question upon interstate commerce.”

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**The Court’s ruling unsettles a well-settled area of law.** The third legal problem created by the Court’s holding is that it threatens legal uncertainty in an area of law that, until this case, seemed reasonably well settled. . . .

**I respectfully dissent.** In sum, to find this legislation within the scope of the Commerce Clause would permit “Congress ... to act in terms of economic ... realities.” . . . It would interpret the Clause as this Court has traditionally interpreted it, with the exception of one wrong turn subsequently corrected. . . . Upholding this legislation would do no more than simply recognize that Congress had a “rational basis” for finding a significant connection between guns in or near schools and (through their effect on education) the interstate and foreign commerce they threaten. . . . Respectfully, I dissent.

[Read the Full Opinion](#)

**\*Bold sentences give the big idea of the excerpt and are not a part of the primary source.**

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7.4 Case Brief

### TESTS OF CONGRESSIONAL POWER

In this activity, you will explore how various Supreme Court cases have interpreted the scope of congressional power in the Supreme Court's own words. Examine these three cases to understand how the Court's rulings shaped these powers over time.

You will work with a group to review one of the following cases:

- [McCulloch v. Maryland \(1819\)](#)
- [Wickard v. Filburn \(1942\)](#)
- [United States v. Lopez \(1963\)](#)

Read excerpts from your assigned case from the *Founders' Library* and complete the chart below as if your role is to brief the case like a constitutional lawyer.

Case Name:

Facts:

Who are all the people (parties) associated with the case? What was the dispute between them?

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#### 7.4 Case Brief

##### Issue:

What is the issue in the case? What constitutional provision is at issue? What is the constitutional question that the Supreme Court has to answer?

##### Outcome/Ruling:

How does the Court rule? What was the outcome in the case? Who won and who lost? How did the justices vote? What sort of rule does the Court come up with to resolve the issue?

##### Reasoning:

Why did the Court rule that way? How did this decision shape the powers of Congress? How does the Court apply the rule to the facts of the case? How does the Court reason through the issue? What is the chain of its logic? What factor(s) seem to be driving the Court's reasoning? Is there any connection to separation of powers, federalism, or checks and balances? Is there any connection to the methods of constitutional interpretation that we discussed in Module 1? If relevant, what did the dissenters say?

##### Conclusion/Holding:

## **BUILDING CONSENSUS**

Consensus building is not easy; it means that you have to stand by what you believe is right, and, simultaneously, let go of things you may want. When successful, the process may end with solutions that meet the needs of the larger community but may not be everything you want as an individual. Consensus building begins with establishing rules, norms, and assigning roles for discussion of the issue at hand.

The role of a member of Congress is to craft laws that are consistent with the Constitution and that promote the common good. However, the Constitution itself lays out a demanding process—one that slows politics down, promotes deliberation and debate, and (often) requires compromise. In this activity, you will explore what the Constitution says about how Congress works and get to experience how a bill becomes a law.

Because of the Constitution's demanding lawmaking process, members of Congress have to work with other representatives to ensure that new laws are crafted in a way that draws broad support. This often requires representatives to balance the concerns of their own constituents—the members of their own community—and those held by voters in other communities. Many conversations (and debates) go into this process. To succeed, representatives must use this process to learn about the concerns of the other representatives, negotiate any factional divisions in Congress, reach a compromise, and build a law that attracts broad support. They must also ensure that their new law is consistent with the Constitution. This process is slow. This process takes time. However, the founders predicted that it would lead to better laws. Overall, the goal of the system is to ensure the passage of (good) laws that serve the common good and the rejection of bad ones that are the product of factional interests.

The process of this activity, where we create a new law, includes:

1. Assign each group a region of the country to represent.
2. Establish roles.
3. Identify an issue.
4. Paraphrase.
5. Discuss in small groups (committees).
6. Research (Constitution check).
7. Develop solutions (draft legislation).
8. Work in committees.
9. Discuss in a large group.
10. Send it to the president for signature.

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#### ASSIGNING GROUPS

Your teacher will assign you a group and let you know which region of the country you will be representing.

#### ESTABLISHING ROLES

Now that you have been assigned your group, work with one another to assign each member of the group a role—each role will come with a task to complete during the exercise.

1. Recorder: Completes KWL (described below), drafts group consensus on issue.
2. Facilitator: Keeps conversation moving within small groups.
3. Spokesperson: Summarizes group consensus and presents during small and whole group discussion.
4. Moderator: Facilitates whole group discussion.

