**1.3 Foundations and Constitution**

**SSCG5: Demonstrate the knowledge of the federal system of government described in the United States Constitution.**

**SSCG5a: Explain and analyze the relationship of state governments to the national government.**

One of the fears of the founders was a system of government that put too much power in the hands of one group or person. One of the ways to divide power was to create the system of Federalism.

**Federalism** is a system of government in which a written constitution divides the powers of the government on a territorial basis between a national, or central, government, and several regional governments, typically referred to as States. Each level of government has its own set of powers. The Constitution sets out a **division of powers;** certain powers are assigned to the National government and other powers are assigned to the States. Each of the levels of government has its own areas of authority.

A major strength of federalism is that it allows for a more timely response to local matters and decisions by giving certain powers to the States. The National government’s powers are focused on issues of national concern like defense and foreign relations.

**SSCG5b: Define and provide examples of enumerated, implied, concurrent, reserved, and denied powers.**

Not only was power divided between the different levels of government in the Federal system, but each level of government was given certain things is could and could not do, referred to as powers. But not allowing any one level of government to do everything, this prevented any one person or group from holding all the power.

The first of these is called the **Enumerated powers**, also called the expressed powers. The enumerated powers are delegated (given) to the national government and are spelled out, or expressed, in the Constitution. Most of the enumerated powers can be found in Article I, Section 8. There are 27 powers given to Congress, including: the power to collect taxes, to coin money, to regulate commerce, to maintain a national defense, to declare war, fix the standards of weight and measurement, and grant patents and copyrights. The enumerated powers given to the President are: operating in the role of Commander-in-Chief, issuing pardons, and entering into treaties with foreign nations.

**Implied powers** are not expressly stated in the Constitution, but are reasonably suggested, or implied. Article I, Section 8, Clause 18 is referred to as the ‘necessary and proper clause’. The **necessary and proper clause** grants Congress the power to make any laws necessary to carry out the enumerated powers. The necessary and proper clause is also referred to as the **elastic clause.** Examples of Congress’ implied powers include: the building of the interstate highway system, the building of dams, and the prohibition of discrimination.

**Concurrent powers** are those powers that both the National and State governments possess and exercise. Concurrent powers are not given exclusively to the National government and at the same time are not denied to the States. Examples include: the power to levy and collect taxes and to define crimes and punishments.

**Reserved powers** are those powers not granted to the National government, but at the same time, not denied to the States. The scope of reserved powers is huge! Most of what government does is done by the States and their local governments. Examples of reserved powers include: making laws regarding the minimum age to marry, the minimum age to purchase tobacco products, the minimum drinking age, laws regarding the ban of prostitution and gambling, requirements for businesses to obtain a license to operate, establish public schools, and the right to define criminal offenses and set punishments for violations.

**Denied powers** are set forth in the Constitution. These are powers that are expressly denied to the National government and include the reserved powers that are not denied to the States. Examples include: creating titles of nobility, taxes on exports, Bills of Attainder, Ex Post Facto Laws, no suspension of Habeas Corpus.

 **SSCG5c: Analyze the ongoing debate that focuses on the balance of power between state and national governments as it relates to current issues.**

Much of the current debate on the balance of power between the national government and the state governments focuses on state governments challenging federal governments in what they view as overstepping constitutionally prescribed roles.

One of the more controversial ways the federal government can potential overstep their constitutionally prescribed roles is through the president issuing Executive Orders. **Executive Orders** are not specifically expressed in the Constitution; however, in Article II, there is a “grant of executive power”. Executive Orders are binding orders that have the same effect as law but do not require Congressional approval. They are intended to help guide federal agencies in matters that involve established laws. Many executive orders are intended to be symbolic. Current debates focus on the President’s use of executive orders to make laws, which goes against the separation of powers between the three branches of government.

**SSCG5d: Analyze the Supremacy Clause found in Article VI and the role of the U.S. Constitution as the “supreme law of the land”.**

The Framers of the Constitution expected that conflicts would be inevitable between national laws and State laws. They wrote what is known as the **Supremacy Clause** into the Constitution. The clause is found in Article VI, Section 2: “This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding”.

The Supremacy Clause means that the Constitution stands above all other laws, including laws of States. The Supreme Court has the responsibility of applying the Supremacy Clause**.**

**SSCG5e: Describe the roles of Congress and the states in the formal process of amending the Constitution.**

The Framers of the Constitution realized during the creation process that they would not be able to think of everything and they were creating an imperfect document. Therefore, they added a way for the Constitution to be changed. An **amendment** to the Constitution means a change to the Constitution. The Framers expected that changes would need to be made over time, and they set out a very detailed plan for how amendments to the Constitution could be proposed and ratified. Article V sets out two methods for the proposal and methods for the ratification of constitutional amendments.

First Method – an amendment may be proposed by a two-thirds vote in each house of Congress and must be ratified by three-fourths of the State legislatures.

Second Method – an amendment may be proposed, and then ratified by conventions called for the purpose of the amendment, in three-fourths of the States.

Third Method – an amendment may be proposed by a national convention, called by Congress, at the request of two-thirds of the State legislatures. It must then be ratified by three-fourths of the State legislatures.

Fourth Method – an amendment may be proposed by a national convention and ratified by conventions in three-fourths of the States.

**SSCG6: Analyze the meaning and importance of each of the rights guaranteed under the Bill of Rights and how each is secured.**

A major argument between the Federalists and Anti-Federalists focused on the Anti-Federalists’ viewpoint that the Constitution did not provide for protection of American citizen’s basic rights. Thomas Jefferson led the fight to ratify the Bill of Rights as a condition for Anti-Federalist support of ratification of the Constitution. The **Bill of Rights** includes the first ten amendments to the United States Constitution. The Bill of Rights was written by James Madison. There are currently 27 amendments. The first ten amendment’s guarantee the: freedoms of belief and expression, of freedom and security of the person, and of fair and equal treatment before the law.

***Bill of Rights:***

**First Amendment**: Guarantees the freedom of religion, speech, and the press

**Second Amendment**: Guarantees the right to bear arms

**Third Amendment**: Protects against the forced quartering of troops

**Fourth Amendment**: Protects against unreasonable searches and seizures

**Fifth Amendment**: Guarantees a trial by jury and due process of law and guards against double-jeopardy and self-incrimination

**Sixth Amendment**: Outlines the rights of the accused, including a speedy and public trial

**Seventh Amendment**: Lays out the rules of common law

**Eighth Amendment**: Protects against cruel and unusual punishment and guards against excessive bail and fines

**Ninth Amendment**: Ensures that the individual rights that are not enumerated in the Constitution are secure

**Tenth Amendment**: Limits the power of the federal government by reserving all of the rights for the

States not enumerated in the Constitution as national rights, nor denied to states

