



# We the People

## THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education

### STATE HEARING QUESTIONS 2022–2023

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

1. **“To understand political power right [correctly], and derive it from its original, we must consider, what state all men are naturally in, and that is, a state of perfect freedom to order their actions, and dispose of their possessions and persons, as they think fit, within the bounds of the law of nature, without asking leave, or depending upon the will of any other man.”\***  
**If humans are in a state of perfect freedom, why is government necessary?**

- How do natural rights philosophy and classical republicanism explain the purposes of and need for government differently?
- How are the principles and ideas of classical republicanism and natural rights philosophy represented in our governmental institutions and public policies today?

\* John Locke, *The Second Treatise of Civil Government*, ed. John W. Gough (Oxford: Basil Blackwell, 1946), [https://wnorton.com/college/history/archive/resources/documents/ch04\\_03.htm](https://wnorton.com/college/history/archive/resources/documents/ch04_03.htm).

2. **Article VI of the U.S. Constitution reads, “this Constitution ... shall be the supreme Law of the Land.” Why is a constitution considered a higher law? What are the major characteristics of a higher law?**

- How did the Founders believe legitimate government was established?
- How could higher law be used as a justification for a revolution?

3. **The royal charter granted to the Virginia Company states that “the Persons ... which shall dwell ... within every or any of the said Colonies and Plantations, and every of their children ... shall HAVE and enjoy all Liberties, Franchises, and Immunities ... as if they had been abiding and born, within this our Realm of England.”\* How did this tradition of expressing rights become an essential part of American constitutions?**

- What basic ideas of constitutional government did the colonial governments use?
- Who benefited and who did not benefit from English common law in the colonial governments, and how did this differ across the colonies?

\* “The First Charter of Virginia; April 10, 1606,” The Avalon Project, Yale Law School: Lillian Goldman Law Library, [https://avalon.law.yale.edu/17th\\_century/va01.asp](https://avalon.law.yale.edu/17th_century/va01.asp).



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

**1. George Washington said of the Articles of Confederation, “no Morn ever dawned more favourable than ours did—and no day was ever more clouded than the present! Wisdom, & good examples are necessary at this time to rescue the political machine from the impending storm.”\* What were the problems resulting from the Articles of Confederation?**

- What do you consider the most important achievements of government under the Articles of Confederation?
- Do you think the Constitution effectively remedied the problems of the Articles of Confederation?

\* “From George Washington to James Madison, 5 November 1786,” Founders Online, National Archives, <https://founders.archives.gov/documents/Washington/04-04-02-0299>.

**2. At the Philadelphia Convention, the delegates agreed that “nothing spoken in the House be printed, or otherwise published, or communicated without leave.”\* Do you agree or disagree that the convention proceedings should have been kept secret? Why or why not?**

- Evaluate the delegates’ other rules to govern debates in the Philadelphia Convention.
- Some deliberations are still held in secret, such as the deliberations of juries, certain congressional committees, and those of the Supreme Court. Are these secret deliberations justifiable? Why or why not?

\* “Madison Debates: May 29,” record of May 29, 1787, from the James Madison’s notes on the debates of the federal convention, The Avalon Project, Yale Law School: Lillian Goldman Law Library, [https://avalon.law.yale.edu/18th\\_century/debates\\_529.asp](https://avalon.law.yale.edu/18th_century/debates_529.asp).

**3. James Madison observed, “it seems now to be pretty well understood that the real difference of interests lies not between the large and small but between the northern and southern states. The institution of slavery and its consequences form the line of discrimination.”\* What were the Framers’ views on slavery at the time of the Philadelphia Convention?**

- In what ways did the existence of slavery in the states shape the powers of Congress and the clauses in the Constitution?
- Which issues left unaddressed by the Philadelphia Convention are most relevant today?

\* “Madison Debates: July 14,” record of July 14, 1787, from the James Madison’s notes on the debates of the federal convention, The Avalon Project, Yale Law School: Lillian Goldman Law Library, [https://avalon.law.yale.edu/18th\\_century/debates\\_714.asp](https://avalon.law.yale.edu/18th_century/debates_714.asp).



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

- 1. Some constitutional scholars say that the Supreme Court should not “find” rights that are not specifically enumerated in the Constitution. They argue that the American people should amend the Constitution if they want to recognize certain rights. Do you agree or disagree? Why?**
  - Is the amendment process the best way to change the Constitution?
  - What rights, if any, that are not yet recognized or formally recognized by the courts as having constitutional protection do you believe should be enumerated in new amendments to the Constitution? Explain.
- 2. “The Constitution limits only the action of Congress, and is not a limitation on the States. This amendment supplies [remedies] that defect, allows Congress to correct the unjust legislation of the States, so far that the law which operates upon one man shall operate equally upon all.”\* In what ways has selective incorporation altered the federal system?**
  - In what ways, if any, does the equal protection clause of the Fourteenth Amendment limit American governments? How does it limit private organizations?
  - Do all classifications that result in different treatment of persons violate the guarantee of equal protection of the laws? Why or why not?
- 3. In *Washington v. Glucksberg*, Chief Justice William Rehnquist said, “the Due Process Clause guarantees more than fair process, and the ‘liberty’ it protects includes more than the absence of physical restraint. The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests.”\* Do you agree with this interpretation of the due process clause? Why or why not?**
  - How has the Supreme Court defined “fundamental rights”?
  - What effect has the doctrine of selective incorporation had on fundamental rights?

