

CHAPTER 11

Powers of Congress

Essential Question

What should be the limits on the powers of Congress?

Section 1:

The Expressed Powers of Money and Commerce

Section 2:

The Other Expressed Powers

Section 3:

The Implied Powers

Section 4:

The Nonlegislative Powers

GOVERNMENT ONLINE

On the Go

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- Audio Review
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“Though the President is Commander in Chief, Congress is his commander; . . . this is not a Government of kings . . . , but a Government of the people, and . . . Congress is the people.”

—Rep. Thaddeus Stevens, 1867

Photo: Members of the House of Representatives are sworn in.

295

Lesson Goals

SECTION 1

Students will . . .

- explain what is meant by the expressed, implied, and inherent powers of Congress.
- identify the expressed powers of Congress by examining the Constitution and recognizing their application in scenarios.
- consider limits on the powers of Congress through a Socratic Dialogue.

SECTION 2

Students will . . .

- examine the division of war powers by analyzing a primary source document.
- evaluate the expressed powers of Congress by determining which powers they feel are most important.
- examine the domestic powers by using photographs illustrating each power.

SECTION 3

Students will . . .

- use the example of a teacher's powers in the classroom to consider the meaning of implied powers.
- explore strict and liberal construction by evaluating congressional actions.
- decide upon and defend a position on implied powers.

SECTION 4

Students will . . .

- evaluate the impeachment process by examining primary sources and data about the impeachment of President Clinton.
- examine the nonlegislative duties of Congress, using the Jigsaw strategy.

DIFFERENTIATED INSTRUCTION KEY

Look for these symbols to help you adjust steps in each lesson to meet your students' needs.

L1 Special Needs

L2 Basic

ELL English Language Learners

LPR Less Proficient Readers

L3 All Students

L4 Advanced Students

Pressed for Time

To cover the chapter quickly, begin with Section 1, asking students to outline Article I, Section 8 of the Constitution. Then ask them to complete the Chapter 11 Section 1 Core Worksheet and Chapter 11 Section 2 Core Worksheet A. Introduce the implied powers using Transparency 11E, Implied Powers of Congress, which lists some expressed and implied powers. Review Landmark Decisions of the Supreme Court: *McCulloch v. Maryland*, and discuss modern conflicts related to strict and liberal construction of the Constitution. To cover Section 4, do the Core Worksheets as a group.

GUIDING QUESTION

What powers over money and commerce does the Constitution give to Congress and what limits does it put on these powers?

Money and Commerce	
Expressed Power	Limits on Power
<ul style="list-style-type: none">regulate interstate and foreign tradetaxborrowestablish uniform bankruptcy lawscoin money and regulate its value	<ul style="list-style-type: none">cannot favor ports of one State over those of any other State in regulating trade; • cannot require vessels bound to or from one State to be obliged to enter, clear, or pay duties in another; • could not interfere with slave trade until 1808may tax only for public purposes; • cannot tax exports; • direct taxes (except income taxes) must be apportioned among States according to population; • indirect taxes must be levied at same rate in every part of country

Get Started

LESSON GOALS

Students will . . .

- explain what is meant by the expressed, implied, and inherent powers of Congress.
- identify the expressed powers of Congress by examining the Constitution and recognizing their application in scenarios.
- consider limits on the powers of Congress through a Socratic Dialogue.

SKILLS DEVELOPMENT

ANALYZE SOURCES

Before students analyze Article I, Sections 8 and 9 of the Constitution in this lesson, you may want to have students turn to the Skills Handbook, p. S14, to read the information there.

SECTION 1

The Expressed Powers of Money and Commerce

Guiding Question

What powers over money and commerce does the Constitution give to Congress and what limits does it put on these powers? Use a table to keep track of the powers of Congress and their limits.

Money and Commerce	
Expressed Power	Limits on Power
<ul style="list-style-type: none">	<ul style="list-style-type: none">

Political Dictionary

- expressed powers
- implied powers
- inherent powers
- commerce power
- tax
- public debt
- deficit financing
- bankruptcy
- legal tender

Objectives

- Describe the three types of powers delegated to Congress.
- Analyze the importance of the commerce power.
- Summarize key points relating to the taxing power.
- Explain how the bankruptcy and borrowing powers work.
- Explain why the Framers gave Congress the power to issue currency.

Image Above: Congress created the Coast Guard to protect coastal waters.



A typical day in either chamber of Congress might suggest that there is no limit to what Congress can do. On any given day, the House might consider bills dealing with such varying matters as the interstate highway system, an increase in the minimum wage, and grazing on public lands. Meanwhile, the Senate might be considering aid to a famine-stricken country in Africa, the President's nomination of someone to fill a vacancy on the Supreme Court, or any number of other matters.

Still, remember, there are very real limits on what Congress can do. Recall that (1) government in the United States is limited government, and (2) the American system of government is federal in form. These two fundamental facts work to shape and also to limit the powers of Congress.

The Delegated Powers

Remember, Congress has only those powers delegated (granted, given) to it by the Constitution. Large areas of power are denied to Congress in so many words in the Constitution, by the Constitution's silence on many matters, and because the Constitution creates a federal system.

There is much that Congress cannot do. It cannot create a national public school system, require people to vote or attend church, or set a minimum age for marriage or drivers' licenses. It cannot abolish jury trials, confiscate all handguns, or censor the content of newspaper columns or radio or television broadcasts. Congress cannot do these and a great many other things because the Constitution does not delegate to it any power to do so.

Still, Congress does have the power to do many things. The Constitution grants it a number of specific powers—and, recall, it delegates those powers in three different ways: (1) explicitly, in its specific wording—the **expressed powers**; (2) by reasonable deduction from the expressed powers—the **implied powers**; and (3) by creating a national government for the United States—the **inherent powers**.

The Framers very purposefully created a limited government. Given that fact, it is understandable that the existence and the scope of both the implied and the inherent powers have been the subject of dispute ever since the adoption

Focus on the Basics

FACTS: • Congress has expressed, implied, and inherent powers. • The Constitution spells out 27 expressed powers of Congress. • The commerce power allows Congress to regulate trade. • Congress levies taxes to meet public needs and to protect domestic industry and public health and safety. • The currency power allows the Federal Government to coin money and regulate its value. Congress may borrow on the credit of the United States and establish uniform bankruptcy laws.

CONCEPTS: enumerated powers, implied powers, federalism

ENDURING UNDERSTANDINGS: • Much of the meaning of the expressed powers is found in the ways in which these powers have been carried out. • The commerce power is the basis for many of the implied powers. • The taxing power is vital to the functioning of government

of the Constitution. Later in the chapter, we shall examine the conflict between the strict constructionists, who interpret congressional power narrowly, and the liberal constructionists, who favor a broader interpretation.

The Expressed Powers

Most, but not all, of the expressed powers of Congress are found in Article I, Section 8 of the Constitution. There, in 18 separate clauses, 27 different powers are explicitly given to Congress.¹

These grants of power are brief. What they do and do not allow Congress to do often cannot be discovered by merely reading the few words involved. Rather, their meaning is found in the ways in which Congress has exercised its powers since 1789, and in scores of Supreme Court cases arising out of the measures Congress has passed.

As a case in point, take the Commerce Clause, in Article I, Section 8, Clause 3. It gives Congress the power “to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.” What do these words mean? Over the past two centuries, Congress and the Court have had to answer hundreds of questions about the scope of the Commerce Clause. Here are but a few examples: Does “commerce” include people crossing State lines or entering or leaving the country? What about business practices? Working conditions? Radio and television broadcasts? The Internet? Does Congress have the power to ban the shipment of certain goods from one State to another? To prohibit discrimination? What trade is “foreign” and what is “interstate”? And what trade is neither?

In answering these and dozens of other questions arising out of this one provision, Congress and the Court have defined—and are still defining—the meaning of the

Commerce Clause. So it is with most of the other constitutional grants of power to Congress.

The commerce power and, with it, the expressed power to tax have provided much of the basis upon which Congress and the courts have built nearly all of the implied powers. Most of what the Federal Government does, day to day and year to year, it does as the result of legislation enacted by Congress in the exercise of those two powers.

The Commerce Power

Commerce, generally, is the buying and selling of goods and services. The **commerce power**—the power of Congress to regulate interstate and foreign trade—is vital to the welfare of the nation. Its few words have prompted the growth of the greatest open market in the world. The Commerce Clause proved to be more responsible for the building of a strong and *United States* out of a weak confederation than any other provision in the Constitution.

Gibbons v. Ogden, 1824 The first case involving the Commerce Clause to reach the Supreme Court, *Gibbons v. Ogden*, was decided in 1824. The case arose out of a clash over the regulation of steamboats by the State of New York, on the one hand, and the Federal Government, on the other. In 1807, Robert Fulton’s steamboat, the *Clermont*, had made its first successful run up the Hudson River, from New York City to Albany. The State legislature then gave Fulton an exclusive, long-term grant to navigate the waters of the State by steamboat. Fulton’s monopoly then gave Aaron Ogden a permit for steamboat navigation between New York City and New Jersey.

Thomas Gibbons, operating with a coasting license from the

Checkpoint
Who defines the meaning of the Commerce Clause?

Inherent powers are those that belong to all sovereign nations—for example, the power to control a nation’s borders.

Expressed powers are those stated in the Constitution—for example, the power to regulate both foreign and interstate commerce.

Implied powers are not stated in the Constitution, but drawn from the expressed powers. Based on the expressed power to regulate commerce, Congress has set a minimum wage for hourly workers.

▶ This chart gives an example of each type of congressional power. **From which type of power does Congress derive most of its current authority?**

¹ Several of the expressed powers of Congress are set out elsewhere in the Constitution. Thus, Article IV, Section 3 grants Congress the power to admit new States to the Union (Clause 1) and to manage and dispose of federal territory and other property (Clause 2). The 16th Amendment gives Congress the power to levy an income tax. The 13th, 14th, 15th, 19th, 24th, and 26th amendments grant Congress the “power to enforce” the provisions of the amendments “by appropriate legislation.”

BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 3 All-in-One, p. 61) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 3 All-in-One, p. 63)

BELLRINGER

Write **Article I, Section 8**, and **Should Internet purchases be taxed?** on the board. Have students review this part of the Constitution and then write down the clause that gives Congress the power to answer this question.

Teach

To present this topic using online resources, use the lesson presentation at **PearsonSuccessNet.com**.

REVIEW BELLRINGER

Discuss students’ Bellringer answers. Point out Article I, Section 8, Clause 3 and explain that it is from this clause that Congress may derive the power to regulate the Internet, if the regulation deals with commerce. Explain that this is an *expressed* power, because it is stated directly in the Constitution.

INTRODUCE THE DELEGATED POWERS

Explain to students that *delegated* means “granted” or “given” and that Congress has only those powers delegated to it by the Constitution. Direct students’ attention to the graphic on this page describing the three types of powers that the Constitution delegates to Congress. Ask students to name the three types of powers (*inherent, expressed, and implied*) and to define each. (*Inherent powers are those that all sovereign nations have. Expressed powers are those directly stated in the Constitution. Implied powers are drawn from the expressed powers.*)

L2 ELL Differentiate Help students understand the term *inherent* by providing the following concrete examples: “John had an inherent ability to excel at math.” “Anti-lock brakes were an inherent part of the car’s braking system.” Provide the following synonym: *built-in*. Then ask students to offer a synonym of their own (*included, integrated, inseparable*).

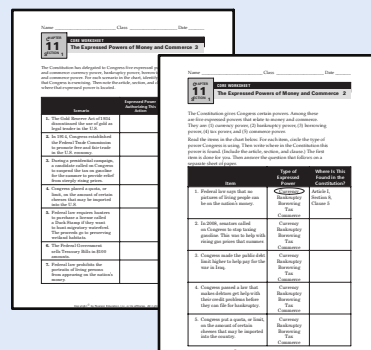
Answers

Checkpoint Congress and the Supreme Court
Caption the implied powers, based on the expressed powers of commerce and tax

Differentiated Resources

The following resources are located in the All-in-One, Unit 3, Chapter 11, Section 1:

- L2** Prereading and Vocabulary Worksheet (p. 57)
- L3** Reading Comprehension Worksheet (p. 61)
- L2** Reading Comprehension Worksheet (p. 63)
- L3** Core Worksheet (p. 65)
- L2** Core Worksheet (p. 67)
- L3** Quiz A (p. 68)
- L2** Quiz B (p. 69)



OUTLINE ARTICLE I, SECTION 8 OF THE CONSTITUTION

Have students read Article I, Section 8, Clauses 1–6 of the Constitution and list the powers related to money and commerce. They are: Clause 1—the taxing power; Clause 2—the borrowing power; Clause 3—the power to regulate foreign and interstate commerce; Clause 4—the bankruptcy power; Clause 5—the power to coin money; and Clause 6—the power to punish counterfeiters.

DISTRIBUTE CORE WORKSHEET

Distribute the Chapter 11 Section 1 Core Worksheet (Unit 3 All-in-One, p. 65), which asks students to identify the power Congress is exercising in several scenarios.

L2 ELL Differentiate Distribute the adapted Core Worksheet (Unit 3 All-in-One, p. 67), which has similar scenarios but fewer for students to address.

Name _____ Class _____ Date _____

CHAPTER 11 **SECTION 1** **CORE WORKSHEET**
The Expressed Powers of Money and Commerce 3

The Constitution has delegated to Congress five expressed powers related to money and commerce: currency power, bankruptcy power, borrowing power, tax power, and commerce power. For each scenario in the chart, identify the expressed power that Congress is exercising. Then note the article, section, and clause in the Constitution where that expressed power is located.

Scenario	Expressed Power Authorizing This Action	Location in the Constitution
1. The Gold Reserve Act of 1934 discontinued the use of gold as legal tender in the U.S.		
2. In 1914, Congress established the Federal Trade Commission to promote free and fair trade in the U.S. economy.		
3. During a presidential campaign, a candidate called on Congress to surgen the tax on gasoline for the summer to provide relief from steeply rising prices.		
4. Congress placed a quota, or limit, on the amount of certain cheeses that may be imported into the U.S.		
5. Federal law requires hunters to purchase a license called a Duck Stamp if they want to hunt migratory waterfowl. The proceeds go to preserving wetland habitats.		
6. The Federal Government sells Treasury Bills in \$100 amounts.		
7. Federal law prohibits the portraits of living persons from appearing on the nation's money.		

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Checkpoint
What was the Court's decision in *Gibbons v. Ogden*?

sweeping
adj. wide-ranging

Federal Government, began to carry passengers on a competing line. Ogden sued, and the New York courts ruled in his favor, holding that Gibbons could not sail by steam in New York waters.

Gibbons appealed that ruling to the Supreme Court. He claimed that the New York grant conflicted with the congressional power to regulate interstate commerce. The Court agreed. It rejected Ogden's argument that "commerce" should be defined narrowly, as simply "traffic" or the mere buying and selling of goods. Instead, the Court read the Commerce Clause in very broad terms:

PRIMARY SOURCE

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.

—Chief Justice John Marshall

The Court's ruling was widely popular at the time because it dealt a death blow to steamboat monopolies. Freed from restrictive State regulation, many new steamboat companies came into existence. As a result, steam navigation developed rapidly. Within a few years, the railroads were similarly freed, which revolutionized transportation within the United States.

Over the decades, the Court's sweeping definition of commerce has brought an extension of federal authority into many areas of American life—a reach of federal power beyond anything the Framers could have imagined. As another of the many examples of the point, note this: It is on the basis of the commerce power that the Civil Rights Act of 1964 prohibits discrimination in access to or service in hotels, motels, theaters, restaurants, and in other public accommodations on grounds of race, color, religion, or national origin.²

² The Supreme Court upheld this use of the commerce power in *Heart of Atlanta Motel v. United States* in 1964. The unanimous Court noted that there was "overwhelming evidence of the disruptive effect that racial discrimination has had on commercial intercourse." You will look at this case again in Chapter 21.

The Commerce Clause

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

—Article I, Section 8, Clause 3

FROM THE CONSTITUTION



Enabling Commerce The commerce power played a major role in the formation of the Union. The weak Congress created under the Articles of Confederation had no power to regulate interstate trade and little authority over foreign commerce. The 1780s were marked by intense commercial rivalries and bickering among the States. High trade barriers and spiteful State laws created chaos and confusion in much of the country. That circumstance led the Framers to write the Commerce Clause into the Constitution.

Constitutional Principles How does the Commerce Clause reflect the principle of federalism?

▲ Acting under its commerce power, Congress created the interstate highway system.

Answers

Checkpoint The Court found in favor of Gibbons, establishing a broad definition of "commerce."

Constitutional Principles The Commerce Clause places authority over commerce between States in the hands of the Federal Government rather than State governments.

Background

CIVIL RIGHTS AND THE COMMERCE CLAUSE During the first half of the 1900s, the Supreme Court had broadened the scope of the Commerce Clause to allow Congress to regulate more areas of the economy, including interstate commerce. Supporters of the Civil Rights Act of 1964 believed that discrimination in public places had kept African Americans from traveling around the country. Both Title II and Title VII of the act prohibited racial discrimination by businesses that affected interstate commerce. Thus, the Commerce Clause became the foundation for affirming the constitutionality of the act. In *Heart of Atlanta Motel v. United States*, 1964, the Supreme Court found that Congress could regulate a business that served mainly interstate travelers. In *Katzenbach v. McClung*, 1964, the Court ruled that federal civil rights legislation could regulate a restaurant that served food that had previously crossed state lines.

The Americans with Disabilities Act

Based on the commerce power, Congress passed the Americans with Disabilities Act (ADA) in 1990. It prohibits discrimination against people with disabilities in areas such as employment, public accommodation, public transportation, and access to commercial buildings. **How do these photographs illustrate problems addressed by the ADA?**



Limits on the Commerce Power The congressional power to regulate commerce is not unlimited. It, too, must be exercised in accord with all other provisions in the Constitution. Thus, for example, the Supreme Court struck down the Gun-Free School Zone Act of 1990 in *United States v. Lopez*, 1995. That act had made it a federal crime for anyone other than a police officer to possess a firearm in or around a school. The Court could find no useful connection between interstate commerce and guns at school. It held that Congress had in this case invaded the reserved powers of the States.

In more specific terms, the Constitution places four explicit limits on the use of the commerce power. It says that Congress

1. cannot tax exports (Article I, Section 9, Clause 5);
2. cannot favor the ports of one State over those of any other in the regulation of trade (Article I, Section 9, Clause 6);
3. cannot require that “Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another” (Article I, Section 9, Clause 6); and, finally,
4. could not interfere with the slave trade, at least not until the year 1808 (Article I, Section 9, Clause 1). This last limitation, part of the curious Slave-Trade Compromise the Framers struck at Philadelphia, has been a dead letter for more than two centuries now that slavery has been abolished.

The Power to Tax

The Constitution gives Congress the power

FROM THE CONSTITUTION

To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States. . . .