#### ISSUE

Select the issue that your group will focus on. Think about a problem facing the country, or a program that you'd like to see implemented.

#### PARAPHRASE THE ISSUE IN YOUR OWN WORDS:

Clearly and transparently state the issue at hand. For this assignment, we will be examining constitutional issues. Remember, the constitutionality of our proposal will turn on whether the Constitution grants Congress the power to address the issue.

- Paraphrase it in your own words to ensure your individual understanding of the problem.
- Next, share with your small group; each member should check that they agree with the paraphrase. Is everyone saying the same thing?



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#### DISCUSS:

Now it's time to discuss the issue. This can be fun, but it can also be taxing on participants, as issues of national importance are often complex and having strongly held views is normal. To help, use the KWL tool below to guide you as you share your thoughts, ideas, and questions about the issue at hand.

<b>Know</b> What I know	<b>Want</b> What I want to know	<b>Learned</b> What I learned

#### RESEARCH: CONSTITUTION CHECK

Focus on how to fix the issue at hand. Again, think about how you address the issue and proposed solutions through a constitutional lens.

We begin by asking questions about the issue's connection to the powers that the Constitution grants to Congress.

1. Where does the Constitution grant Congress the power to address this issue?
2. Does our approach conflict with any constitutional limits on the powers of the national government (e.g., the Bill of Rights, previous Supreme Court decisions)?

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3. Do we need to amend the Constitution to address this issue? What are the prospects of building a broad enough base of support to secure the ratification of a new constitutional amendment?

Research past cases, congressional proposals, state laws, and policy proposals that others have offered in the past. What has worked, and where did they stall? Were there any constitutional arguments offered on either side of the issue? In small deliberative group sessions, discuss ideas and options that you want to propose for the larger group.

#### SOLUTIONS

As a small group, you will begin to write your proposed bill. Get started by summarizing how your legislation will address the issue that you identified earlier in the assignment. Most legislation is pretty long, but a brief 3–5 point outline will work for this assignment.

Next, write a short persuasive paragraph summarizing why your proposal is consistent with the Constitution and the best solution to the problem. (Hint: Cite the specific constitutional text/clause that grants Congress the power to address this issue.) Include a list of the other options that the group considered, and why they were abandoned.

#### COMMITTEE PHASE: COMBINE GROUPS

Generally speaking, before a bill is voted on by the full Senate, it first goes through the committee process. This is a smaller group of senators focused on a specific area of legislation. Your fellow committee members are there to debate your bill, offer amendments, and decide whether to recommend it to the full Senate.

Work with another group, preferably one working on a similar issue. Share your solution with them and ask them for two to three ideas that could help improve it. If possible, try to combine the group's individual solutions into a single bill.

#### LARGE GROUP DISCUSSION

Now it's time to bring your bill before the full Senate! Reconvene for a full class discussion. Share the solutions that your smaller groups decided to propose. Explain why they are consistent with the Constitution. Listen to the proposals from the other groups.

As a large group, your new goal is to narrow the list of proposals and identify bills that earn enough votes to pass both houses of Congress.

Begin by aligning solutions that are similar, and compare and contrast the unique solutions. Combine the most popular ideas, and cut anything that is not gaining consensus. This will give you the best chance of creating a strong bill. Analyze the proposal(s) and ensure that they are consistent with the Constitution.

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#### CONSTITUTIONAL LENS

Where does the Constitution grant Congress the power to address this issue?	Does our approach conflict with any constitutional limits on the powers of the national government? (e.g., the Bill of Rights, previous Supreme Court decisions)	Do we need to amend the Constitution to address this issue?

#### RESEARCH

Past Cases	State Laws	Former Ideas/Past Congressional Proposals

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### SOLUTIONS NOTES



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#### 7.6 Test Your Knowledge

## THE LEGISLATIVE BRANCH: HOW CONGRESS WORKS

Complete questions in the following quiz to test your knowledge of basic ideas and concepts covered in this module.