\* Thaddeus Stevens, May 8, 1866 (Cong. Globe, 39th Cong., 1st Sess., p. 2459), Library of Congress, <https://memory.loc.gov/ammem/amlaw/lwclink.html>.

\* *Washington v. Glucksberg*, 521 U.S. 702, June 26, 1997, Cornell Law School: Legal Information School, <https://www.law.cornell.edu/supremecourt/text/521/702>.



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

- 1. What are the major functions of the House of Representatives and the Senate? What institutional checks exist between the two chambers?**
  - How has political polarization influenced the function of Congress? To what extent have political compromises overcome political differences?
  - Which do you think has the most influence on a congressional representative: the interests of their constituents, party leadership, or ideology? Why?
- 2. Sir Francis Bacon stated that “judges ought to remember that their office is ... to interpret law and not to make or give law.”\* Has the Supreme Court done a good job maintaining this standard?**
  - What checks are there on the power of the Supreme Court, if any?
  - If a majority of people disagree with a Supreme Court decision, in what ways, if any, can they change the ruling?
- 3. The Framers of the Constitution wanted to ensure that the presidency was *energetic* as opposed to the *deliberative* nature of Congress. Did the Framers achieve this aim based on the constitutional powers given to the president?**
  - At the Philadelphia Convention, what were the various measures proposed to check and balance the power of the executive?
  - How, if at all, has the role of the president evolved?

\* Francis Bacon, “Of Judicature,” in *The Essays or Counsels, Civil and Moral, of Francis Ld. Verulam Viscount St. Albans*, n.d., Project Gutenberg, [https://www.gutenberg.org/files/575/575-h/575-h.htm#link2H\\_4\\_0056](https://www.gutenberg.org/files/575/575-h/575-h.htm#link2H_4_0056).



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### STATE HEARING QUESTIONS 2022–2023

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

1. **“It is said that the insertion of a bill of rights would be an argument against the present liberty of the people. ... If the people do really possess them [rights], there can be no harm in expressing what is meant to be understood.”\* Does it matter whether protected rights are identified in the body of a constitution or in a separate bill of rights?**

- What are negative and positive rights, and how are they protected differently?
- How do different methods of constitutional interpretation affect the meaning of various provisions of the Bill of Rights?

\* A Federal Republican, “A Review of the Constitution,” November 28, 1787, Center for the Study of the American Constitution, University of Wisconsin–Madison,  
[https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/A\\_Federal\\_Republican.pdf](https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/A_Federal_Republican.pdf).

2. **Does the Constitution protect the right to privacy? How does it do so, or how do you know it does not?**

- Why and to what degree may the government limit individuals’ right to privacy?
- What other Supreme Court decisions have protected unenumerated rights?

3. **“The liberty of the press is essential to the security of freedom in a state: it ought not, therefore, to be restrained in this Commonwealth.”\* Many of the first state constitutions specifically protect freedom of the press. Why was the protection of a free press so important to the Framers?**

- Are different types of media treated differently under the First Amendment today? Why or why not?
- How, if at all, do you think the government should strike a balance between protecting freedom of the press and preventing the spread of “fake news”?

\* Massachusetts Constitution, Part the First, Article XVI, June 15, 1780, <https://malegislature.gov/laws/constitution>.



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

- 1. The Constitution lays out the privileges and immunities of citizenship. By the end of the civil war, however, the idea that each sovereign state could define its own qualifications for citizenship was preeminent. What are the “privileges and immunities” of citizens?**
  - Is state citizenship still relevant in the twenty-first century? Why or why not?
  - Should the United States provide more or less assistance to immigrants seeking to become citizens? What kind of assistance should be provided? What role, if any, should current citizens play in the process?
- 2. At the Philadelphia Convention, the Framers established rules to promote civil discourse, including limiting how often one could speak, ensuring that attention was focused on the speaker, and allowing for reconsideration of any decisions. How did this promote civil discourse at the convention?**
  - What rules would be necessary today to promote civil discourse in government?
  - What, if anything, needs to be done to promote and improve civil discourse in the media and public life?
- 3. Following the Philadelphia Convention, someone asked, “Well, Doctor, what have we got—A Republic or a Monarchy?” Benjamin Franklin responded, “A Republic, if you can keep it.”\* What did Franklin mean, and what is the responsibility of citizens in maintaining their system of government?**
  - What responsibilities do our elected or appointed officials hold for maintaining our republic?
  - What role, if any, should schools play in maintaining our republic?

\* *Respectfully Quoted: A Dictionary of Quotations Requested from the Congressional Research Service*, ed. Suzy Platt (Washington: Library of Congress, 1989), <https://www.bartleby.com/73/1593.html>.