—Article I, Section 8, Clause 1

Remember, the Articles of Confederation had not given Congress the power to tax. Congress did have the power to requisition funds from the States; that is, Congress could ask (in reality, beg) each of the 13 States for money. But, through the 1780s, not a single State came even remotely close to meeting the few requests that Congress made, and a number of them paid nothing at all. The government was **impotent**, and the lack of a power to tax was a leading cause for the creation of the Constitution.

impotent
adj. powerless

The Purpose of Taxes We shall take another and longer look at the taxing power in Chapter 16. But, here, a number of important points: The Federal Government will take in some \$3 trillion in fiscal year 2009, and almost certainly an even larger sum in 2010. Most of that money—well over 95 percent of it—will come from the various taxes levied by Congress.

CHECK COMPREHENSION

Be sure students understand the sequence of events and import of the *Gibbons v. Ogden* case. Ask *who*, *where*, *what*, *when*, and *how* questions to check understanding of sequence. Then ask: **What was the long-term impact of the case on the commerce power of Congress?** (Its broad definition of commerce extended federal authority into many areas of American life; for example, the ban on discrimination in public places and services set forth in the Civil Rights Act of 1964 is based on the commerce power.)

DISCUSS LIMITS ON THE POWERS OF CONGRESS

Distribute copies of Article I, Section 8, Clauses 1–6, and Section 9 of the Constitution. Have students underline those clauses or parts of clauses that place limits on Congress. (*Article I, Section 8, Clause 1 and Article I, Section 9, all Clauses*) Use this question to lead a Socratic Dialogue (p. T24) about the powers of Congress: **Using the Constitution as your primary source and this section of the book for examples, discuss how far the powers of Congress should extend. Has Congress gone beyond the limits the Framers intended?**

L2 Differentiate Implement a ten- to fifteen-minute wait time between comments. The break will allow all students to formulate a response.

Background

PROTECTIVE TARIFF In the early 1800s, Congress imposed protective tariffs to help fledgling U.S. industries compete with the more established industries of Europe. A protective tariff works by increasing the price of an imported product. For example, suppose a hat made in Britain cost \$1 in the U.S. Because the U.S. hat industry was less efficient, the American-made hat might cost \$1.05. To induce Americans to buy U.S.-made hats, Congress might place a 10 cent tariff on British hats, raising the cost to \$1.10 and giving U.S. hat makers a price advantage. Consumers, however, were not happy about paying higher prices. Most U.S. manufacturing was located in the North. The agricultural South depended on buying manufactured products, putting the burden of higher prices disproportionately on Southerners. Southern opposition to the Tariff of 1828 led to the Nullification Crisis, which nearly split the Union.

Answers

Caption Steps can prevent persons with disabilities from holding certain jobs or entering public buildings. By requiring ramps, the ADA reduces discrimination against persons with disabilities by enabling equal access.

EXTEND THE LESSON

L4 Differentiate Assign students a mock newscast in which they highlight the main points of the 1824 *Gibbons v. Ogden* case and then interview major participants, such as a member of the New York State legislature, Aaron Ogden, and Thomas Gibbons. The newscast should cover the facts in the case, including the position of each side and the Supreme Court decision, the participants' reactions to that decision, and the long-term impact of the case.

L3 Differentiate Ask students to find recent newspaper articles that discuss instances in which Congress has exercised its money and commerce powers. Have them summarize their articles and identify the power(s) of Congress that are discussed. Post these around the room and have students choose two other articles to analyze.

L3 Differentiate Have students look at the textbook graphic "Federal Spending." Ask students to identify the categories of the 2006 federal budget that did not exist in 1800 and 1900. Then have them do research and make a presentation explaining what these programs are, why they were created, and how Congress pays for them. Reports should also analyze the origin of the legislation and discuss whether the Framers would have accepted it as being under the jurisdiction of Congress.

L2 Differentiate Have students begin a chart with three main headings: "Expressed Powers," "Implied Powers," and "Inherent Powers." Under the heading "Expressed Powers," have them list the powers described in this section. As they read later sections, students can complete their charts.

L4 Differentiate Remind students that the debate over how the Constitution should be interpreted has its roots in the early years of the nation. Have students refer to chapters 2 and 4 of their textbooks, and summarize the debates of the Federalists and the Anti-Federalists. Then have students research recent examples of the strict v. liberal construction debate, summarize the issue, politicians' positions on it (one on each side), and the student's position, based on his or her understanding of the Constitution.



Interpreting Cartoons Congress levies taxes, but created the Internal Revenue Service to collect them. This cartoon shows a taxpayer and an IRS agent. In what ways does this cartoon show a negative attitude toward taxes?

Checkpoint
Name three purposes for which the government collects taxes.

A **tax** is a charge levied by government on persons or property to raise money to meet public needs. But notice, Congress does sometimes impose taxes for other purposes as well. The protective tariff is perhaps the oldest example of this point. Although it does bring in some revenue every year, its real goal is to "protect" domestic industry against foreign competition by increasing the cost of imported goods.

Taxes are also sometimes levied to protect the public health and safety. The Federal Government's regulation of narcotics is a case in point. Only those who have a proper federal license can legally manufacture, sell, or deal in those drugs—and licensing is a form of taxation.

Limits on the Taxing Power Congress does not have an unlimited power to tax. As with all other powers, the taxing power must be used in accord with all other provisions of the Constitution. Thus, Congress cannot lay a

tax on church services, for example—because such a tax would violate the 1st Amendment. Nor could it lay a poll tax as a condition for voting in federal elections, for that would violate the 24th Amendment.

More specifically, the Constitution places four explicit limitations on the congressional power to tax:

1. Congress may tax only for public purposes, not for private benefit. Article I, Section 8, Clause 1 says that taxes may be levied only "to pay the Debts and provide for the common Defence and general Welfare of the United States. . . ."

2. Congress may not tax exports. Article I, Section 9, Clause 5 declares "[n]o Tax or Duty shall be laid on Articles exported from any State." Thus, customs duties (tariffs), which are taxes, can be levied only on goods brought into the country (imports), not on those sent abroad (exports).

3. Direct taxes must be apportioned among the States, according to their populations:

FROM THE CONSTITUTION

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census of enumeration herein before directed to be taken.

—Article I, Section 9, Clause 4

A direct tax is one that must be paid directly to the government by the person on whom it is imposed—for example, a tax on the ownership of land or buildings, or a capitation (head or poll) tax.

An income tax is a direct tax, but it may be laid without regard to population:

FROM THE CONSTITUTION

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

—16th Amendment

Answers

Interpreting Cartoons The cartoon suggests that the government keeps tax money rather than using it for the public good.

Checkpoint Taxes are used to raise revenue for public purposes, to protect domestic industry against foreign competition, and to protect public health and safety.

Debate

Most State constitutions place restrictions on borrowing by State and local governments. Yet the U.S. Constitution places no limit on federal borrowing. This lack of imposed restraint worried Thomas Jefferson:

"[We should] all consider ourselves unauthorized to saddle posterity with our debts, and morally bound to pay them ourselves. . . ."

—Thomas Jefferson, letter to John Wayles Eppes, 1813

Use the Debate strategy (p. T25) to have students argue this point: **We need a constitutional amendment requiring the Federal Government to balance the budget.**

Wealth (which translates to the ability to pay taxes) is not evenly distributed among the States. So, a direct tax levied in proportion to population would fall more heavily on the residents of some States than it would on others—and would, therefore, be grossly unfair. Consequently, Congress has not levied any direct tax—except for the income tax—outside the District of Columbia since 1861.

4. Article I, Section 8, Clause 1 provides that “all Duties, Imposts and Excises shall be uniform throughout the United States.” That is, all indirect taxes levied by the Federal Government must be levied at the same rate in every part of the country. Those indirect taxes include the federal levies on gasoline, alcoholic beverages, and tobacco products.

As a general rule, an indirect tax is one first paid by one person but then passed on to another. It is indirectly paid by that second person. Take, for example, the federal tax on cigarettes. It is paid to the Treasury by the tobacco company, but is then passed on through the wholesaler and retailer to the person who finally buys the cigarettes.

The Borrowing Power

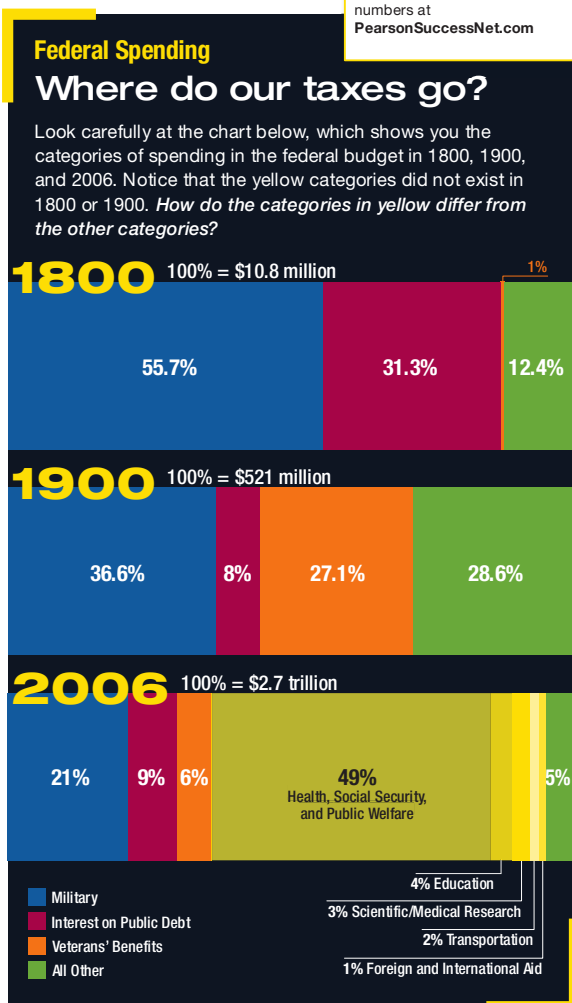
Article I, Section 8, Clause 2 gives Congress the power “[t]o borrow Money on the credit of the United States.” There are no constitutional limits on the amount of money Congress may borrow, and no restriction on the purposes for borrowing.

The Treasury does the actual borrowing. Usually, it issues Treasury Notes (T-bills) for short-term borrowing and bonds for long-term purposes. Those securities are promissory notes, for which the government agrees to pay investors a certain sum plus interest on a certain date.

Congress has put a statutory ceiling on the public debt, however. The **public debt** is all of the money borrowed by the Federal Government over the years and not yet repaid, plus the accumulated interest on that money. That legal ceiling has never amounted to much more than a political gesture, however. Congress regularly raises the limit whenever the debt threatens to overtake it. The public debt now exceeds \$10 trillion.

For decades, the Federal Government has practiced **deficit financing**. That is, it regularly spends more than it takes in each year and then borrows to make up the difference. Thus, the government has relied on deficit financing, on borrowing, to deal with the economic Depression of the 1930s, to meet

GOVERNMENT ONLINE
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L2 Differentiate Ask students how the designs of coins and bills have changed in recent years. Show an example of a newly designed five dollar bill or State quarter. Ask students to do research and make a poster explaining the changes to the new currency and reasons for those changes. They may find these Web sites helpful:

www.bep.treas.gov

www.moneyfactory.gov

www.usmint.gov

L4 Differentiate Ask students to investigate *Gibbons v. Ogden* and *United States v. Lopez* to see how the Court's interpretation of the Commerce Clause and the purpose of the laws in question shaped its opinion. Have students summarize this information and explain why they agree or disagree with the Court's decision.

L4 Differentiate Have students write a position paper addressing the borrowing power of Congress. They should answer this question: **Should there be a limit on the borrowing power of Congress? Why or why not?**

Government
online

All print resources are available on the Teacher's Resource Library CD-ROM and online at PearsonSuccessNet.com.

Political Cartoon Mini-Lesson

Display Transparency 11A, Debt Limit, when you discuss the statutory ceiling Congress places on the public debt. This cartoon depicts Congress increasing the debt limit.

Ask: **Is there any limit on the amount of money the Federal Government may borrow?** (There is no constitutional limit, but Congress puts a statutory ceiling on the public debt.) **What is Congress doing in the cartoon?** (extending the debt limit) **What detail in the cartoon suggests Congress's attitude toward this action?** (The musical notes above the man's head suggest that Congress takes this action lightly, as if it created no problem.) **Why do the children compare themselves to Santa Claus?** (The children represent the next generation who will have to fill the stocking, or pay for the huge public debt.)

Answers

Federal Spending The yellow categories represent benefits for the general public, such as social programs. These programs did not exist in 1800 and 1900.

Tell students to go to the Audio Tour for a guided audio tour about bankruptcy.

Assess and Remediate

L3 Collect the Core Worksheet and assess students' work.

L3 Assign the Section 1 Assessment questions.

L3 Section Quiz A (Unit 3 All-in-One, p. 68)

L2 Section Quiz B (Unit 3 All-in-One, p. 69)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

GOVERNMENT ONLINE

Audio Tour

Listen to a guided audio tour about bankruptcy at PearsonSuccessNet.com

What Is Personal Bankruptcy?

Regulating bankruptcy is one of the expressed powers of Congress. Declaring bankruptcy is a legal process through which people who owe more money than they can pay are relieved of part or all of their debt. It cannot be used for certain debts, including mortgages and taxes, but it can be used for medical expenses and other debts. **Why is bankruptcy a function of the Federal Government?**

Steps in Filing for Bankruptcy

- 1** A debtor must choose one of two kinds of bankruptcy:


The debtor gives up most of his or her property, which is then sold to pay creditors, or people who are owed money.


OR


The debtor works out a payment plan with creditors, who may accept a reduced amount in exchange for total repayment over time.


Chapter 7 Liquidation Bankruptcy


Chapter 13 Individual Debt Adjustment


- 2** The application for bankruptcy requires detailed documentation of income, expenses, assets, liabilities, and all recent financial transactions.


- 3** When a bankruptcy application is filed, the court assumes responsibility for the debtor's finances and issues an order informing all creditors and stopping them from taking steps to collect their debts without court permission.


- 4** With a court-appointed trustee, the debtor meets with creditors to negotiate and agree on how much each will be paid. The trustee's job is to recover as much money as possible for creditors.


- 5** At a hearing, a federal judge then declares the debt discharged, or dismissed.



the extraordinary costs of World War II, and to pay for wars and social programs over the decades since then.

In fact, the government's books showed a deficit in all but seven years from 1930 to 1969. And they were in the red every year from 1969 to 1998. As a result, the public debt climbed to more than \$5.5 trillion at the beginning of fiscal year 1998.

A concerted effort by a Republican-controlled Congress and President Bill Clinton did curb the soaring debt. In fact, it produced four straight years of budget surpluses from 1998 to 2002.

Deficits are once again the order of the day, however. The Treasury has reported a deficit for every fiscal year since 2002. The shortfall topped \$450 billion in 2008—as you will see when we return to this whole matter of government finance in Chapter 16.

The Bankruptcy Power

Article I, Section 8, Clause 4 gives Congress the power “[t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.” A bankrupt individual or company or other organization is one a court has found to be insolvent—that is, unable to pay debts in full. **Bankruptcy** is the legal proceeding in which the bankrupt's assets—however much or little they may be—are distributed among those to whom a debt is owed. That proceeding frees the bankrupt from legal responsibility for debts acquired before bankruptcy.

The States and the National Government have concurrent power to regulate bankruptcy. Today, however, federal bankruptcy law is so broad that it all but excludes the States. Nearly all bankruptcy cases are heard now in federal district courts.

The Currency Power

Article I, Section 8, Clause 5 gives Congress the power “[t]o coin Money [and] regulate the Value thereof.” The States are expressly denied that power.³

³ Article I, Section 10, Clause 1 forbids the States the power to coin money, issue bills of credit (paper money), or make anything but gold and silver legal tender.

Background

CONSEQUENCES OF BANKRUPTCY Display Transparency 11B, Bankruptcy. Personal bankruptcy offers a fresh start for people with severe financial problems. However, point out to students that bankruptcy is not a step to be taken lightly. It carries significant consequences. If they file for bankruptcy, they may have to give up most of their possessions. Also, not all debts are discharged. They would still have to pay student loans, child support, and taxes. Their credit report would show the bankruptcy for up to ten years, seriously limiting their ability to get a loan or credit card. They may have to buy with cash only, which could put large purchases, such as a car, out of their reach. If they are able to obtain credit, the rates and fees would be very high. As a credit risk, they would have difficulty finding a landlord who would rent an apartment to them.

Answers

What Is Personal Bankruptcy? to apply bankruptcy rules uniformly across the country

Until the Revolution, the English money system, built on the shilling and the pound, was in general use in the colonies. With independence, that stable currency system collapsed. The Second Continental Congress and then the Congress under the Articles issued paper money. Without sound backing, and with no taxing power behind it, however, the money was practically worthless. Each of the 13 States also issued its own currency. Adding to the confusion, people still used English coins, and Spanish money circulated freely in the southern States.

Nearly all the Framers agreed on the need for a single, national system of “hard” money. So the Constitution gave the currency power to Congress, and it all but excluded the States from that field. Currency is money in any form when it is in use as a medium of exchange. From 1789 on, among the most important of all of the many tasks performed by the Federal Government has been that of providing the nation with a uniform, stable monetary system.

From the beginning, the U.S. has issued coins in gold, silver, and other metals. Congress chartered the first Bank of the United States in 1791 and gave it the power to issue bank notes—that is, paper money. Those notes were not legal tender, however. **Legal tender** is any kind of money that a creditor must by law accept in payment for debts.

Congress did not create a national paper currency, and make it legal tender, until 1862. Its new national notes, known as Greenbacks, had to compete with other paper currencies already in the marketplace. Although the States could not issue paper money themselves, State governments could and did charter (license) private banks, whose notes did circulate as money. When those private bank notes interfered with the new national currency, Congress (in 1865) laid a ten percent tax on their production. The private bank notes soon disappeared. The Supreme Court upheld the 1865 law as a proper exercise of the taxing power in *Veazie Bank v. Fenno*, 1869.

At first, the Greenbacks could not be redeemed for gold or silver. Their worth fell to less than half their face value on the open market. Then, in 1870, the Supreme Court held their issuance to be unconstitutional. In *Hepburn v. Griswold* it said “to coin” meant to stamp metal and so the Constitution did not authorize the National Government to issue paper money.

The Court soon changed its mind, however, in the *Legal Tender Cases* in 1871 and again in *Juliard v. Greenman* in 1884. In both cases, it held the issuing of paper money as legal tender to be a proper use of the currency power. The Court also declared this a power properly implied from both the borrowing and the war powers.

Checkpoint
How did Congress stop private bank notes from interfering with the national currency?

creditor
n. person to whom money is owed

REMEDIATION

If Your Students Have Trouble With	Strategies For Remediation
Understanding the differences among the delegated powers (Question 2)	Review the graphic describing inherent, expressed, and implied powers. Have students give an example of each type of power. Examples should be different from those given in the textbook.
Identifying the long-term importance of <i>Gibbons v. Ogden</i> and <i>McCulloch v. Maryland</i>	Teach students to ask themselves: “How did things change after this event/decision/development?”
The need for limits on the money and commerce powers of Congress (Questions 1, 3, 4, 5, 6)	Discuss: What might happen if Congress did not have these limits?