1. The structure of the legislative branch, which is outlined in Article I of the Constitution, was the result of which compromise during the Constitutional Convention?
  - a. The Virginia Compromise
  - b. The New Jersey Compromise
  - c. The Connecticut Compromise
  - d. The Great Dissent
2. Which of the following can best be described as the primary responsibility of Congress?
  - a. Making laws
  - b. Enforcing laws
  - c. Interpreting laws
  - d. All of the above
3. According to Article I of the Constitution, which of these powers belong(s) to Congress?
  - a. Declaring war
  - b. Collecting taxes
  - c. Granting titles of nobility
  - d. Both A and B
4. The Constitutional Convention established a two-house legislature, or this term, for the United States government.
  - a. Bicameral
  - b. Unicameral
  - c. Tricameral
  - d. Parliamentary
5. How many members currently serve in the U.S. House of Representatives?
  - a. 100
  - b. 270
  - c. 435
  - d. 538

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#### 7.6 Test Your Knowledge

6. How many members currently serve in the U.S. Senate?
  - a. 100
  - b. 270
  - c. 435
  - d. 538
  
7. Article I, Section 8 of the Constitution establishes that Congress has the power to make all laws \_\_\_\_\_.
  - a. Regardless of the will of the people
  - b. That are approved by the president
  - c. Which are necessary and proper
  - d. That are convenient and expedient
  
8. Which landmark Supreme Court decision focused on whether Congress had the authority to create a national bank?
  - a. *McCulloch v. Maryland*
  - b. *Brown v. Board of Education*
  - c. *Dred Scott v. Sandford*
  - d. *Marbury v. Madison*
  
9. In the debate over the national bank, \_\_\_\_\_ believed Congress **did** have the power to create one, while \_\_\_\_\_ believed it **did not**.
  - a. Alexander Hamilton, Thomas Jefferson
  - b. Thomas Jefferson, Alexander Hamilton
  - c. Aaron Burr, Alexander Hamilton
  - d. Thomas Jefferson, Aaron Burr
  
10. In a landmark Supreme Court decision, Chief Justice John Marshall argued that, although there was no specified clause in the Constitution granting Congress the power to create a bank, \_\_\_\_\_.
  - a. The nation did not need a national bank anyway
  - b. It was clearly unconstitutional for Congress to create a bank
  - c. He had ruled in favor of the bank anyway because he didn't like Thomas Jefferson
  - d. Congress could create one because it was consistent with other powers listed in the Constitution

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11. Justice Marshall used the Supremacy Clause of Article VI of the Constitution to argue that \_\_\_\_\_.
  - a. State law was superior to federal law
  - b. Federal law was superior to state law
  - c. The Constitution was not always the supreme law of the land
  - d. Maryland could tax the national bank
  
12. Which of the following was a significant question about the interpretation of the Commerce Clause in Article I of the Constitution?
  - a. What is the meaning of “commerce”?
  - b. What is the meaning of “among the several states”?
  - c. What is the meaning of “to regulate”?
  - d. All of the above
  
13. What is true about the president’s veto power, established by the Constitution?
  - a. The president can veto laws passed by Congress.
  - b. The president’s veto is absolute.
  - c. Congress can override a president’s veto with a two-thirds vote.
  - d. Both A and C
  
14. During the 1930s, Congress’s power to regulate commerce was contested in several Supreme Court cases concerning the policies of the \_\_\_\_\_.
  - a. McKinley Tariff
  - b. New Deal
  - c. Northwest Ordinance
  - d. Housing market
  
15. The case of *Wickard v. Filburn* (1942) dealt with Congress’s authority to do what?
  - a. Declare War
  - b. Change the number of justices on the Supreme Court
  - c. Regulate the amount of wheat that farmers could grow
  - d. Change the prices of oil and gas
  
16. During which era did Congress have the broadest authority to regulate commerce?
  - a. 1800s to 1850s
  - b. 1870s to 1910s
  - c. 1930s to 1990s
  - d. 2000s to today

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#### 7.6 Test Your Knowledge

17. In what case did the Supreme Court strike down the Gun Free Schools Act on the grounds that Congress had exceeded its authority to regulate commerce?
- United States v. Lopez*
  - United States v. Morrison*
  - Gonzales v. Raich*
  - NFIB v. Sebelius*
18. During which time period did the Supreme Court strike down the most federal laws?
- 1803 to 1857
  - 1942 to 1995
  - 1995 to 2019
  - Roughly the same in all three eras
19. What has to happen before a bill becomes a law?
- Debate in committees
  - House approval or Senate approval
  - Sending the bill to the desk of the president
  - All of the above
20. The formal and enumerated powers of Congress are found in
- Article I, Section 1
  - Article I, Section 8
  - Article II, Section 4
  - The Preamble



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#### 7.6 Test Your Knowledge

##### Answer Key

1. C
2. A
3. D
4. A
5. C
6. A
7. C
8. A
9. A
10. D
11. B
12. D
13. D
14. B
15. C
16. C
17. A
18. C
19. D
20. B