SECTION 1 ASSESSMENT

Essential Questions Journal To continue to build a response to the chapter Essential Question, go to your **Essential Questions Journal**.

1. Guiding Question Use your completed table to answer this question: What powers over money and commerce does the Constitution give to Congress and what limits does it put on these powers?

Key Terms and Comprehension

- Explain the difference between the **expressed powers** and the **implied powers**.
- What is the **commerce power** and why is it important?

Critical Thinking

- 4. Make Decisions** Based on your understanding of the commerce power, explain whether Congress has the power to regulate the Internet.
- 5. Draw Inferences** Why did the Framers place limits on the power of Congress to levy taxes?
- 6. Express Problems Clearly** Why did the Framers explicitly grant the powers of currency, borrowing, and bankruptcy to Congress?

Quick Write

Persuasive Writing: Gather Evidence Choose one power of Congress described in this section. Then list the pros and cons of Congress exercising that power. Use your list to help you form an opinion on whether Congress has taken use of that power too far or not far enough.

Assessment Answers

1. Commerce: must be exercised in accordance with other constitutional limitations; can’t tax exports; can’t favor the ports of one State over another; can’t require that vessels bound to or from one State be obliged to enter, clear, or pay duties in another State; could not interfere in the slave trade until 1808
Tax: can’t conflict with any other constitutional provision; must tax only for public purposes; may not tax exports; direct taxes must be apportioned among the States according to

population; indirect taxes must be levied at same rate

Power to borrow: no specific limitations

Bankruptcy: no limits

Currency: no limits

- those stated in Constitution; those that can reasonably be deduced from the expressed powers
- Congress can regulate foreign and interstate trade. It has been the basis for expanding the powers of Congress.
- The broad definition of *commerce* given

since *Gibbons v. Ogden* might allow Congress to regulate the Internet.

5. The Framers were concerned about a Congress that might use the taxing power unfairly.
6. The National Government needed the currency and borrowing powers to ensure a stable national currency. They needed the bankruptcy power to create uniform laws for all debtors seeking bankruptcy protection.

QUICK WRITE Students’ lists should relate correctly to the powers of Congress they selected.

GUIDING QUESTION

How do the expressed powers reflect the Framers' commitment to creating a strong but limited National Government?

Powers of Congress	
Foreign Policy	Domestic Policy
<ul style="list-style-type: none">• From inherent powers as sovereign nation in matters affecting national security• Shares power with President• Can declare war• Can raise and maintain military forces• Can grant letters of marque and reprisal• War Powers Act	<ul style="list-style-type: none">• Naturalization laws• Copyrights and patents• Post offices• Establishes crimes based on postal power• Fixes standards of weights and measures• Acquires, manages, and disposes of federal areas• Eminent domain• Can admit new States• Creates federal courts below Supreme Court• Defines federal crimes and sets punishments

Get Started

LESSON GOALS

Students will . . .

- examine the division of war powers by analyzing a primary source document.
- evaluate the expressed powers of Congress by determining which powers they feel are most important.
- examine the domestic powers by using photographs illustrating each power.

SKILLS DEVELOPMENT

DRAW INFERENCES AND CONCLUSIONS

To practice drawing inferences and conclusions in this section, use the Chapter 11 Skills Worksheet (Unit 3 All-in-One, p. 77). You may teach the skill explicitly either before or after this lesson's class discussion about downloading from the Internet. For L2 and L1 students, assign the adapted Skill Activity (Unit 3 All-in-One, p. 78).

SECTION 2

The Other Expressed Powers



Guiding Question

How do the expressed powers reflect the Framers' commitment to creating a strong but limited National Government? Use a table to organize information about the expressed powers of Congress.

Powers of Congress	
Foreign Policy	Domestic Policy
<ul style="list-style-type: none">•••	<ul style="list-style-type: none">• Naturalization laws••

Political Dictionary

- copyright
- patent
- territory
- eminent domain
- naturalization

Objectives

1. Identify the key sources of the foreign relations powers of Congress.
2. Describe the power-sharing arrangement between Congress and the President on the issues of war and national defense.
3. List other key domestic powers exercised by Congress.

Image Above: Congress has the expressed power to establish post offices and maintain post roads.

We have just reviewed the several expressed powers that Congress has with regard to money and to foreign and interstate commerce. The Constitution gives Congress a number of other—and very important—expressed powers, and they are the focus of this section.

Congress and Foreign Policy

The Federal Government has greater powers in the field of foreign affairs than it does in any other area of public policy. The 50 States that comprise the Union are not sovereign, so they have no standing in international law. In short, the Constitution does not allow them to take part in foreign relations.⁴

The Constitution gives the President primary responsibility for the conduct of American foreign policy. As the Supreme Court stated in *United States v. Curtiss-Wright Export Corp.* in 1936, the chief executive is “the sole organ of the Federal Government in the field of international relations.”

Still, the Constitution does give Congress a significant place in the field of foreign affairs. Its authority in that area arises from two sources: (1) from a number of the expressed powers, most especially the spending power, the power to regulate foreign commerce, and the war powers; and (2) from the fact that the United States is a sovereign state in the world community. As the lawmaking body of the sovereign United States, Congress has the inherent power to act on matters affecting the security of the nation—for example, the regulation of immigration and the enactment of measures to combat terrorism here and abroad. We shall return to this vitally important subject—foreign policy—in Chapter 17.

The War Powers

Six of the 27 expressed powers set out in Article I, Section 8 deal explicitly with the subject of war and national defense.⁵ Remember that here, too,

⁴ See Article I, Section 10, Clauses 1 and 3.

⁵ The war powers of Congress are contained in Clauses 11 through 16.

Focus on the Basics

FACTS: • Congress derives its foreign affairs powers from the expressed powers and from its position as the lawmaking body of a sovereign nation. • Congress shares power with the President in the areas of defense and foreign affairs. • Congress regulates the postal system, copyrights, patents, and weights and measures. • Congress has the power to acquire and manage federal territories, to oversee naturalization laws, and to create federal courts.

CONCEPTS: balance of power, enumerated powers, checks and balances

ENDURING UNDERSTANDINGS: • Some expressed powers of Congress serve to check the powers of the President and the courts. • The fact that the States do not have any powers in the field of foreign affairs is a reflection of the federal system. • The domestic powers of Congress have a direct impact on the daily lives of all Americans.

Congress shares power with the chief executive. The Constitution makes the President commander in chief of the nation's armed forces,⁶ and, as such, the President dominates the field.

The congressional war powers are, however, both extensive and substantial. Only Congress can declare war. It alone has the power to raise and support armies, to provide and maintain a navy, and to make rules for the governing of the nation's military forces. Congress also has the power to provide for "calling forth the Militia" (today, the National Guard), and for the organizing, arming, and disciplining of that force. And Congress is also given the power to grant letters of marque and reprisal,⁷ and to make rules concerning captures on land and water.

⁶ Article II, Section 2, Clause 1.

We shall return to the war powers in Chapter 14 and there consider, at some length, this question: Does the Constitution give the President the power to make war in the absence of a declaration of war by Congress? Many argue that it does not, but more than 200 years of American history argue otherwise. Indeed, most Presidents have used the armed forces of the United States abroad, in combat, without a congressional declaration of war.

⁷ A few of the expressed powers are of little importance today. Thus, Congress has the power to grant letters of marque and reprisal (Article I, Section 8, Clause 11), and the States are denied the power to issue them (Article I, Section 10, Clause 1). Letters of marque and reprisal are written grants of power authorizing private persons to outfit vessels to capture and destroy enemy vessels in time of war. In effect, they authorize a form of legalized piracy. Letters of marque and reprisal are forbidden in international law by the Declaration of Paris, 1856, and the United States honors the rule.

Checkpoint
What war powers does Congress have?

BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 3 All-in-One, p. 70) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 3 All-in-One, p. 72)

BELLRINGER

Distribute the Bellringer Worksheet, which is an excerpt from the U.S. declaration of war on Germany in 1917.

L2 Differentiate Define the word *resolved* (decided) on the board. Add these scaffolding questions before students answer the questions on the transparency:

What group of people declared war? (Hint: Look after the words "Resolved by.") Who was given permission to carry out the war?

Teach

To present this topic using online resources, use the lesson presentation at **PearsonSuccessNet.com**.


DISCUSS THE BELLRINGER

Discuss students' answers to the Bellringer questions. (*The excerpt suggests that the President implements war, but this power is balanced by Congress's power to authorize the use of resources for war.*) Make sure they understand that the Framers granted Congress the power to declare war to prevent the President from gaining too much power. Tell them that they will read more about the role of Congress in the conduct of war in "Issues of Our Time" in this chapter.

L4 Differentiate Challenge students to describe other examples of Congress working with or against the President in carrying out its war powers.

IDENTIFY THE WAR POWERS

Have students list the war powers of Congress and the President, including the provisions of the War Powers Resolution. Then ask them to use the textbook to answer this question: **What limits are placed on the President's war powers?** (*Only Congress can formally declare war and raise and maintain military forces. The President can use military forces in response to an attack, but must then report to Congress within 48 hours. The military commitment ends in 60 days unless Congress extends it.*)



The Expressed Powers of Congress

Why These Powers?

Of all the many powers the Framers could have granted to Congress, why did they choose these? In the *Federalist Papers*, James Madison answered this question by grouping the enumerated powers into the five categories below. Only Clause 9, bestowing the power to create courts inferior to the Supreme Court was not included. *Which of these powers do you think is most important? Explain.*

Security against foreign danger:

- Clause 1** levy taxes, duties, and excises
- Clause 2** borrow money
- Clause 11** declare war
- Clause 12, 13, 14** raise, regulate and provide for armies and navy
- Clause 15 and 16** organize, arm, discipline, and call forth the militia to execute federal laws, suppress uprisings, and repel invasions

Regulation of the intercourse with foreign nations:

- Clause 3** regulate foreign commerce
- Clause 10** define and punish crimes committed on the high seas and offenses against the law of nations

Maintenance of harmony and proper intercourse among the States:

- Clause 3** regulate commerce among the several States and the Indian tribes
- Clause 4** establish a uniform rule of naturalization and uniform laws of bankruptcy
- Clause 5** coin money, regulate the value of domestic and foreign coin, fix the standard of weights and measures
- Clause 6** provide for the punishment of counterfeiting
- Clause 7** establish post offices and post roads

Miscellaneous objects of general utility:

- Clause 8** establish patent and copyright laws
- Clause 17** legislate for the seat of the federal capital and other federal territories

Provisions for giving due efficacy to all these powers:

- Clause 18** The Necessary and Proper Clause

The powers delegated by the proposed Constitution to the federal government are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, . . .

— James Madison, *The Federalist No. 45*

Differentiated Resources

The following resources are located in the All-in-One, Unit 3, Chapter 11, Section 2:

- L3** Reading Comprehension Worksheet (p. 70)
- L2** Reading Comprehension Worksheet (p. 72)
- L3** Bellringer Worksheet (p. 74)
- L3** Core Worksheets A and B (pp. 75, 76)
- L3** Skills Worksheet (p. 77)
- L2** Skill Activity (p. 78)
- L3** Quiz A (p. 79)
- L2** Quiz B (p. 80)

The image shows two sample worksheets. The first is titled 'Drawing Inferences and Conclusions' and contains a passage about the framers of the Constitution and their concerns about federal power. The second is titled 'Apply the Skill' and contains several questions related to the passage, including identifying the main idea and drawing inferences from the text.

Answers

Checkpoint declare war; raise and support armies, provide and maintain a navy; make rules for the governing of the nation's military forces; call forth and organize, arm, and discipline the militia (National Guard).

The Expressed Powers of Congress Students should support their answers with evidence.

How does copyright law affect me?

The Internet makes sharing information easier than ever, but laws regulate what information can or cannot be shared freely. Copyright protection may be inconvenient for those who want music or other content for free, but it is important to protect the rights of writers and artists. *What determines fair use?*

Alex, Ryan, and Chris form a band. They practice their favorite popular songs and sometimes play for their friends after school. They are asked to play at a school dance. **WARNING:** Although they do not charge for their performance and they are not taking money away from the copyright holder, the band could be sued for using someone else's copyrighted work.

Ryan suggests they record an album of cover songs and distribute it for free. **WARNING:** The band could lose its case if sued in court for copyright infringement. If they record current songs, some people might download their version instead of buying it. That would take money from the original artist or copyright holder.

CHECK COMPREHENSION

Have students list an example of an action that Congress might take under each of the following powers: foreign affairs; war; postal; copyrights and patents; weights and measures; territories; naturalization; and judicial. Then ask students to trade papers with a partner. Did their partner choose different examples? If so, have students jot down those examples as well. Have students continue to trade papers with different students until they have two or three examples for each power.

L2 Differentiate Photocopy and distribute the pages of Section 2. Have students underline, highlight, or circle one or two examples of actions Congress might take using each expressed power. Then ask students to think of laws that Congress might pass using these powers. For example, for the naturalization power, Congress might pass a law changing the requirements for citizenship.

In today's world, no one can doubt that the President must have the power to respond, rapidly and effectively, to any threat to the nation's security. Still, many people have long warned of the dangers inherent in a presidential power to involve the country in undeclared wars.

Again, we shall revisit this matter in Chapter 14. But here, in the context of the war powers of Congress, we must examine the War Powers Resolution, a statute enacted by Congress in 1973.

The war-making power as it was exercised by Presidents Johnson and Nixon during the undeclared war in Vietnam (1964–1973) moved Congress to enact the War Powers Resolution. That law provides that the chief executive can commit American military forces to combat abroad only (1) if Congress has declared war or (2) when Congress has specifically authorized a military action or (3) when an attack on the United States or any of its armed forces has occurred.

If troops are ordered into combat in the third circumstance, the President is directed to report that fact to Congress within 48 hours. Any such commitment of military forces must

end within 60 days, unless Congress agrees to a longer involvement. And Congress can end a commitment at any time.

The constitutionality of the War Powers Resolution remains in dispute. A determination of the question must await a situation in which Congress demands that its provisions be obeyed but the President refuses to do so.

Domestic Powers

The other expressed powers relate to domestic matters. Each of them has a direct and a considerable effect on the daily lives of the American people.

Copyrights and Patents The Constitution gives Congress the power

FROM THE CONSTITUTION

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

—Article I, Section 8, Clause 8

Political Cartoon Mini-Lesson

Display Transparency 11 C, Iraq War Funding Bill, when you discuss students' answers to the Bellringer activity. Explain to students that "timetable" in this cartoon refers to a plan for withdrawing troops from Iraq over a stated time period. Ask: **Whom do the characters represent?** (*President George W. Bush and the Democrat-controlled Congress*) **What is about to happen?** (*The President and Congress are about to collide over funding the war in Iraq.*) **What does the President want?** (*funding without strings, or conditions*) **What "string" does Congress want to put on war funding?** (*a timetable for the withdrawal of troops*) **How does this cartoon illustrate checks and balances in the exercise of war powers?** (*Congress can use its power of the purse to limit the President's ability to wage war. The President can use veto power to block a war funding bill that contains unwanted restrictions.*)

Answers

How does copyright law affect me? Fair use is determined by the purpose and character of the use, the nature of the copyrighted work, the amount and substantiality of the portion used, and the effect of the use on the value of the copyrighted work. It also depends on whether a new work is transformative.



The band sells their songs over the Internet, but discover that some people are sharing the songs with friends who have not paid. **WHAT CAN THEY DO?** They can sue those who are illegally distributing and copying their compositions. If they do not take action, they could forfeit their copyright.

The band members write songs and record them. They should then copyright their compositions, registering them with the Copyright Office. **CAUTION:** The band must protect their copyrights by suing anyone who uses their songs without permission.



A rival band records one of Ryan, Chris, and Alex's songs and sells the CDs at school. **WHAT CAN THEY DO?** They can sue the other band for copyright infringement. If they can prove that they wrote the song or recorded it first, they could win and force the other band to pay damages.

Fair Use Determining an infringement of copyright depends upon whether the test of "fair use" is met. The factors considered are: **1** the purpose and character of the use, **2** the nature of the copyrighted work, **3** the amount and substantiality of the portion used, and **4** the effect of the use on the value of the copyrighted work. In addition, the Supreme Court has held that the courts should focus on the extent that the new work is transformative—that is, does it alter the work with new expression, meaning, or message? The more transformative the new work, the less will be the significance of the other factors.

A **copyright** is the exclusive right of an author to reproduce, publish, and sell his or her creative work. That right may be assigned—transferred by contract—to another, as to a publishing firm by mutual agreement between the author and the other party.

Copyrights are registered by the Copyright Office in the Library of Congress. Under present law, they are good for the life of the author plus 70 years. They cover a wide range of creative efforts: books, magazines, newspapers, musical compositions and lyrics, dramatic works, paintings, sculptures, cartoons, maps, photographs, motion pictures, sound recordings, and much more.⁸ The Office registers more than 500,000 copyrights each year.

The Copyright Office does not enforce the protections of a copyright. If the holder thinks a copyright has been violated, he or she may bring a suit for damages in the federal courts.

A **patent** grants a person the sole right to manufacture, use, or sell "any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof." A patent is good for up to 20 years. The term of a patent may be extended

only by a special act of Congress. The Patent and Trademark Office in the Department of Commerce administers patent laws.⁹

The Postal Powers Article I, Section 8, Clause 7 gives Congress the power "[t]o establish Post Offices and Post roads"—in effect, the power to provide for the carrying of the mail. "Post roads" are all postal routes, including rail lines, airways, and waters within the United States, during the time mail is being carried on them.

Carrying the mail is among the oldest of all governmental functions. Its origins date back at least to Egyptian practice before

⁸ Not all publications can be protected by copyright. Thus, the Supreme Court has held that such "factual compilations" as telephone directories "lack the requisite originality" for copyright protection (*Feist Publications, Inc., v. Rural Telephone Service Co.*, 1991).

⁹ The power to protect trademarks is an implied power drawn from the commerce power. A trademark is some distinctive word, name, symbol, or device used by a manufacturer or merchant to identify his goods or services and distinguish them from those made or sold by others. A trademark need not be original, merely distinctive. The registration of a trademark carries the right to its exclusive use in interstate commerce for 10 years. The right may be renewed an unlimited number of times.

Checkpoint
Who enforces copyrights?

DISTRIBUTE CORE WORKSHEET A

Tell students that today they will look closely at the powers of Congress and rank them according to their importance. Point out that some of the expressed powers are very important, yet controversial, while others, though important for the nation to run smoothly, are not at all controversial. Divide students into groups of two or three and distribute the Chapter 11 Section 2 Core Worksheet A (Unit 3 All-in-One, p. 75), which asks students to rank the top ten expressed powers of Congress. Remind them to use the chart "The Expressed Powers of Congress: Why These Powers?" which summarizes the powers.

Name _____ Class _____ Date _____

CHAPTER 11 **CORE WORKSHEET A**
SECTION 2 **Other Expressed Powers** **3**

Review the powers of Congress listed in "The Expressed Powers of Congress: Why These Powers?" feature in your text. Make a list of the ten powers that you consider most important and rank them in order of importance from 1 (most important) to 10 (least important). Explain why you ranked each power as you did.

Part 1 Define *important*. What makes a power of Congress important? Day-to-day influence on people's lives, the power to check and balance the President, or something else?

Part 2 Rank the top ten powers by completing the table below.

Power	Explain the Ranking
1.	
2.	
3.	
4.	
5.	
6.	
7.	
8.	
9.	
10.	

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DISTRIBUTE CORE WORKSHEET B

After students have completed Core Worksheet A, distribute the Chapter 11 Section 2 Core Worksheet B (Unit 3 All-in-One, p. 76), which asks students to compare their lists to those of other groups. They should rotate around the room, looking for students whose lists differ from their own to answer the questions. Finish the class by discussing students' answers on the Core Worksheets.

L2 ELL Differentiate Pair ELLs with partners to complete Core Worksheet B.

How Government Works

FAIR USE The fair-use rule allows the limited use of someone's creative work without asking for permission from the copyright holder. Point out to students that they must always cite their sources. However, citing sources is not enough. They still must follow fair-use guidelines. The guidelines continue to evolve as the courts apply the four factors to specific cases. Generally, the courts have allowed teachers and students to copy small amounts of copyrighted material for educational purposes, without obtaining permission. However, they may not sell the materials. Students may use quotations in their papers without requesting permission. The amount of lifted material matters, however. The courts are more likely to allow the use of 20 words from a 500-page book than 20 words from a 40-word poem. Advise students to use common sense: Does their use seem fair or like stealing?

Answers

Checkpoint If the copyright holder thinks a copyright has been violated, he or she may sue for damages in the federal courts.

CREATE A PHOTO ESSAY

Challenge students to take or find five photographs, each relating to a different domestic power of Congress discussed in the section. Display all photos and have the students explain how each of their photos relates to a domestic power of Congress. If students cannot access a digital camera, they can cut photographs from magazines and newspapers.

L4 Differentiate Have students research congressional and presidential speeches, news articles on laws passed by Congress, and other primary sources to find quotations to pair with their photographs. The quotations can be attached to the photos.

EXTEND THE LESSON

L3 Differentiate Have students create a radio news segment on a fictional copyright or patent infringement case, including interviews with both sides in the case.

L4 Differentiate Ask students to read and analyze one of *The Federalist* essays about the powers granted to Congress (No. 41, 43, 43, or 45). They should make an outline of Madison's arguments and then make a list of possible rebuttals to those arguments.

L2 Differentiate Have students find and copy into their notebooks the sentences in the section that explain the checks and balances system at work in the areas of war powers and judicial powers.

L4 Differentiate Have students create a board game called "Power." The game should include rewards for the constitutional use of congressional power and penalties for unconstitutional use. Players can be real or fictional members of Congress. Game pieces might include cards describing various scenarios, and a board with steps leading to the capture of the prize, which might be the recognition of the player as an "expert on congressional power" and an invitation to appear on a panel discussion. These are suggestions only.

L3 Differentiate Have students write a letter from a former President to a member of Congress. The letter should express the President's views on the division of the war-making power between the two branches. It should include a summary of the war powers of the President and those of Congress and a discussion of the War Powers Resolution. The letter should indicate whether the division of power is appropriate and necessary.

L3 Differentiate Have students research a recent copyright or patent infringement case and create a graphic organizer in which they show the main facts, players, and outcome of the case.

Answers

Caption Congress legislates for Washington, D.C., but the Capitol has no voting representative or senator.



► The Constitution gives Congress responsibility for federal lands within the U.S. Congress legislates directly for Washington, D.C. It also sets up agencies to manage national parks and the postal system. **What does "Taxation without representation" on the license plate mean?**



4000 B.C. The first post office in America was established in Boston in 1639, by the General Court of the Massachusetts Bay Colony. The first successful postal system in the colonies, the Penn Post, was begun by William Penn in 1683. He established a post office in Philadelphia and provided a regular weekly service along a thirty-mile route from there to New Castle, Delaware.

The United States Postal Service traces its history back to the early colonial period. The remarkable Benjamin Franklin is generally recognized as the father of the present-day postal system. He served as Co-Deputy Postmaster of the British Colonies in North America from 1753 to 1774, when the British removed him from office because of his political activities. In 1775, he became, by unanimous choice of the Second Continental Congress, the first Postmaster General of the United States.

Today, the Postal Service functions as an independent agency in the executive branch. It serves the nation through some 37,000 post offices. The nearly 700,000 career employees of the Postal Service handle more than 200 billion pieces of mail every year.

Congress has established a number of crimes based on the postal power. It is, for example, a federal crime for anyone to obstruct the mails or to use the mails to commit any criminal act. It has also prohibited the mailing of many items, among them poisons, explosives, intoxicating liquors, some live animals, libelous or obscene matter, lottery tickets, and any articles dangerous to the mails or postal workers. Any article prohibited by a State's laws—for example, switchblade knives or firecrackers—cannot be sent into that State by mail.

The States and their local governments cannot interfere with the mails in any unreasonable way. Nor can they require licenses for Postal Service vehicles, tax the gas they use, or tax post offices or any other property of the United States Postal Service.

Territories and Other Areas In two places—in Article I, Section 8, Clause 17 and in Article IV, Section 3, Clause 2—the Constitution delegates to Congress the power to acquire, manage, and dispose of various federal areas. That power relates to the District of Columbia and to the several federal **territories**, parts of the United States that are not admitted as States and that have their own systems of government, including Puerto Rico, Guam, and the Virgin Islands. It also covers hundreds of military and naval installations, arsenals, dockyards, post offices, prisons, parks and forest preserves, and many other federal holdings.

The Federal Government may acquire property by purchase or gift. It may also do so through the exercise of the power of **eminent domain**, the inherent power to take private property for public use. Notice that the Taking Clause in the 5th Amendment restricts the Federal Government's use of the power with these words: "nor shall private property be taken for public use, without just compensation." Private property may be taken

Background

EMINENT DOMAIN Governments have long used eminent domain to obtain property for public works, such as a highway or power plant. But could your local government take your home to make way for a shopping center? Quite possibly! The government of New London, Connecticut, was looking for a way to revitalize the city's sagging economy. A developer presented a plan to build a hotel and conference center in the city's Fort Trumbull neighborhood. The new complex would create jobs and yield greater tax revenue than did the modest homes in the area, so the city agreed to take the homeowners' property by eminent domain. A group of homeowners sued, arguing that seizing property to sell to private developers was not public use. In *Kelo v. City of New London*, 2005, the Supreme Court ruled for the city, interpreting "public use" broadly to mean a "public purpose," such as economic development.

by eminent domain only (1) for a public use, (2) with proper notice to the owner, and (3) for a fair price. What in fact constitutes a public use, proper notice, or a fair price often becomes a matter for courts to decide.

Territory may also be acquired from a foreign state as the result of the exercise of the power of Congress to admit new States (in Article IV), the war powers, or the President's treaty-making power (in Article II). Under international law, any sovereign state may acquire unclaimed territory by discovery.

Weights and Measures Article I, Section 8, Clause 5 gives Congress the power to "fix the Standard of Weights and Measures" throughout the United States. The power reflects the absolute need for accurate, uniform gauges of time, distance, area, weight, volume, and the like.

In 1838, Congress set the English system of pound, ounce, mile, foot, gallon, quart, and so on, as the legal standards of weights and measures in this country. In 1866, Congress also legalized the use of the metric system of gram, meter, kilometer, liter, and so on.

In 1901, Congress created the National Bureau of Standards in the Commerce Department. Now known as the National Institute of Standards and Technology, the agency keeps the original standards for the

United States. It is these standards by which all other measures in the United States are tested and corrected.

Naturalization Citizens of one country become citizens of another through a process called **naturalization**. Article I, Section 8, Clause 4 gives Congress the exclusive power "[t]o establish a uniform Rule of Naturalization." Today, the nation's population includes more than 14 million naturalized citizens.

Judicial Powers As a part of the system of checks and balances, the Constitution gives Congress several judicial powers. Thus, it has the power to create all of the federal courts below the Supreme Court and otherwise provide for the organization and composition of the federal judiciary. The federal court system is treated at length in Chapter 18.

Congress also has the power to define federal crimes and set the punishments that may be imposed on those who violate federal law. The Constitution mentions only four. Three are found in Article I, Section 8: counterfeiting, piracies and felonies committed on the high seas, and offenses against international law. Treason is listed in Article III, Section 3. But, as you will see, Congress has used its implied powers to establish more than 100 other federal crimes.

Checkpoint
What restrictions does the Constitution place on the exercise of eminent domain?

Assess and Remediate

L3 Collect the Core Worksheets and assess students' work.

L3 Assign the Section 2 Assessment questions.

L3 Section Quiz A (Unit 3 All-in-One, p. 79)

L2 Section Quiz B (Unit 3 All-in-One, p. 80)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

REMEDIATION

If Your Students Have Trouble With	Strategies For Remediation
Understanding how the foreign affairs powers of Congress are limited (Questions 1, 2, 5)	Have them list the President's foreign affairs powers in one column and the powers of Congress in another
Recognizing the importance of the postal, copyright, or weights and measures powers (Questions 3, 6)	Have them write a scenario in which these matters operate without government control
The judicial powers of Congress (Question 4)	Provide specific questions relating to these powers and direct students to the appropriate subsection to answer those questions

SECTION 2 ASSESSMENT

Essential Questions Journal To continue to build a response to the chapter Essential Question, go to your **Essential Questions Journal**.

1. Guiding Question Use your completed table to answer this question: How do the expressed powers reflect the Framers' commitment to creating a strong but limited National Government?

Key Terms and Comprehension

- Explain how Congress and the President share power in foreign policy and defense.
- How does a **copyright** differ from a **patent**?
- What judicial powers does Congress have?

Critical Thinking

- Predict Consequences** How might the foreign policy of the United States be different if the Constitution had not forbidden the individual States from making treaties or alliances with foreign powers?
- Draw Conclusions** Some people believe that the U.S. Postal Service should be abolished because its functions could be performed more efficiently by for-profit mail companies. Do you agree? Explain.

Quick Write

Persuasive Writing: Identify Your Audience Think about who you would like to persuade to share your point of view about the power of Congress that you selected in Section 1. For example, a group of students may be interested in how Congress affects education. Make a list of the strongest evidence to persuade your audience that Congress has used that power too little or too much.

Assessment Answers

- The Framers gave Congress important powers, but imposed limits on those powers.
- The President is the commander in chief and has primary responsibility for foreign policy. Only Congress can declare war, but the President can deploy the military in response to an attack on U.S. interests. The President must report to Congress and must end military involvement unless Congress agrees to extend it.
- A copyright protects creative works, such

as art, music, and literature. A patent protects inventions, such as a new machine.

- to create federal courts below the Supreme Court; to define federal crimes and punishments
- If every State had a different foreign policy, the U.S. would have been less of a nation and more of a confederation of States, each pursuing its own goals. The Union might not have held together.
- Possible responses: I agree, because competition among carriers might lead to lower rates. I disagree, because businesses might not find

it profitable to deliver mail to thinly populated areas, leaving people in some parts of the country without service or force them to pay higher rates.

QUICK WRITE Evidence students list should be appropriate for their chosen audience.

Get Started

LESSON GOAL

- Students will discuss the significance of the Court's decision in *McCulloch v. Maryland* on the power of the National Government.

Teach

Have students read the feature as homework or at the beginning of class.

INTRODUCE THE CONTENT

The decision in *McCulloch v. Maryland* is important because it established the meaning of the Necessary and Proper Clause—the Elastic Clause—of the Constitution. The Court authorized a broad reading of the Constitution that has allowed Congress to pass laws relating to issues not specifically mentioned in the Constitution. In other words, the ruling confirmed the existence of implied powers.

ESTABLISH THE FACTS

Have students work in pairs to sequence the main events in the case (not the events on the bottom of the page). The events are:

1. Congress charters the Second Bank of the United States.
2. A branch opens in Baltimore.
3. Maryland levies a tax on the bank.
4. McCulloch refuses to pay.
5. The case goes to the Maryland court, which rules in the State's favor.
6. The case is appealed to the Supreme Court.

What Are the Limits on the Implied Powers of Congress?

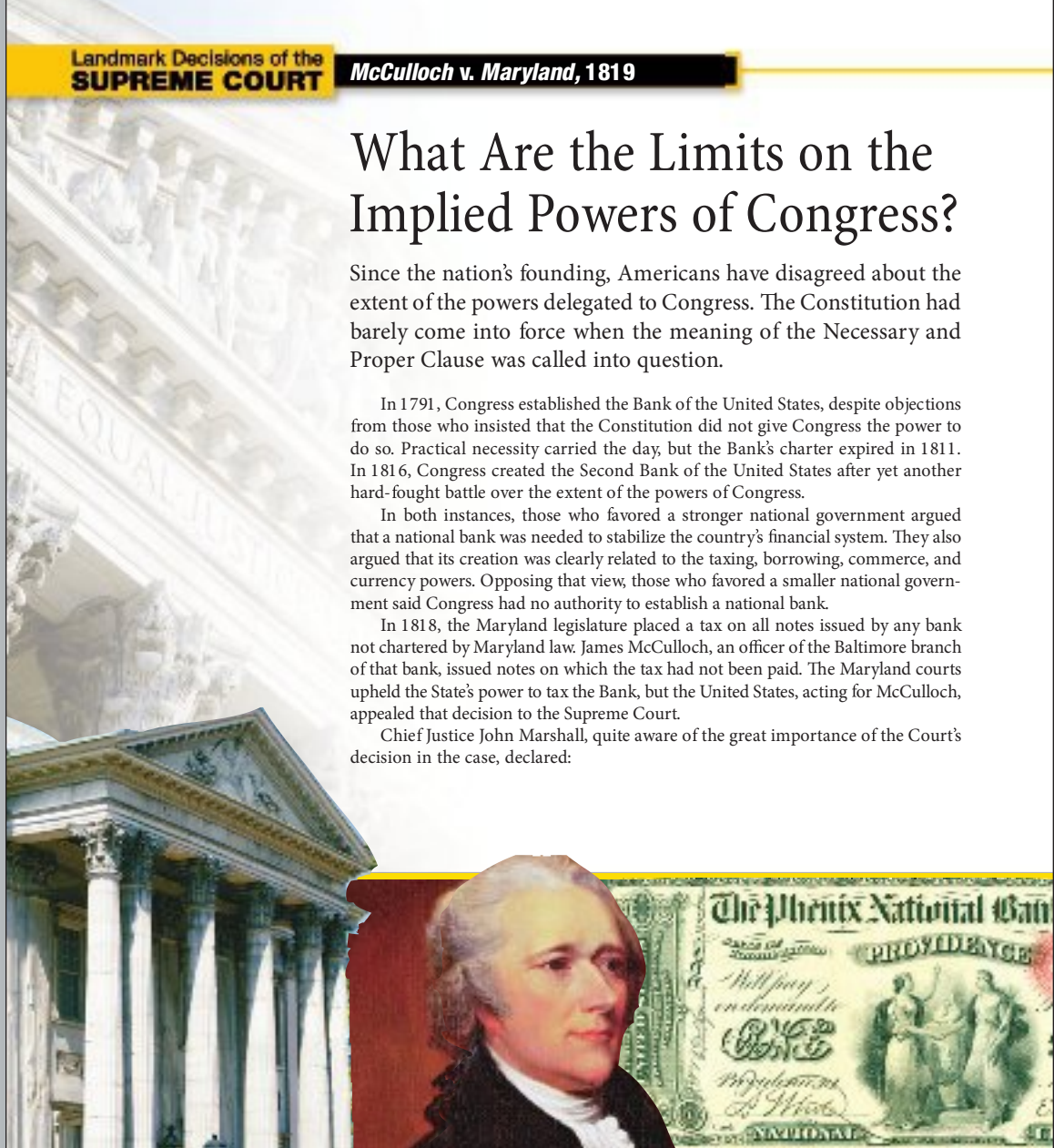
Since the nation's founding, Americans have disagreed about the extent of the powers delegated to Congress. The Constitution had barely come into force when the meaning of the Necessary and Proper Clause was called into question.

In 1791, Congress established the Bank of the United States, despite objections from those who insisted that the Constitution did not give Congress the power to do so. Practical necessity carried the day, but the Bank's charter expired in 1811. In 1816, Congress created the Second Bank of the United States after yet another hard-fought battle over the extent of the powers of Congress.

In both instances, those who favored a stronger national government argued that a national bank was needed to stabilize the country's financial system. They also argued that its creation was clearly related to the taxing, borrowing, commerce, and currency powers. Opposing that view, those who favored a smaller national government said Congress had no authority to establish a national bank.

In 1818, the Maryland legislature placed a tax on all notes issued by any bank not chartered by Maryland law. James McCulloch, an officer of the Baltimore branch of that bank, issued notes on which the tax had not been paid. The Maryland courts upheld the State's power to tax the Bank, but the United States, acting for McCulloch, appealed that decision to the Supreme Court.

Chief Justice John Marshall, quite aware of the great importance of the Court's decision in the case, declared:



Congress charters the First Bank of the United States with the support of Alexander Hamilton, 1791

Alexander Hamilton is the first Secretary of the Treasury, from 1789 to 1795.

Congress charters the Second Bank of the United States, 1816.

310

SKILLS DEVELOPMENT

ANALYZE POLITICAL CARTOONS

To teach the skill of analyzing political cartoons, have students read Analyze Political Cartoons in the Skills Handbook, p. S22. Then have them work the Landmark Decisions of the Supreme Court Worksheet (All-in-One, p. 100).

Supreme Court Notes

ON TAXING THE BANK One key question in *McCulloch v. Maryland* was whether the constitutional power of the States to tax included the power to tax the National Bank. In the opinion, Chief Justice John Marshall stated that "the power to tax involves the power to destroy." He went on to explain: "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; they may tax patent rights; they may tax the papers of the custom house; they may tax judicial process; they may tax all the means employed by the Government to an excess which would defeat all the ends of Government. This was not intended by the American people. They did not design to make their Government dependent on the States."

GOVERNMENT ONLINE**In the News**

To learn more about the relevance of the case today, go to PearsonSuccessNet.com

“The conflicting powers of the government of the Union ... are to be discussed; and an opinion given, which may essentially influence the great operations of the government. No tribunal can approach such a question without a deep sense of its importance, and of the awful responsibility involved in its decision. But it must be decided peacefully, or remain a source of hostile legislation, perhaps of hostility of a still more serious nature; . . .”

In one of its most important decisions, the Court unanimously reversed the Maryland courts, upholding the concept of implied powers. It held that the Constitution need not expressly empower Congress to create a bank. The creation of the Second Bank of the United States, said the Court, was “necessary and proper” to the execution of the taxing, borrowing, currency, and commerce powers.

As to the question of whether Maryland had the right to tax the Bank, the Court said, “the power to tax involves the power to destroy.” If States had the power to tax the Federal Government, they could destroy it. This was not, said the Court, the intention of the people when they ratified the Constitution.

Arguments for Maryland

- The Constitution gives the Federal Government no right to establish a bank.
- The power to establish banks is therefore reserved to the States.
- States are sovereign and may tax any bank within their borders.

Arguments for McCulloch and the National Bank

- The Necessary and Proper Clause gives Congress the right to do what is necessary to carry out its expressed powers.
- No State can lawfully tax any agency of the Federal Government.

Thinking Critically

1. What standard should be used to decide whether an act of Congress is or is not “necessary and proper”?
2. **Constitutional Principles** How did the decision in *McCulloch v. Maryland* change the distribution of power in the federal system?



President Andrew Jackson vetoes a bill to renew the charter of the Second Bank of the United States, 1832.

The National Banking Act creates a uniform currency for the United States, 1863.

President Woodrow Wilson signs the Federal Reserve Act, creating the Federal Reserve System, 1913.

311

DISCUSS

Ask students to summarize the arguments of the two sides in *McCulloch* and remind them that the Court found in favor of *McCulloch*. Then ask students to list ways in which society today differs from that of the Framers. You may discuss how the Internet, telephones, television, prescription drugs, and other important facets of today's life did not exist until recently. Ask: **What would have happened if the National Government could only legislate based on what is specifically in the Constitution?** (*The National Government would likely still make laws regarding commerce, but might be limited in how they could regulate new developments, such as the Internet, television advertising, or prescription drugs.*) Tell students that they will learn more about implied powers in the next section of the chapter.

L2 ELL Differentiate Give students prompts, asking them describe how business and communications are different than in the past.

CONNECT TO THE ESSENTIAL QUESTION

To end the discussion, ask students to consider the chapter Essential Question: **What should be the limits on the powers of Congress?** They may want to discuss how implied powers can and should be defined.

EXTEND THE LESSON

L3 L4 Differentiate Assign the Landmark Decisions of the Supreme Court Worksheet (Unit 3 All-in-One, p. 100).

L2 Differentiate Assign the adapted Landmark Decisions of the Supreme Court Worksheet (Unit 3 All-in-One, p. 102).

Assess and Remediate

Have students answer the Thinking Critically questions in the student edition.

IN THE NEWS

Point out to students that they can learn about more cases involving implied powers by visiting PearsonSuccessNet.com.

Answers

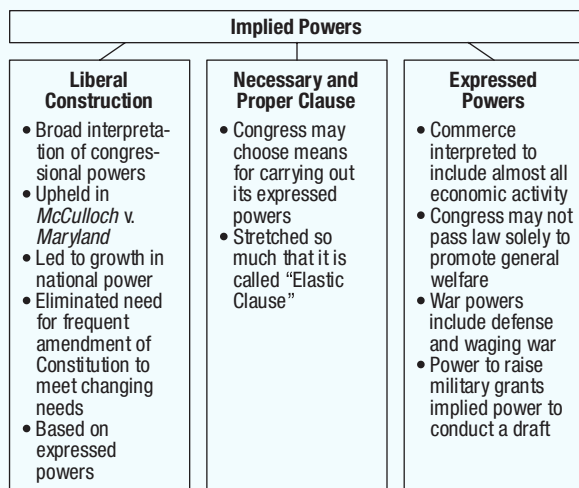
1. The act of Congress must be needed to carry out its expressed powers without violating any other provisions of the Constitution.
2. The decision shifted significant power to the Federal Government.

Supreme Court Notes

ON EXECUTING EXPRESSED POWERS The opinion written by Chief Justice John Marshall in *McCullough v. Maryland* broadened the scope of federal power. The Court concluded that the Constitution's expressed powers naturally included the implied powers to carry them out. “Although, among the enumerated powers of Government, we do not find the word ‘bank’ or ‘incorporation,’ we find the great powers, to lay and collect taxes; to borrow money; to regulate commerce; to declare and conduct a war; and to raise and support armies and navies. . . . But it may with great reason be contended that a Government entrusted with such ample powers, on the due execution of which the happiness and prosperity of the Nation so vitally depends, must also be entrusted with ample means for their execution. The power being given, it is the interest of the Nation to facilitate its execution.”

GUIDING QUESTION

How has the doctrine of implied powers increased the powers of Congress?



Get Started

LESSON GOALS

Students will . . .

- use the example of a teacher’s powers in the classroom to consider the meaning of implied powers.
- explore strict and liberal construction by evaluating congressional actions.
- decide upon and defend a position on implied powers.

SKILLS DEVELOPMENT

DECISION MAKING

To help students learn to make decisions, have them turn to the Skills Handbook, p. S18, and use the information explained there to complete this lesson’s Core Worksheet.

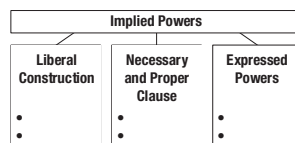
SECTION 3

The Implied Powers



Guiding Question

How has the doctrine of implied powers increased the powers of Congress? Use a chart to record information about the implied powers.



Political Dictionary

- Necessary and Proper Clause
- liberal constructionist
- strict constructionist
- consensus constructionist
- appropriate

Objectives

1. Explain how the Necessary and Proper Clause gives Congress flexibility in lawmaking.
2. Compare the strict construction and liberal construction positions on the scope of congressional power.
3. Describe the ways in which the implied powers have been applied.

Image Above: Congress established the United States Border Patrol to guard the nation’s borders.

What does the Constitution have to say about education? Nothing, not a word. Still, Congress provides tens of billions of dollars every year for the United States Department of Education to spend in a variety of ways throughout the country. Look around you. What indications of these federal dollars can you find in your school? If you attend a public school anywhere in the United States, that evidence should not be hard to spot.

How can this be? You know that Congress has only those powers delegated to it by the Constitution, and that document says nothing about education. The answer to that question lies in the central topic of this section: the implied powers of Congress.

The Necessary and Proper Clause

Remember, the implied powers are those powers that are not set out in so many words in the Constitution but are, rather, implied by (drawn from) those that are. The constitutional basis for the existence of the implied powers is found in one of the expressed powers. The **Necessary and Proper Clause**, the final clause in the lengthy Section 8 of Article I in the Constitution, gives to Congress the expressed power

FROM THE CONSTITUTION

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

—Article I, Section 8, Clause 18

Much of the vitality and adaptability of the Constitution can be traced directly to this provision, and even more so to the ways in which both Congress and the Supreme Court have interpreted and applied it over the years. In effect, the Necessary and Proper Clause allows Congress to choose the means “for carrying into Execution” the many powers given to it by the Constitution.

Focus on the Basics

FACTS: • The Necessary and Proper Clause allows Congress to exercise powers not expressly defined in the Constitution. • The scope of implied powers remains a subject of debate. • Liberal constructionists believe that the Constitution should be interpreted loosely, allowing Congress to do many things not expressly stated. • Strict constructionists believe that Congress should have only those implied powers absolutely necessary to carry out its expressed powers.

CONCEPTS: limited government, implied powers

ENDURING UNDERSTANDING: • The concept of implied powers has been a major factor in the growth of the powers of Congress. • The Necessary and Proper Clause has helped avoid the need for frequent amendments to the Constitution.

The manner in which Congress has viewed the concept, together with the supporting decisions of the Supreme Court, have made the final clause in Article I, Section 8, truly the “Elastic Clause.” It has earned that name, for it has been stretched so far and made to cover so much over the years.

Strict Versus Liberal Construction The Constitution had barely come into force when the meaning of the Elastic Clause became the subject of one of the most important disputes in American political history. The Framers of the Constitution intended to create a new and stronger National Government. The ratification of their plan was opposed by many, and that opposition was not stilled by the adoption of the Constitution. Rather, the conflict between the Federalists and the Anti-Federalists continued into the early years of the Republic. Much of that conflict centered

on the powers of Congress and the meaning of the Elastic Clause. Just how broad, in fact, were those powers?

The **strict constructionists**, led by Thomas Jefferson, continued to argue the Anti-Federalist position from the ratification period. They insisted that Congress should be able to exercise (1) its expressed powers and (2) only those implied powers absolutely necessary to carry out those expressed powers. They maintained that the States should keep as much power as possible. They agreed with Jefferson that “that government is best which governs least.”

Most of these Jeffersonians did acknowledge a need to protect interstate trade, and they recognized the need for a strong national defense. At the same time, they feared the consequences of a strong National Government. They believed, for instance, that the interests of the people of Connecticut were

Checkpoint
What was the argument of the strict constructionists?

GOVERNMENT ONLINE
Audio Tour
Listen to a guided audio tour about these powers at PearsonSuccessNet.com

The Implied Powers of Congress

Many of the laws Congress makes today stem from the Necessary and Proper Clause. The Framers could not have made provisions for every situation that might arise in the modern world. *Without its implied powers, how effectively could Congress address new situations?*

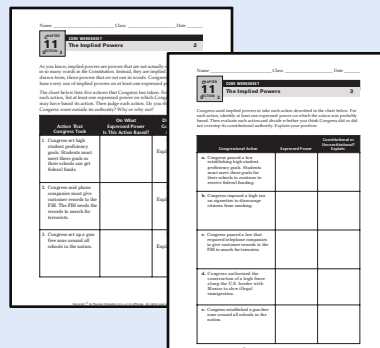
The expressed power to lay and collect taxes	Implies the power to: <ul style="list-style-type: none"> Punish tax evaders Regulate (license) some commodities (such as alcohol) and outlaw the use of others (such as narcotics) Require States to meet certain conditions to qualify for federal funding
The expressed power to borrow money	Implies the power to establish the Federal Reserve System of banks
The expressed power to create naturalization law	Implies the power to regulate and limit immigration
The expressed power to raise armies and a navy	Implies the power to draft Americans into the military
The expressed power to regulate commerce	Implies the power to: <ul style="list-style-type: none"> Establish a minimum wage Ban discrimination in workplaces and public facilities Pass laws protecting the disabled Regulate banking
The expressed power to establish post offices	Implies the power to: <ul style="list-style-type: none"> Prohibit mail fraud and obstruction of the mails Bar the shipping of certain items through the mail

Chapter 11 • Section 3 313

Differentiated Resources

The following resources are located in the All-in-One, Unit 3, Chapter 11, Section 3:

- L3** Reading Comprehension Worksheet (p. 81)
- L2** Reading Comprehension Worksheet (p. 82)
- L3** Core Worksheet (p. 83)
- L2** Core Worksheet (p. 85)
- L3** Quiz A (p. 87)
- L2** Quiz B (p. 88)



BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 3 All-in-One, p. 81) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 3 All-in-One, p. 82)

BELLRINGER

Write on the board: **Teachers will maintain order in the classroom. (1) What does this mean? (2) What would such a rule allow teachers to do? Give examples. (3) What would it not allow teachers to do? Give examples. (4) Why are there limits on a teacher's power? Answer in your notebook.**

Teach

To present this topic using online resources, use the lesson presentations at PearsonSuccessNet.com.

REVIEW BELLRINGER ANSWERS

Ask about ways in which teachers can maintain order in class. (*using grading systems, calling parents, or sending students to the principal*) Ask students if they can think of any strategies that fall into a gray area. (*Some teachers might find ridiculing a disruptive student to be appropriate, while others might find that technique objectionable.*)

L2 ELL Differentiate Clarify the word *implied* (not stated, but suggested or understood).

DRAW PARALLELS WITH POWERS OF CONGRESS

Display Transparency 11D, Implied Powers of Congress. Ask: **What provision of the Constitution allows Congress to take these actions?** (*Article I, Section 8, Clause 18, known as the Necessary and Proper Clause*) **Why is this also called the Elastic Clause?** (*It has allowed Congress to stretch its powers to meet changing needs.*) **What limits the power of teachers to impose discipline?** (*laws, school rules, and community standards for acceptable behavior*) **How is this similar to the implied powers of Congress?** (*Congress, too, may do what is necessary and proper to carry out its duties as long as it respects the Constitution.*)

Tell students to go to the Audio Tour for a guided audio tour of the implied powers of Congress.

Answers

The Implied Powers of Congress Congress could not effectively address new situations.

Checkpoint that Congress should exercise its expressed powers and only those implied powers necessary to carry out the expressed powers

L2 Differentiate Display Transparency 11E, Necessary and Proper Clause. Underline the words *necessary* and *proper*. Ask students to define them. (*necessary*: “needed”; *proper*: “correct”) Point out that an action by Congress would not be “proper” if it violated any part of the Constitution.

DISTRIBUTE CORE WORKSHEET

Distribute the Chapter 11 Section 3 Core Worksheet (Unit 3 All-in-One, p. 83). Tell students that they will look at some specific actions by Congress to identify the expressed powers that form the basis for each implied power. Then they will evaluate each action and decide whether they think Congress overstepped its constitutional authority.

L2 Differentiate Distribute the adapted Chapter 11 Section 3 Core Worksheet (Unit 3 All-in-One, p. 85), which is shorter than the on-level version.

REVIEW CASES

Walk through each congressional action on the worksheet. Ask: **How is an act of Congress determined to be constitutional or unconstitutional?** (*A case challenging the law must be brought to court.*) Tell students which actions were overturned by the courts. Point out that not all of these actions were challenged, and many were controversial.

EXPLORE LIBERAL AND STRICT CONSTRUCTION

Have students use their notes on the Core Worksheet to consider their position on how Congress uses its powers—Do they tend to agree more with strict constructionists or liberal constructionists? Point out that they are probably not completely one or the other. Use the Opinion Line strategy (p. T26) to gauge student understanding of the concept. Provide the following “talking points”: (1) The States need to keep as much power as possible in order to protect their varying interests. (2) If Congress becomes too powerful, the States will have no say in matters that affect their residents directly. (3) The National Government should focus solely on protecting interstate and foreign trade and defending the nation. (4) The National Government needs broad powers in the areas of war, economic issues, and national emergencies. (5) There are some issues on which the States should have no power, such as immigration.

Answers

Congress and Education Congress has used its commerce power to pass the Civil Rights Act and IDEA, which prohibit discrimination in schools.

not the same as those of South Carolinians or Marylanders or Pennsylvanians. They argued that only the States—not the far-off National Government—could protect and preserve those differing interests.

The **liberal constructionists**, led by Alexander Hamilton, had led the fight to adopt the Constitution. Now they favored a liberal interpretation of that document, a broad construction of the powers it gives to Congress. They believed that the country needed, as Hamilton put it in *The Federalist* No. 70, “an energetic Executive.”

The strict constructionists were sorely troubled by that broad view of the powers of Congress. They were sure that it would all but destroy the reserved powers of the States.

Liberal Construction Prevails You know that the Supreme Court upheld the concept of implied powers in *McCulloch v. Maryland* in 1819. That victory for the liberal constructionists set a pattern that, in general, has been followed ever since. Over the years, the powers wielded by the National Government have grown to a point that even the most **ardent** supporters of liberal construction could not

have imagined. It is impossible to see how the United States could have developed as it has over the past two centuries had the Court not ruled as it did in *McCulloch*.

Several factors, working together with the liberal construction of the Constitution, have been responsible for that marked growth in national power. They have included wars, economic crises, and other national emergencies. Spectacular advances, especially in transportation and communication, have also had a real impact on the size and the scope of government. Equally important have been the demands of the people for more and still more services from government.

Congress has been led by these and other factors to view its powers in broader and broader terms. Most Presidents have regarded their powers in like fashion. The Supreme Court has generally taken a similar position in its decisions in cases involving the powers of the National Government.

Moreover, the American people have generally agreed with a broader rather than a narrow reading of the Constitution. This **consensus**, or general agreement, has prevailed even though our political history has

ardent
adj. committed,
passionate

Congress and Education

Congress has no expressed powers related to education. In fact, education is one of the areas expressly delegated to the States. Yet Congress has used the powers implied by the Necessary and Proper Clause to make legislation that has drastically influenced schools in the United States. **How has Congress interfered in schools?**

Title III of the Civil Rights Act authorized the attorney general to initiate civil suits against discriminatory public schools and colleges in the name of the United States.

Civil Rights Act, 1964

Photo: Despite a court order to desegregate the schools, the U.S. Army had to protect African American students who enrolled at Central High School in Little Rock, Arkansas, in 1957. These circumstances led Congress to pass the 1964 law.

Constitutional Principles

FEDERALISM AND IMPLIED POWERS The Constitution delegates expressed powers to the National Government and reserves the remaining powers to the States. Congress’s use of implied powers, however, sometimes encroaches into the realm of the States. Judicial interpretation of the expressed powers helps to establish the division of authority between State and National Governments in our federal system. The Court’s decision in *Gibbons v. Ogden* interpreted the Commerce Clause broadly, allowing Congress to regulate many activities that are only indirectly related to commerce. In *United States v. Lopez*, the Court reined in congressional regulatory power by ruling that the federal firearms law depended on an overly broad definition of “commerce.” Future cases will no doubt continue to adjust the line where federal authority ends and State powers begin.

been marked, and still is, by controversies over the proper limits of national power.

The Doctrine in Practice

The ways in which the Necessary and Proper Clause has been construed (interpreted) and applied over the last 200 years has enabled the National Government to meet the changing needs of the times. As a result, it has virtually eliminated the need for frequent amendment of the Constitution.

Instances of the exercise of the **doctrine** of implied powers are almost too numerous to count. The concept of implied powers has made it possible for the Government of the United States to meet any number of problems that could not possibly have been foreseen by the Framers. It does not stretch matters too much to say that, today, the Constitution's words "necessary and proper" really mean "convenient and useful."

Every exercise of implied powers must be based on at least one of the expressed powers. Thus, in *McCulloch v. Maryland* the Supreme Court found that the creation of the Bank of the United States was "necessary and proper"

to the execution of four expressed powers held by Congress: the taxing, borrowing, currency, and commerce powers.

Over the years, Congress has most often found a basis for the exercise of implied powers in (1) the commerce power, (2) its power to tax and spend, and (3) the war powers.

The Commerce Clause As you know, the Commerce Clause gives Congress the power to regulate both foreign and interstate trade. And you are aware, too, of the Supreme Court's hugely expansive reading of that provision, beginning with *Gibbons v. Ogden* in 1824. The word "commerce" has been held to include the production and the buying and selling of goods as well as the transportation of people and commodities. Commerce has been defined so broadly that it encompasses virtually every form of economic activity today. Congress has the authority to regulate manufacturing, wages and hours, labor-management relations, foods and drugs, air travel, and much more. It can provide for the building of interstate highways, consumer protection, the protection of the environment—the list goes on and on. In 1998,

Checkpoint
What factors have led to the growth of national power?

doctrine
n. a principle or concept

Title IX of the Education Amendments to the Civil Rights Act forbids gender discrimination in federally funded education programs. Its most visible effect has been in girls' and women's athletics. Since 1970, the number of female high school athletes has increased from fewer than 300,000 to more than 3 million.

Title IX, 1972



The Individuals with Disabilities Education Act (IDEA) is a federal civil rights law designed to prevent discrimination and enable individuals with disabilities to participate fully in all aspects of education.

The education gap between people with and without disabilities is shrinking. People with disabilities are attending postsecondary institutions in greater numbers.

IDEA, 1990

Photo: Schools today must be accessible to students with wheelchairs.

L2 ELL Differentiate Define *liberal* and *strict* in the context of Section 3. (*liberal*: broad, generous, loose; *strict*: kept within narrow limits, exact, precise) Have students say the words aloud and then write a sentence using each. Be sure students know what *elastic* means. If possible, demonstrate how an elastic stretches and explain again why the Necessary and Proper Clause is referred to as the Elastic Clause.

REVIEW MCCULLOCH V. MARYLAND

If you didn't cover *McCulloch v. Maryland* in another class, have students read about that case now in this chapter's Landmark Decisions of the Supreme Court feature. Explain that the case established the constitutionality of implied powers and a broad interpretation of the Constitution. This ruling helped shape the way in which the Necessary and Proper Clause has been interpreted in the years since 1819.

L2 Differentiate Make signs with these labels: "McCulloch," "State of Maryland," "Chief Justice Marshall," "Arguments for Maryland," and "Arguments for McCulloch." Tell the story of the case, while students holding the signs act it out. You may ask the student playing Marshall to read a segment of the Court's decision, and those holding the Arguments signs to read the arguments for each side.

L4 Differentiate Have students write a brief dialogue that might have taken place between a member of the Maryland State legislature and James McCulloch in 1818. The dialogues should reflect the basic facts in the case.

EXTEND THE LESSON

L3 Differentiate Have students do research to find recent legislation. They should identify the power by which Congress made the legislation and describe any controversy surrounding it.

L4 Differentiate Ask students to identify types of laws that the Framers could not have anticipated—such as environmental protection laws—and make a presentation giving their examples, reasons the need for such laws could not have been anticipated, and an argument for either national or State power in the arena.

Answers

Checkpoint wars, economic crises, national emergencies, advances in transportation and communications, and people's demands for more services

Political Cartoon Mini-Lesson

Display Transparency 11F, Power to Tax and Spend, when you discuss the power of Congress to appropriate funds. Give students a moment to analyze the cartoon. Point out that funding decisions always require tradeoffs. If the Congressional Ways and Means Committee decides more money is necessary for public use, it can exercise both expressed powers and implied powers to raise money. Ask: **What is the setting for the cartoon?** (*the Washington, D.C., government office of the Committee on Ways and Means*) **How would you describe the tone of this cartoon?** (*as a slur by economic opponents of greater government spending on public programs*) **What does the cartoon suggest has happened to the Ways and Means Committee?** (*The committee is controlled by spending liberals now.*)

Assess and Remediate

L3 Ask students to write a journal entry arguing that liberal construction of the Constitution has been either good or bad for the United States. Suggest that students look at the chart “The Implied Powers of Congress” in their textbook for ideas.

L3 Collect the Core Worksheet and assess students’ work.

L3 Assign the Section 3 Assessment questions.

L3 Section Quiz A (Unit 3 All-in-One, p. 87)

L2 Section Quiz B (Unit 3 All-in-One, p. 88)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

REMIEDIATION

If Your Students Have Trouble With	Strategies For Remediation
Understanding the importance of the Necessary and Proper Clause (Questions 2, 4, 6)	Have them re-read the text material under that heading and answer this question: Congress may make laws that are necessary and proper for what? (to carry out its expressed powers)
Recognizing how liberal construction has affected American history (Questions 1, 3, 5)	Direct them to the chart “The Implied Powers of Congress” and point out that some of these actions may have been ruled unconstitutional under strict construction.

Answers

Caption the power to declare war



Interpreting Cartoons Congress has several war powers, but the President has primary responsibility for the conduct of wars. **To which war power does this cartoon refer?**

moratorium
n. temporary suspension

Congress used the Commerce Clause to impose a three-year **moratorium** on State taxation of e-commerce and other Internet activities; that freeze was extended in 2007.

Limits on the Commerce Power Still, Congress is not free to use the Commerce Clause to do whatever it chooses. The Constitution places four explicit limitations on the exercise of the commerce power. And the Supreme Court does, at least on occasion, find that the lawmaking branch has overstepped its authority under that provision.

Congress cannot pass a law based solely on the grounds that a measure will somehow promote “the general Welfare of the United States.” But it can and does levy taxes and provide for the spending of money for that purpose. Thus, for example, as we said on the opening page of this section, Congress **appropriates**—assigns to a particular use—tens of billions of dollars per year to support education. And, similarly, it does so to provide for such things as farm subsidies, unemployment compensation, Social Security, Medicare, and a host of other programs.

The War Powers The several war powers reflect the fact that the National Government is responsible for the protection of this country against aggression and, when necessary, for the waging of war. As with its other expressed powers, Congress has the authority to do whatever is necessary and proper for the execution of its war power—with the exception that, in doing so, it cannot violate any other provision of the Constitution. Among many other examples of the point, Congress has the power to provide for compulsory military service—a draft—because Article I, Section 8 gives it the expressed power “[t]o raise and support Armies” (in Clause 12) and “[t]o provide and maintain a Navy” (in Clause 13). The Supreme Court originally upheld the constitutionality of a draft in a series of cases challenging the Selective Service Act of 1917 (*Selective Draft Law Cases*, 1918).

SECTION 3 ASSESSMENT

Essential Questions Journal

To continue to build a response to the chapter Essential Question, go to your Essential Questions Journal.

1. Guiding Question Use your completed chart to answer this question: How has the doctrine of implied powers increased the powers of Congress?

Key Terms and Comprehension

- What is the **Necessary and Proper Clause** and why is it important?
- Summarize the main disagreements between **strict constructionists** and **liberal constructionists**.

Critical Thinking

- Draw Inferences** How have war and economic crises increased the power of the National Government?
- Predict Consequences** If the strict constructionists had won the battle to limit the implied powers, how might the United States be different today?
- Draw Conclusions** Is it necessary for Congress to expand its powers to successfully carry out the expressed powers of commerce?

Quick Write

Persuasive Writing: Make an Outline Write a thesis statement expressing your view and explaining the power you chose in Section 1. Explain why the Framers delegated this power to Congress and how it has been interpreted. Then use your lists from Sections 1 and 2 to make an outline of the arguments you will use to support it.

316 Powers of Congress

Assessment Answers

- Possible response: The doctrine of implied powers has enabled Congress to apply the narrowly worded expressed powers to broad areas of American life. For example, the expressed power to regulate commerce led to the implied power to ban discrimination in public places.
- Article I, Section 8 is the clause that allows Congress to make all laws that are necessary and proper to carry out the expressed powers. It is important because it has allowed the Congress to choose a wide variety of means to carry out its delegated powers.

- Strict constructionists believe that the implied powers are limited to only those that are absolutely necessary to carry out the expressed powers. Liberal constructionists believe that the Necessary and Proper Clause gave Congress power to do anything that was reasonably related to carrying out its expressed powers.
- Students should recognize that wars and economic crises lead to public support for strong national leadership and expanded national power to deal with the crises.
- Possible response: The States would operate

more like sovereign nations. Laws would be less uniform nationwide. The Federal Government might have been too weak to adjust to new situations.

- Possible response: Yes; “commerce” has changed greatly over the years to include new forms of transportation, communication, and technology. The power to regulate commerce must expand to include these innovations.

QUICK WRITE Students should write a thesis sentence and outline of supporting arguments.

ISSUES OF OUR TIME

Congressional War Powers

▶▶ Track the Issue

The Constitution divides the war powers between Congress and the President. However, it remains unclear whether Congress may control the conduct of war.

1770s–1780s

Continental Congress acts as the civilian authority over the armed forces.

1860s

President Abraham Lincoln clashes with Congress over the conduct of the Civil War, the appointment of generals, and the freeing of slaves.

1898

Congress approves the use of force to secure Cuban independence, but prohibits its annexation.

1969

The War Powers Resolution limits the President's ability to send troops abroad without Congressional approval.

2001

President George W. Bush requests military authority to combat terrorism; Congress approves force only against those involved in the 9/11 attacks.

General David Petraeus, the former Commander of Armed Forces in Iraq. ▶



▶▶ Perspectives

Several years into the Iraq war, midterm elections returned Democratic majorities to both the House and the Senate. The Democrats pledged to use these majorities to end the increasingly unpopular war. The White House fought the efforts of Congress to assert control over the war.

"[Congressional war] powers. . . are a clear and direct statement that Congress has authority to declare, to define, and ultimately to end a war. . . . By prohibiting funds . . . , Congress can force the President to bring our forces out of Iraq. . . . Since the President is adamant about pursuing his failed policies in Iraq, Congress has the duty to stand up and use its power to stop him."

—Senator Russell D. Feingold
(D., Wisconsin)

"Congress does, of course, play a critical role in . . . the conduct of a war. That role is defined and limited by the Constitution. After all, the military answers to one commander-in-chief in the White House, not 535 commanders-in-chief on Capitol Hill. Congress does have the purse strings. . . . We expect the House and Senate to meet the needs of our military and the generals leading the troops in battle on time and in full measure."

—Vice President
Richard B. Cheney

▶▶ Connect to Your World

- 1. Understand (a)** What reason did Senator Feingold give for his argument that Congress should end the war in Iraq? **(b)** How did Vice President Cheney describe the role of Congress?
- 2. Compare and Contrast (a)** How are the two views of congressional war powers alike and how do they differ? **(b)** Whose view do you agree with? Why?

GOVERNMENT ONLINE

In the News

For updates about congressional war powers, visit PearsonSuccessNet.com

LESSON GOAL

- Students will evaluate the war powers of Congress and justify their positions.

Teach

INTRODUCE THE CONTENT

Point out that the war powers are divided between Congress and the President. This division of powers has been contentious, as Congress must raise and provide for the armed services, while the President is the commander in chief. The Constitution, however, gives no detail about the duties of the commander in chief. Have students review the war powers by reading Article I, Section 8, Clauses 11-16 and Article II, Section 2, Clause 1 of the Constitution.

READ THE POSITIONS

Have a student read the introduction below "Perspectives." Then have different students read each quotation. Ask students to practice summarizing by writing a one-sentence summary of each argument and then read a few aloud. You may wish to spend a few minutes discussing the ambiguity in the Constitution.

OPINION LINE

Use the Opinion Line strategy (p. T26) to have students take a position on whether Congress may withhold funds to force the President to end armed conflict.

Assess and Remediate

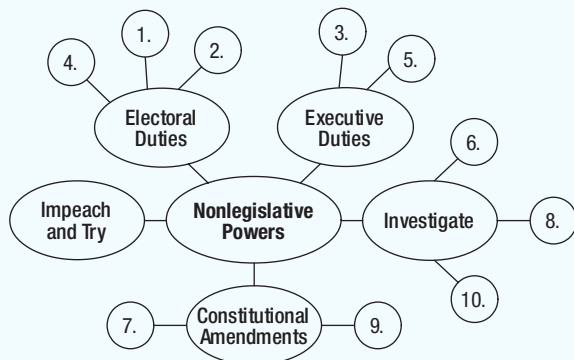
Have students answer the Connect to Your World questions.

Answers

- 1. (a)** Senator Feingold argued that the power to declare war includes the implied power to end it. Since the President continues to pursue his failed war policy in Iraq, Congress has a duty to end the war. **(b)** Vice President Cheney saw Congress's power as limited to funding the troops, with all power to conduct the war residing in the President.
- 2. (a)** Both views acknowledge that Congress has the power to fund the war effort. They differ on whether the power of the purse gives Congress the right to end the war by withholding funds. **(b)** Answers will vary. Students should support their positions.

GUIDING QUESTION

What nonlegislative powers does the Constitution delegate to Congress?



1. Senate chooses Vice President if no one wins electoral majority
2. Confirm President's choice to fill vacancy in vice presidency
3. Senate confirms presidential appointments
4. House elects President if no one receives electoral majority
5. Senate advises on and confirms treaties
6. Oversee executive agencies
7. Propose amendment
8. Gather information for laws
9. Call national convention to propose amendment
10. Focus public attention on issue

Get Started

LESSON GOALS

Students will . . .

- evaluate the impeachment process by examining primary sources and data about the impeachment of President Clinton.
- examine the nonlegislative duties of Congress, using the jigsaw strategy.

SKILLS DEVELOPMENT

GIVE A MULTIMEDIA PRESENTATION

Before students complete this lesson's Core Worksheet, you may want to review tips on giving a multimedia presentation in the Skills Handbook, p. S21.

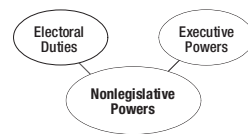
SECTION 4

The Nonlegislative Powers



Guiding Question

What nonlegislative powers does the Constitution delegate to Congress? Use a concept web to record the congressional powers described in this section.



Political Dictionary

- successor
- impeach
- acquit
- perjury
- censure
- subpoena

Objectives

1. Describe the role of Congress in amending the Constitution and its electoral duties.
2. Describe the power of Congress to impeach, and summarize presidential impeachment cases.
3. Identify the executive powers of Congress.
4. Describe the investigatory powers of Congress.

Image Above: Bill Gates testifies at a congressional hearing on technology innovation.

Congress is a legislative body; its primary function is to make law. But the Constitution does give it some other chores—several nonlegislative duties—to perform as well.

Constitutional Amendments

Article V says that Congress may propose amendments by a two-thirds vote in each house. It has done so 33 times. Article V also provides that Congress may call a national convention of delegates from each of the States to propose an amendment—but only if requested to do so by at least two thirds (34) of the State legislatures. No such convention has ever been called.

In recent years, several State legislatures have petitioned Congress for amendments—among them measures that would require Congress to balance the federal budget each year, prohibit flag burning, permit prayer in public schools, outlaw abortions, impose term limits on members of Congress, and prohibit same-sex marriages.

Electoral Duties

The Constitution gives certain electoral duties to Congress. But they are to be exercised only in very unusual circumstances.

The House may be called on to elect a President. The 12th Amendment says that if no one receives a majority of the electoral votes for President, the House, voting by States, is to decide the issue. It must choose from among the three highest contenders in the electoral college balloting. Each State has but one vote to cast, and a majority of the States is necessary for election.

Similarly, the Senate must choose a Vice President if no candidate wins a majority of the electoral votes for that office. In that situation, the vote is not by States but by individual senators, with a majority of the full Senate necessary for election.¹⁰

¹⁰ Notice that the 12th Amendment makes it possible for the President to be of one party and the Vice President another. On the matter of presidential and vice-presidential selection, see Chapter 13.

Focus on the Basics

FACTS: • Congress may propose constitutional amendments with a two-thirds vote in each house. • Congress must choose a President or Vice President if no candidate wins a majority of the electoral votes. • The House can impeach, or accuse, government officials, but the Senate conducts the trial. • The Senate has the power to confirm or reject presidential appointments and give advice and consent for treaties. • Congress may investigate any matter that falls within the scope of its legislative powers.

CONCEPTS: checks and balances, enumerated powers

ENDURING UNDERSTANDING: • Many nonlegislative duties of Congress help maintain the balance of power among the branches of government.

The House has had to choose a President twice: Thomas Jefferson in 1801 and John Quincy Adams in 1825. The Senate has had to pick a Vice President only once: Richard M. Johnson in 1837.

Remember that the 25th Amendment provides for the filling of a vacancy in the vice presidency. When one occurs, the President nominates a **successor**—a replacement, someone to fill the vacancy, subject to a majority vote in both houses of Congress. That process has also been used twice: Gerald Ford was confirmed as Vice President in 1973 and Nelson Rockefeller in 1974.

Impeachment

The Constitution provides that the President, Vice President, and all civil officers of the United States may “be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”¹¹ A close reading of those words suggests that the Framers expected that only serious criminal offenses, not political disagreements, would lead to impeachment. Politics has, nevertheless, been at the root of most impeachment controversies.

The House has the sole power to **impeach**—to accuse, or bring charges. The Senate has the sole power to try—to judge or sit as a court—in impeachment cases.¹²

Impeachment requires only a majority vote in the House; conviction requires a two-thirds vote in the Senate. The Chief Justice presides over the Senate when a President is to be tried. The penalty for conviction is removal from office. The Senate may also prohibit a convicted person from ever holding federal office again; and he or she can be tried in the regular courts for any crime involved

in the events that led to the impeachment. To date, there have been 17 impeachments and seven convictions; all seven persons removed by the Senate were federal judges.¹³

Two Presidents have been impeached by the House: Andrew Johnson in 1868 and Bill Clinton in 1998. The Senate voted to **acquit** both men—that is, it found them not guilty.

Andrew Johnson The unsuccessful attempt to remove Andrew Johnson grew out of the turmoil that followed the Civil War. Mr. Johnson had become the nation’s 17th President when Abraham Lincoln was assassinated in April of 1865, and he soon became

Checkpoint
What is the penalty if a President is impeached and convicted?

How Government Works

Electoral Duties of Congress Who Wins?

Presidents regularly come from the two major parties. No law says that only two people may run in the general election, but the Constitution does say that the winner must receive a majority of the electoral college votes, now 270. *What would happen if a minor party candidate won enough electoral votes to prevent any candidate winning a majority?*

STEP 1:

No candidate receives a majority of the **electoral college votes**.



STEP 2:

Each State’s **House** delegation decides which of the top three candidates to support. Each State has **one vote**. Failure to agree means the loss of that State’s vote.



STEP 3:

If a majority of the State delegations vote for one candidate, he or she becomes **the next President**. If no candidate wins a majority, 26 votes, another vote must be taken.



The Vice President is selected by the **Senate**.

Winner!

¹¹ Article II, Section 4. Military officers are not considered “civil officers,” nor are members of Congress.

¹² Article I, Section 2, Clause 5; Section 3, Clause 6.

¹³ Seven other federal judges were impeached by the House but later acquitted by the Senate. Two federal judges impeached by the House resigned before the Senate could act in their cases. One of the seven judges removed from office was later elected to Congress. The only other federal officer ever impeached was William W. Belknap, President Grant’s Secretary of War. Belknap had been accused of accepting bribes and, although he had resigned from office, was impeached by the House in 1876. He was then tried by the Senate and found not guilty.

BEFORE CLASS

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 3 All-in-One, p. 89) before class.

L2 Differentiate Reading Comprehension Worksheet (Unit 3 All-in-One, p. 91)

BELLRINGER

Distribute the Bellringer Worksheet (Unit 3 All-in-One, p. 93), which investigates the role of partisanship in the Clinton impeachment.

Teach

To present this topic using online resources, use the lesson presentations at **PearsonSuccessNet.com**.

DEVELOP THE BELLRINGER

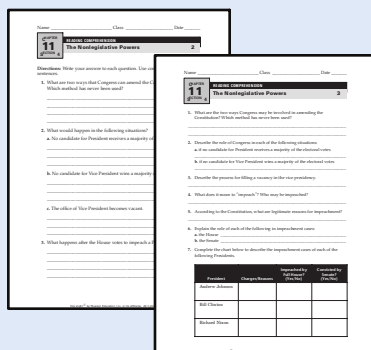
Review students’ answers to the Bellringer questions: **Which house of Congress has the power to impeach?** (*the House*) **Which house conducts the trial?** (*the Senate*) **How many votes are required to convict an impeached official?** (*67 votes, or two thirds of the Senate*) **Was President Clinton impeached?** (*yes, on two articles*) **Was he convicted?** (*no*) Then ask these additional questions: **Why did the House vote on four articles of impeachment, while the Senate voted on only two?** (*The other two articles did not receive enough votes in favor of impeachment in the House and so were not sent on to the Senate.*) **How is Alexander’s Hamilton’s concern expressed in the excerpt from *The Federalist No. 65* reflected in the data shown in the charts?** (*Hamilton expressed a concern that members of Congress would tend to let partisanship cloud their judgment during an impeachment trial. The data shows that President Clinton’s impeachment trial did follow strict party lines—the Democrats overwhelmingly voted against the charges, while the Republicans overwhelmingly voted for impeachment and conviction.*)

L2 ELL Differentiate Have students look up the definitions of these words in the Bellringer Worksheet excerpt from Hamilton: *impeachment, misdemeanor, concurrence, faction, animosity*. Then have them read the excerpt again, this time substituting the definitions in place of these words.

Differentiated Resources

The following resources are located in the All-in-One, Unit 3, Chapter 11, Section 4:

- L3** Reading Comprehension Worksheet (p. 89)
- L2** Reading Comprehension Worksheet (p. 91)
- L3** Bellringer Worksheet (p. 93)
- L3** Core Worksheets A and B (pp. 95, 96)
- L3 L4** Extend Worksheet (p. 97)
- L3** Quiz A (p. 98) **L2** Quiz B (p. 99)
- L3** Chapter Test A (p. 104)
- L2** Chapter Test B (p. 107)



Answers

Checkpoint removal from office

Electoral Duties of Congress The House would choose the President and the Senate would choose the Vice President.

EMPHASIZE CHECKS AND BALANCES

Tell students that today they will discuss the nonlegislative roles of Congress. Emphasize that Congress has many important functions related to checks and balances. Ask students to explain why Congress has the ultimate authority to override the President on many matters or propose amendments to the Constitution. (*The Framers saw Congress as being most responsive to the needs and wishes of the people, because they are elected by the people and represent the diversity of each State. The Framers wanted the United States to have a government by and for the people.*)

L1 Differentiate Help students understand the phrase *checks and balances* with a visual example. Place a flat rectangular block on top of a small block, so that the ends of the rectangular block extend well past the smaller block. Place three small blocks on each end of the rectangular block, so that the block remains balanced. Explain that this is how the Framers intended checks and balances to work, with each of the three branches keeping the government in balance. Then remove two blocks from one end so that the rectangular block crashes to one side. Explain that without checks and balances, the government might also become unbalanced, with one branch having more power than the others.

✓ Checkpoint Why was President Johnson impeached?

enmeshed
v. entangled; caught
up in

conciliatory
adj. producing
agreement

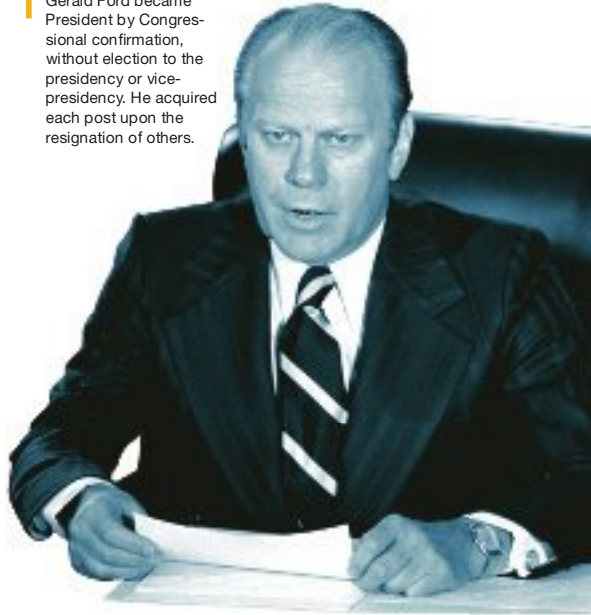
enmeshed in a series of disputes with the Radical Republicans who controlled both houses of Congress. Many of those disagreements centered around the treatment of the defeated Southern States in the immediate post-war period.

President Johnson sought to carry out the **conciliatory** Reconstruction policies favored by Abraham Lincoln—policies that Mr. Lincoln had summarized in these memorable words in his Second Inaugural Address on March 4, 1865: “With malice toward none, with charity for all . . .” The Radical Republicans supported a much harsher approach to Reconstruction.

Matters came to a head when Congress passed the Tenure of Office Act, over the President’s veto, in 1867. President Johnson’s violation of that law triggered his impeachment by a House bent on political revenge. The Senate fell just one vote short of removing him from office.

Bill Clinton Bill Clinton was impeached by the House in 1998. In proceedings steeped

Gerald Ford became President by Congressional confirmation, without election to the presidency or vice-presidency. He acquired each post upon the resignation of others.



in partisanship, the House voted two articles of impeachment against him on December 19. Both articles arose out of the President’s admitted “inappropriate relationship” with a White House intern. The first article charged the President with **perjury**—that is, lying under oath. The second article accused him of obstruction of justice because he had withheld information about his affair with the intern.

Members of the House who supported the articles of impeachment contended that the acts of lying under oath and of withholding evidence were within the meaning of the Constitution’s phrase “other high Crimes and Misdemeanors.” Therefore, they argued, the President’s immediate removal from office was justified.

Their opponents argued that the facts involved in the case did not justify either charge. They insisted that, while the President’s conduct was deplorable and should be condemned, that conduct did not rise to the level of an impeachable offense. Many of them pressed, instead, for a resolution to **censure** the President—that is, for a formal condemnation of his behavior.

The Senate received the articles of impeachment when the new Congress convened in 1999, and it began to sit in judgment of the President on January 7.

Richard Nixon A few officeholders have resigned in the face of almost certain impeachment—most notably, Richard Nixon, who resigned the presidency in mid-1974. President Nixon’s second term in office was cut short by the Watergate scandal.

The term *Watergate* comes from a June 1972 attempt by Republican operatives to break into the Democratic Party’s national headquarters in the Watergate office complex in Washington, D.C. The investigation of that incident, by the *Washington Post* and then by other media, led to official investigations by the Department of Justice and by the Senate’s Select Committee on Presidential Campaign Activities, popularly known as the Senate Watergate Committee.

The probes unearthed a long list of illegal acts, including bribery, perjury, income tax fraud, and illegal campaign contributions.

Debate

After students have studied the feature on “President Clinton’s Impeachment,” divide the class into two groups and use the Debate strategy (p. T25) to have them debate this question: **Did President Clinton commit “high crimes and misdemeanors,” as required for conviction?**

Answers

Checkpoint his violation of the Tenure of Office Act

The Impeachment Process

President Clinton's Impeachment

This chronology details the complex impeachment process and shows how the process worked in the impeachment of President Bill Clinton. *What measures did the Framers build into the impeachment process to ensure its fairness? Why do you think the attempt to remove Clinton failed?*

1998

The House Judiciary Committee considers charges against the accused and votes on whether to send articles of impeachment to the full House. A simple majority vote is needed to start the process. ▼

December 11–12, 1998

After three months of hearings, the House Judiciary Committee approves four articles.

Acting much like a grand jury, the House considers the charge(s) brought by the Judiciary Committee. It can subpoena witnesses and evidence. It hears and debates arguments. ▼

December 18–19, 1998

The House holds 13 hours of bitter, partisan debate, in which more than 200 House members speak. Democrats briefly walk out to protest Republican leaders' refusal to consider the lesser punishment of censure.



Newspapers weighed in on the proceedings.

The House votes on each article. If any article is approved by a majority vote, the official is impeached, which is similar to being indicted. The House sends the article(s) of impeachment to the Senate. ▼

December 19, 1998 The House votes to impeach Mr. Clinton on two counts. The votes are 228–206 on the count of perjury and 221–212 on obstruction of justice. Voting is mostly along party lines.



Top: Congress reviewed tapes of Clinton's testimony. Bottom: House Democrats walked out to protest the impeachment resolution.

1999



The Senate tries the case. If the President is to be tried, the Chief Justice of the United States presides. Selected members of the House act as managers (prosecutors). ▼

January 7, 1999 Chief Justice William Rehnquist opens a televised trial. Representative Henry Hyde of Illinois leads a team of 13 House managers. White House Counsel Charles Ruff leads the defense.

Republican leaders held a press conference.



Senators hear testimony and evidence. House prosecutors and lawyers for both sides present their cases. Additional witnesses may be called. Senators may also vote to curb testimony. ▼

January 7–February 11, 1999 With public distaste for impeachment growing, the Senate limits testimony to three witnesses, the intern among them. Closing arguments follow. For three days, the Senate deliberates in secret (despite Democrats' objections).



Protesters rallied outside the Capitol.

The Senate debates the articles, publicly or privately. It need not render a verdict. It could, for example, vote to drop the case and instead censure the official. A two-thirds vote is required for conviction. ▼

February 12, 1999 In a televised session, the Senate acquits the President on both charges, falling well short of the two-thirds vote needed for conviction. There are 55 Republicans and 45 Democrats in the Senate. On the perjury count, 45 Democrats and 10 Republicans vote not guilty. On the obstruction charge, 5 Republicans break with their party to vote with all of the Democrats against conviction.

DISTRIBUTE CORE WORKSHEETS

Explain that students will use the Jigsaw strategy (p. T27) to learn about the nonlegislative duties of Congress. Distribute Chapter 11 Section 4 Core Worksheet A (Unit 3 All-in-One, p. 95) to some students and Core Worksheet B (Unit 3 All-in-One, p. 96) to others. These worksheets give students directions about what type of information to include in their presentation. Divide students into groups and assign each group one of the topics listed on their worksheet (Worksheet A: "Appointments," "Treaties," or "Investigatory Powers"; Core Worksheet B: "Amending the Constitution," "Electoral Duties," or "Impeachment").

L2 Differentiate Give these students Core Worksheet B (Unit 3 All-in-One, p. 96) and assign "Electoral Duties" or "Impeachment."

L3 Differentiate Any of the topics are appropriate for on-level students. The topics on Core Worksheet B are more straightforward but no less important for all students to learn. Refer students using Core Worksheet A to Unit 4 for more information. Refer students using Core Worksheet B to Chapter 3 for more information.

Name _____ Class _____ Date _____	
CHAPTER 11	CORE WORKSHEET B
SECTION 4	The Nonlegislative Powers 3

Answer the following questions and use these notes to present your information to your jigsaw group.

1. Congressional Power (circle one): Amending the Constitution, Electoral Duties, Impeachment
2. Who is involved in this power?

3. Draw a flowchart or make a step-by-step list showing how the power works. Explain each step.

4. When or under what circumstances would this power be used?

5. Can this power be used in a partisan manner? (Can one political party use this power to get ahead?)

6. What are some recent examples of how this power was used?

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Tell students to go to the Audio Tour for a guided audio tour of The Impeachment Process.

Answers

The Impeachment Process The Framers divided the process, giving the power to impeach to the House and power to convict to the Senate. Conviction requires a two-thirds vote, which is a high bar. Also, the Chief Justice presides over the trial. The attempt to remove Clinton probably failed because it was more politically motivated than based on "high crimes and misdemeanors."

How Government Works

ELECTORAL DUTIES Four candidates ran for President in 1824. The electoral vote was as follows: Andrew Jackson, 99; John Quincy Adams, 84; William Crawford, 41; and Henry Clay, 37. Since no candidate received a majority of the electoral vote, the decision went to the House of Representatives. The Constitution requires the House to choose among the top three candidates in the electoral vote. This requirement knocked Clay, the powerful speaker of the House, out of the running. Clay threw his support to Adams, assuring a majority vote in the House to elect Adams. Shortly after his election, Adams offered Clay the job of secretary of state, which Clay accepted. Jackson's supporters were outraged. They charged Adams and Clay of entering into a "corrupt bargain," robbing Jackson of the presidency. This charge cast a cloud over Adams' administration and helped Jackson defeat Adams in the election of 1828.

Congressional Checks on the Presidential Treaty-Making Power

Congressional Influence



The Senate approves high-level appointments by the President, including the secretary of state, as well as ambassadors to foreign nations, who often play a role in the treaty-making process. Senator Diane Feinstein, right, introduces Condoleezza Rice during her confirmation hearing for secretary of state.

The President consults with Congress during the negotiation of treaties. Above, Senate Foreign Relations Committee members Senator Joe Biden, left, and Senator Richard Lugar, talk to reporters after meeting with President George W. Bush about a nuclear arms reduction treaty with Russia.

JIGSAW

After students have time to answer the questions with their “expert” group, jigsaw the groups and let students explain their topic to their new group. Instruct students to ask at least one question of an “expert.” Experts will record these questions to discuss with their expert groups.

RECONVENE EXPERT GROUPS

Expert groups should reconvene and discuss the questions they were asked after their jigsaw presentations. One group member should stand up and address these questions for the class. To finish, ask each group to submit three quiz questions on their topic.

L2 Differentiate Have students use the Click and Clunk strategy (p. T23) to assess which topics from the jigsaw they understood and which need further clarification.

They also revealed the use of the Federal Bureau of Investigation, the Internal Revenue Service, and other government agencies for personal and partisan purposes.

The House Judiciary Committee voted three articles of impeachment against President Nixon in late July 1974. He was charged with obstruction of justice, abuse of power, and failure to respond to the Judiciary Committee’s **subpoenas**. A committee’s subpoena is a legal order directing one to appear before that body and/or to produce certain evidence. Mr. Nixon had ignored the committee’s subpoena of several tape recordings of Watergate-related conversations in the Oval Office.

It was quite apparent that the full House would impeach the President and that the Senate would convict him. Those facts prompted Mr. Nixon to resign the presidency on August 9, 1974.

Beyond doubt, the Watergate scandal involved the most extensive and the most serious violations of public trust in the nation’s history. Among its other consequences, several Cabinet officers, presidential assistants, and others were convicted of various felonies and misdemeanors—and many of them served jail time.

Executive Powers

The Constitution gives two executive powers to the Senate. One of those powers has to do with appointments to office, and the other with treaties made by the President.¹⁴

Appointments All major appointments made by the President must be confirmed by the Senate by majority vote. Each of the President’s nominations is referred to the appropriate standing committee of the Senate. That committee may then hold hearings to decide whether or not to make a favorable recommendation to the full Senate for that appointment. When the committee’s recommendation is brought to the floor of the Senate, it may be, but seldom is, considered in executive (secret) session.

The appointment of a Cabinet officer or of some other top member of the President’s “official family” is rarely rejected by the Senate. The Senate has explicitly rejected only 12

¹⁴ Article II, Section 2, Clause 2

¹⁵ The first was Roger B. Taney, Andrew Jackson’s choice for secretary of the treasury in 1832. Jackson later named Taney Chief Justice. The most recent rejection came in 1989, when the Senate refused President George H.W. Bush’s nomination of John Tower as secretary of defense.

Teacher-to-Teacher Network

ALTERNATE LESSON PLAN Have student groups examine the impeachment process in the cases of Andrew Johnson, Bill Clinton, and Richard Nixon. Each group will research and write a speech either supporting or opposing impeachment of these Presidents. After all groups present their speeches, the class will vote on the President who they think most deserved impeachment and conviction.

To see this lesson plan, go to



Interactive
For an interactive exploration of congressional power, visit PearsonSuccessNet.com



Presidents may need to make changes in a treaty at the behest of Congress. This ensures that there is broad consensus for any such agreement among the American people. Above, protesters oppose NAFTA outside Oklahoma's State Capitol.

Even after a treaty has been approved, Congress can abrogate (repeal) it, by passing a law that is inconsistent with its terms, or by directing the President to abrogate. Right, a lock in the Panama Canal. The Panama Canal Treaty of 1903 was replaced by a new treaty in 1979, which returned the canal to Panama.

Checkpoint
What is the unwritten rule known as "senatorial courtesy"?

of more than 350 Cabinet appointments.¹⁵ More commonly, the President will withdraw a nomination if the Senate sends signals that it will reject the nominee in a confirmation vote. For example, President George W. Bush withdrew the nomination of Harriet Miers, his White House Counsel, to the Supreme Court. Bush later nominated Samuel Alito, who was confirmed by the Senate.

It is with the President's appointment of federal officers who serve in the various States (for example, U.S. attorneys and federal marshals) that the unwritten rule of "senatorial courtesy" comes into play. The Senate will turn down such a presidential appointment if it is opposed by a senator of the President's party from the State involved. The Senate's observance of this unwritten rule has a significant impact on the President's exercise of the power of appointment; in effect, this rule means that some senators virtually dictate certain presidential appointments.

Treaties The President makes treaties "by and with the Advice and Consent of the Senate, . . . provided two thirds of the Senators present **concur**."¹⁶ For a time after the adoption of the Constitution, the President asked the advice of the Senate when a treaty

was being negotiated and prepared. Now the President most often consults the members of the Senate Foreign Relations Committee and other influential senators of both parties.

The Senate may accept or reject a treaty as it stands, or it may decide to offer amendments, reservations, or understandings to it. Treaties are sometimes considered in executive session. Because the House has a hold on the public purse strings, influential members of that body are often consulted in the treaty-making process, too.

The Power to Investigate

Congress has the power to investigate—to inquire into, or inform itself on—any matter that falls within the scope of its lawmaking authority. The authority to do so is implied by the Constitution's grant of the legislative power to Congress, in Article I, Section 1. As

¹⁶ Article II, Section 2, Clause 2. It is often said that the Senate "ratifies" a treaty. It does not. The Senate may give or withhold its "advice and consent" to a treaty made by the President. Once the Senate has consented to a treaty, the President ratifies it by exchanging "instruments of ratification" with other parties to the agreement. We discuss the treaty-making process at some length in Chapter 14.

concur
v. agree

EXTEND THE LESSON

L3 L4 Differentiate Distribute Chapter 11 Section 4 Extend Worksheet (Unit 3 All-in-One, p. 97), which asks students to research the path of a treaty sent to the Senate for ratification or a Senate confirmation hearing and write a summary of the proceedings and the media coverage.

L3 Differentiate Have students research one instance in which Congress has recently exercised its nonlegislative powers. Ask them to write a critique explaining whether Congress used its power wisely and how partisanship affected the action.

L4 Differentiate Have students find and read a portion of a recent congressional hearing in which members question a presidential appointee or investigate a matter of national concern. Evaluate the hearing for partisan motives and evaluate the quality of the hearing. Students should explain whether they would have asked different questions or think that members of Congress should have investigated an issue further.

Government online All print resources are available on the Teacher's Resource Library CD-ROM and online at PearsonSuccessNet.com.

Tell students to go to the Audio Tour for a guided audio tour of Congressional Influence.

Assess and Remediate

L3 Compile students' questions into a quiz and give it to the class.

L3 Collect the Core Worksheet and assess each student's work in the Jigsaw activity, using the Rubric for Assessing Individual Performance in a Group (Unit 3 All-in-One, p. 167).

L3 Assign the Section 4 Assessment questions.

L3 Section Quiz A (Unit 3 All-in-One, p. 98)

L2 Section Quiz B (Unit 3 All-in-One, p. 99)

Have students complete the review activities in the digital lesson presentation and continue their work in the **Essential Questions Journal**.

Answers

Checkpoint The Senate will reject a presidential appointment if it is opposed by a senator of the President's party from the State involved.

Political Cartoon Mini-Lesson

Display Transparency 11G, Judicial Nominees, when you discuss Senate committee hearings about presidential appointments. This cartoon implies that the nomination process for federal judges takes a long time. Ask: **Whom do the two skeletons represent?** (*judicial nominees*) **What does the cartoon illustrate about how long it takes before Senate confirmation hearings begin?** (*It illustrates an exaggerated length of time by showing that nominees die and cobwebs form while the nominees wait to be seen.*) **What is suggested by the clipboard labeled "Political Deal"?** (*Full Senate hearings begin only after political deals are struck in committee.*)

REMEDIATION

If Your Students Have Trouble With	Strategies For Remediation
Identifying the nonlegislative powers of Congress (Questions 1, 4, 5, 6)	Have them write the five main headings in this text section across the top of a broadside sheet of paper. Ask them to add a bullet list of powers under each heading as they review the section.
Remembering how a President and Vice President are chosen if no candidate wins a majority of electoral votes (Question 2)	Have them draw a flowchart showing the steps in the electoral process, using information provided in the text.
Understanding the impeachment and conviction processes (Question 3)	Suggest they create a chart, comparing the reasons for the impeachment of Johnson, Clinton, and Nixon, the results, and the reasons for these results.

Answers

Interpreting Cartoons The cartoonist is making fun of congressional oversight by suggesting that a nonbinding resolution doesn't amount to much of a threat to the President.

Checkpoint to gather information for legislation, oversee executive agencies, focus public attention on a matter, expose questionable activities of public official or private person or group, and/or promote the interests of some members of Congress



▶ **Interpreting Cartoons** In February 2007, the House passed a non-binding resolution opposing the President's plan to send more troops to Iraq. What point does the cartoonist make?

✓ **Checkpoint**
What are some of the reasons that Congress holds hearings?

we noted, both the House and Senate exercise that power through the standing committees and their subcommittees and often through special committees, as well.

Both houses may choose to conduct investigations for any one or a number of reasons. Most often, those inquiries are held to (1) gather information necessary to the framing of legislation, (2) oversee the operations of various agencies in the executive branch, (3) focus public attention on some particular matter, (4) expose the questionable activities of some public official or private

person or group, and/or (5) promote the particular interests of some members of Congress. Notice that the second of these motives, oversight, is a little-noted but quite important aspect of the constitutional system of checks and balances. Note, too, that Congress is more inclined to exercise its oversight function when one or both of its chambers is controlled by the party that does not hold the presidency, most recently in 2007 and 2008.

Over recent years, Congress has improved its ability both to inform itself and to perform its oversight responsibilities by increasing the staff resources available to the standing committees of both houses. The three little-known agencies in the legislative branch which also add to that capability are:

1. Congressional Budget Office, which committees of both houses rely on quite heavily in taxing, spending, and other budget-related matters;
2. Congressional Research Service, in the Library of Congress, whose several hundred staff specialists provide members with factual information on virtually any subject; and
3. Government Accountability Office, also called Congress' watchdog because it has broad authority to monitor the work of the Federal Government and report its findings to Congress.

SECTION 4 ASSESSMENT

Essential Questions Journal To continue to build a response to the chapter Essential Question, go to your Essential Questions Journal.

1. **Guiding Question** Use your completed concept web to answer this question: What nonlegislative powers does the Constitution delegate to Congress?

Key Terms and Comprehension

2. If the vice presidency becomes vacant, how is a **successor** chosen?
3. Summarize the circumstances of President Richard Nixon's resignation from office.
4. Outline the process by which Congress approves or rejects presidential appointments.

5. What powers does Congress have with regard to treaties negotiated by the President?

Critical Thinking

6. **Draw Conclusions** In what two ways may Congress propose amendments to the Constitution? Do you think the Framers made amending the Constitution too difficult? Explain.
7. **Determine Cause and Effect** How do each of the nonlegislative powers of Congress illustrate the principle of checks and balances?

Quick Write

Persuasive Writing: Review and Revise Review and revise your outline from Section 3, making sure that your points are presented in a logical sequence. Use transition words, such as *although*, *because*, and *then* to guide readers through your ideas. Add details that will make your presentation more interesting.

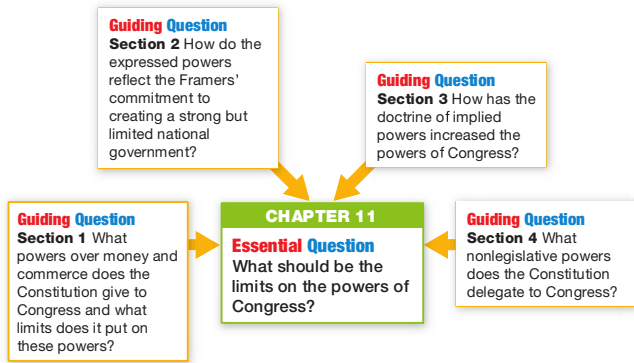
Assessment Answers

1. amending the Constitution; electoral duties; impeachment; appointments and treaties; power to investigate
2. President nominates successor, and a majority vote of both houses of Congress confirms
3. People with ties to the White House broke into the Democratic Party's national headquarters. Investigations found evidence of illegal activities and abuses of power. Congress subpoenaed tape recordings from Nixon, who refused. Realizing he would be impeached and convicted, Nixon resigned.

4. Each presidential nomination is referred to the appropriate standing committee of the Senate. The committee may hold hearings before making a recommendation to the full Senate. The Senate approves by majority vote.
5. The President makes treaties with the "advice and consent" of the Senate. A two-thirds vote of the Senate is required for approval.
6. by a two-thirds vote in each house or by calling a national convention of State delegates
7. Each nonlegislative power involves more than one branch or level of government, or

divides responsibilities between houses of Congress. This design enables one part of government to check the power of another.

QUICK WRITE Students will sequence their outlines logically and add transitions and details.



Political Dictionary

expressed powers p. 296
 implied powers p. 296
 inherent powers p. 296
 commerce power p. 297
 tax p. 300
 public debt p. 301
 deficit financing p. 301
 bankruptcy p. 302
 legal tender p. 303
 copyright p. 307
 patent p. 307
 territory p. 308
 eminent domain p. 308
 naturalization p. 309
Necessary and Proper Clause
 p. 312
 strict constructionist p. 313
 liberal constructionist p. 314
 consensus p. 314
 appropriate p. 316
 successor p. 319
 impeach p. 319
 acquit p. 319
 perjury p. 320
 censure p. 320
 subpoena p. 322

Legislative Checks and Balances

On the Executive Branch

- Provides funding for the armed forces
- The power to declare war
- Senate must approve treaties
- Senate must approve appointments

On the Judicial Branch

- Congress creates courts inferior to the Supreme Court
- Senate must confirm appointments of federal judges

Comparing the House and the Senate

Only the House has the power to

- Impeach executive and judicial officers
- Originate tax bills

Only the Senate has the power to

- Try impeachments
- Approve or reject treaties
- Confirm the appointment of all federal judges, Cabinet members, and other top-level officers

Have students download the digital resources available at Government on the Go for review and remediation.

STUDY TIPS

Active Reading Effective readers interact with the material they are reading to help them absorb and comprehend information. Before reading each section in Chapter 11, have students scan the section by reading the introduction, headings, and conclusion. Ask them to look at the photographs, charts, and other visuals. Then have them write a question about the material, such as “How important are the expressed powers of Congress?” As they read, students should look for an answer to their question; this will give them a purpose for reading. Additional strategies include chunking the material into short segments and paraphrasing that section before continuing to read, and drawing diagrams, flowcharts, or other graphic organizers to map ideas visually. Students might also consider reading aloud or photocopying the material so they can highlight or underline key points. The Checkpoint questions in the margins will also keep students engaged as they read.

ASSESSMENT AT A GLANCE

Tests and Quizzes

Section Assessments
 Section Quizzes A and B, Unit 3 **All-in-One**
 Chapter Assessment
 Chapter Tests A and B, Unit 3 **All-in-One**
 Document-Based Assessment
 Progress Monitoring Online
 ExamView Test Bank

Performance Assessment

Essential Questions Journal
 Debates, pp. 300, 320
 Assessment Rubrics, **All-in-One**

For More Information

To learn more about the powers of Congress, refer to these sources or assign them to students:

- L1** Skog, Jason. *The Civil Rights Act of 1964*. Compass Point Books, 2007.
- L2** Murphy, John. *The Impeachment Process (The U.S. Government: How It Works)*. Chelsea House Publications, 2007.
- L3** Abernathy, Scott. *No Child Left Behind and the Public Schools*. University of Michigan Press, 2007.
- L4** Ellis, Richard E. *Aggressive Nationalism: McCulloch v. Maryland and the Foundation of Federal Authority in the Young Republic*. Oxford University Press, USA, 2007.

Chapter Assessment

COMPREHENSION AND CRITICAL THINKING

SECTION 1

1. (a) expressed powers, implied powers, inherent powers (b) Congress cannot favor different State ports; require vessels bound to or from one State to be obliged to enter, clear, or pay duties in another; tax for private benefit; tax exports; tax at different rates in different parts of the country.
2. (a) the power of Congress to regulate interstate and foreign trade (b) to build a strong and united country (c) It established a broad “commerce” definition.
3. (a) to ensure that the Federal Government would obtain revenue (b) to raise money to meet public needs, but also to protect domestic industry against foreign competition (c) They are both expressed powers.
4. With independence, the former currency system collapsed. Congress needed to provide a uniform, stable monetary system for the nation.

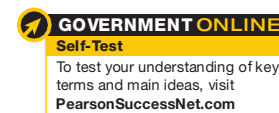
SECTION 2

5. (a) Congress can: declare war; raise and support armies and a navy; make rules for the governing of the nation’s military forces; call forth, organize, arm, and discipline the militia; grant letters of marque and reprisal and make rules concerning captures on land and water. (b) Students should recognize that Congress’ power to declare war serves as a check on the President’s power as commander in chief. (c) The President must be able to respond rapidly and effectively to national security threats. However, there could be dangers inherent in a presidential power to involve the country in undeclared wars.
6. (a) Copyrights and patents provide a financial incentive for progress in the arts and sciences by granting exclusive rights to a work for a period of time. (b) to provide a centralized process for registering copyrights and patents across the country
7. (a) money; foreign and interstate commerce; foreign policy; war powers; domestic powers (b) Answers will vary.

SECTION 3

8. (a) The meaning of the clause led to conflict between the strict constructionists (who wanted a limited interpretation of the Constitution) and the liberal constructionists (who favored a broad interpretation).

Chapter Assessment



Comprehension and Critical Thinking

Section 1

1. (a) Identify the three different types of congressional powers. (b) Explain how the Constitution limits the power of Congress.
2. (a) Describe the commerce power. (b) Why did the Framers grant this power to Congress? (c) What was the significance of the Supreme Court’s decision in *Gibbons v. Ogden*?
3. (a) Why did the Framers grant Congress the power to tax? (b) What is the purpose of taxes? (c) How is the borrowing power related to the taxing power?
4. Why did Congress issue a national currency?

Section 2

5. (a) What powers does the Constitution grant to Congress affecting war and national defense? (b) Why do you think the Framers gave Congress the sole power to declare war? (c) What tensions may arise from the division of the war powers between the Congress and the President?
6. (a) How do copyrights and patents “promote the Progress of Science and useful Arts”? (b) Why do you think the Framers granted these powers to Congress?
7. (a) List the expressed powers of Congress. (b) Are there any powers which, in your view, Congress should possess, but does not? Explain.

Section 3

8. (a) Describe the conflict over the meaning of the Necessary and Proper Clause. (b) Why is that clause also called the Elastic Clause?
9. (a) What is the significance of the Court’s decision in *McCulloch v. Maryland*? (b) Is the concept of implied powers a misrepresentation of federalism? Why or why not?

Section 4

10. (a) What nonlegislative powers does the Constitution grant to Congress? (b) How does each of those powers check or balance the executive branch?
11. (a) Outline the steps of the impeachment process. (b) Has the definition of “high crimes and misdemeanors” as impeachable offenses been taken too far? Explain.

Writing About Government

12. **Persuasive Writing** Use your Quick Write exercises from this chapter to write a persuasive essay arguing that Congress has used its power too little or too much. Remember that your writing will be most effective if you emphasize arguments your audience will find convincing. See pp. S9–S10 in the Skills Handbook.

Apply What You’ve Learned

13. **Essential Question Activity** Do research to find legislation that Congress has passed or considered in a recent session. Choose two pieces of legislation that are based on expressed powers of Congress and two pieces that are based on implied powers. Summarize each of the measures and explain which power allows Congress to be involved.

14. **Essential Question Assessment** Based on your summaries and the content you learned in this chapter, explain in a paragraph how current congressional activity might be different if the Constitution were interpreted strictly. This will help you think about the chapter Essential Question: **What should be the limits on the powers of Congress?**

Essential Questions Journal To respond to the chapter Essential Question, go to your **Essential Questions Journal**.

(b) It has been stretched very far and been made to cover so much over the years.

9. (a) The Court upheld the concept of implied powers, which set a pattern over the years of the National Government wielding wide powers. (b) possible answer: no, because the doctrine of implied powers has enabled the Federal Government to deal with problems that have evolved over time and which the Framers could not have anticipated.

SECTION 4

10. (a) Congress can: propose or call a national

convention to propose amendments to Constitution; elect President or Vice President if no candidate receives electoral majority; confirm President’s choice to fill vacancy in vice presidency; impeach (House) and try impeached officials (Senate); confirm President’s appointments and give advice and consent for treaties (Senate); and conduct investigations to frame legislation, oversee executive agencies, focus attention on issues, expose questionable activities, and promote interests of members of Congress. (b) Congress’ confirmation powers ensure that the President must appoint people

Document-Based Assessment

Strict v. Liberal Construction of the Constitution

The dispute over the extent of the powers the Constitution grants to the National Government has continued to the present day. As you see in Document 1, some make the argument that big government can be dangerous. Others see small government as insufficient to meet the needs of the people, as in Document 2.

Document 1

[Americans] are a lot better economists than most economists care to admit. They know that a government big enough to give you everything you want is a government big enough to take from you everything you have.

—President Gerald R. Ford,
Remarks to a Joint Session
of Congress

Document 2



Use your knowledge of the debate over the limits of federal power and these three documents to answer Questions 1–3.

- In Document 2, what do “apples” represent?
 - Supreme Court rulings
 - wasteful federal programs
 - things people want from government
 - taxes
- What did President Ford mean when he said that “a government big enough to give you everything you want is a government big enough to take from you everything you have”?



GOVERNMENT ONLINE

Documents

To find more primary sources on interpreting the Constitution, visit PearsonSuccessNet.com



DOCUMENT-BASED ASSESSMENT

- C
- President Ford meant that, in order to get services from government, the people have to give it increasing power, which is a potential threat to their liberty. He was warning Americans to think carefully about how much power the federal government should have.
- A good answer will explain that Ford warns of granting too much power to government, while the cartoon warns of the risk of taking too much away. Students should then explain their own viewpoint using these documents and what they learned in this chapter.

L2 Differentiate Students use all the documents on the page to support their thesis.

L3 Differentiate Students include additional information available online at PearsonSuccessNet.com.

L4 Differentiate Students use materials from the textbook, the online information at PearsonSuccessNet.com, and do additional research to support their views.



Go Online to PearsonSuccessNet.com for a student rubric and extra documents.

acceptable to Congress. Impeachment allows Congress to remove officials from office. Congress also oversees executive agencies and can investigate questionable activities, assuring executive branch accountability.

- (a) A majority of the House Judiciary Committee sends articles of impeachment to the full House, which hears evidence and then votes on each charge. Articles approved by a majority of the House are sent to the Senate for trial. Members of the House act as managers (prosecutors). House managers and lawyers for

both sides present their cases. The Senate debates the articles and decides to drop the case, censure, or convict the official. A two-thirds vote is required to convict. (b) Students should consider the difficulty of drafting this wording so that it would cover a wide range of potential misconduct by federal officials.

WRITING ABOUT GOVERNMENT

- Students' essays should reflect the principles of good persuasive writing.

APPLY WHAT YOU'VE LEARNED

- A good answer will show a firm grasp of

the meaning of the concept of expressed and implied powers.

- Students should understand both strict versus liberal construction and the complexities of deciding how much power Congress needs to do its work effectively.

Introduce the Chapter

Essential Questions:

UNIT 3

What makes a successful Congress?

CHAPTER 12

Can and should the lawmaking process be improved?

ACTIVATE PRIOR KNOWLEDGE

Have students examine the image and quotation on these pages. Ask: **What does this photograph tell you about Congress “on exhibition”?** (*Much of what Congress does is scrutinized by the public and the media.*) In this chapter, students will learn about the organization of Congress and how a bill becomes a law. Tell students to begin to explore Congress in action by completing the Chapter 12 Essential Question Warmup Activity in their **Essential Questions Journal**. Discuss their responses as a class.

BEFORE READING

L2 ELL Differentiate Chapter 12 Prereading and Vocabulary Worksheet (Unit 3 All-in-One, p. 121)

SUCCESSNET STUDENT AND TEACHER CENTER

Visit **PearsonSuccessNet.com** for downloadable resources that allow students and teachers to connect with government “on the go.”

DIGITAL LESSON PRESENTATION

The digital lesson presentation supports the print lesson with activities and summaries of key concepts. Activities for this chapter include:

- **Congressional Committee Staffers**
- **How a Bill Becomes a Law**

SKILLS DEVELOPMENT

GIVE AN EFFECTIVE PRESENTATION

You may wish to teach giving an effective presentation as a distinct skill within Section 4 of this chapter. Use the Chapter 12 Skills Worksheet (Unit 3 All-in-One, p. 156) to help students learn how to give an effective presentation. The worksheet asks students to create a multimedia presentation demonstrating how a bill becomes a law. For L2 and L1 students, assign the adapted Skill Activity (Unit 3 All-in-One, p. 157).



The chapter WebQuest challenges students to answer the chapter Essential Question by asking them about the lawmaking process.



328

Block Scheduling

BLOCK 1: Review the “Leadership in the 111th Congress” chart and explain the role of each congressional leader. An online update for this chart is available at **PearsonSuccessNet.com**. Then introduce committees and have students do the Chapter 12 Section 2 Core Worksheet, which describes the standing committees of Congress, before beginning the Section 3 lesson.

BLOCK 2: Finish teaching the Sections 3 and 4 lessons in their entirety.