

## AP US Government & Politics Final Review Study Tools

### Key Constitutional Clauses to Know

#### Commerce Clause-

- Found in the original Constitution
- Congress has the expressed power to “regulate commerce” which is defined as trade between states or with foreign nations
- Commerce was defined broadly by the Supreme Court, in the case *Gibbons v. Ogden* 1824, to include nearly any interaction between states. This interpretation has led to huge growth in the power of Congress and the federal government because Congress can say virtually any law it passes is a concern of “commerce” in this unlimited definition
- In *Heart of Atlanta Motel v. US*, which is not technically a federalism case, the Court upheld the Civil Rights Act of 1964 using the Commerce Clause. This greatly expanded federal power
- *US v. Lopez*, 1995. When Congress passed a Safe School Act making the possession of guns in school zones illegal, it marked the first time US Supreme Court said a law using the Commerce Clause went too far. Gun control should be a state matter, said the Court, as the regulation of guns by the federal government couldn’t directly be called a regulation of commerce.

#### Due Process Clause

- Found in the 14<sup>th</sup> Amendment; ratified following the Civil War
- The Supreme Court used it, beginning with *Gitlow v. New York*, 1925, to begin **selective incorporation**—applying the civil liberty protections of the Bill of Rights on a case-by-case basis—to state laws. Not all BOR rights have been incorporated—but some of the most significant have been (free speech, press, religion, no illegal search and seizure, right to an attorney...)

#### Elastic Clause (a.k.a. Necessary and Proper Clause)

- Found in the original Constitution
- Congress has the right to pass all laws it deems “necessary and proper” to carry out their expressed powers.
- Has led to the many **implied powers** of Congress and a great expansion of power in the National Government, especially relative to state power
- *McCulloch v. Maryland*, 1803 is significant as it reinforced the idea that Congress had expansive “implied powers” and that the national government was superior to state government when conflicts arise

#### Establishment Clause-

- Found in the 1<sup>st</sup> Amendment of the Bill of Rights
- First Amendment Freedom of Religion clause that forbids the US government from “establishing” a religion that its citizens must follow.
- Some say it means: Government can’t favor one religion over another
- Others say it means: There must be a wall of separation between church and state which forbids any government support of religion
- The words “a wall of separation” between church and state don’t actually appear in the Constitution.
- In *Lemon v. Kurtzman*, the Supreme Court established a test to determine the constitutionality of all government involvement in religious activities by saying the involvement must:
  - Be secular in purpose
  - Have a primary effect that neither advances nor inhibits religion
  - Involve no excessive government entanglement with religion

### **Free Exercise Clause**

- Found in the 1<sup>st</sup> Amendment of the Bill of Rights
- First Amendment Freedom of Religion clause that states that the US government may not inhibit the free exercise of religion by any of its citizens.
- Supreme Court has said it means: Government can't infringe on beliefs but can regulate conduct to some degree
- Laws that single out a religious practice and have no general benefit or weren't pre-existing are unconstitutional

### **Equal Protection Clause**

- Found in the 14<sup>th</sup> Amendment, passed after the Civil War
- States that “no state shall deny to any person within its jurisdiction the equal protection of the laws”
- Is the first mention of equality in our Constitution
- Is used to prevent discrimination against any group of citizens (based on race, gender or other differences)
- Is associated with civil rights (protections against discrimination)

### **Full Faith and Credit Clause**

- Found in the original Constitution
- Says that each state must honor the laws, records and court decisions of every other state
- Applies to only civil NOT criminal matters

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### **Privileges and Immunities Clause**

- Found in US Constitution
- Says that no state may discriminate against a person who lives in another state
- Each state must recognize the right of any American to travel in, do business in or become a resident of another state

### **Extradition Clause**

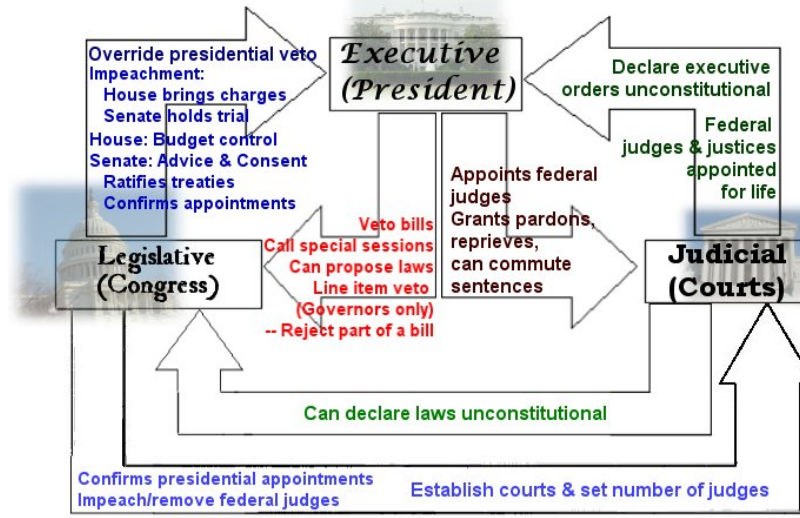
- Found in original Constitution
- The legal process by which a fugitive from justice in one state is returned to it from another state

### **Supremacy Clause**

- Found in the original Constitution
- Establishes a hierarchy of laws in the US
- US Constitution is the highest law of the land, national laws are next, states laws last
- National laws are supreme to state laws if conflicts arise between the two

# Checks and Balances Flow Chart

## The System of Checks and Balances



### Checks and balances

To prevent one branch from becoming supreme. Checks and balances allow for a system-based regulation that allows one branch to limit another.

#### Legislative (Congress)

- Passes bills; has broad [taxing and spending power](#); controls the [federal budget](#); has power to borrow money on the credit of the United States (may be vetoed by President, but [vetoes may be overridden](#) with a two-thirds vote of both houses)
- Has sole power to [declare war](#).
- Oversees, investigates, and makes the rules for the government and its officers.
- Defines by law the jurisdiction of the federal judiciary in cases not specified by the Constitution
- Ratification of treaties signed by the President and gives [advice and consent](#) to presidential appointments to the [federal judiciary](#), [federal executive departments](#), and other posts (Senate only)
- Has sole power of [impeachment](#) (House of Representatives) and trial of impeachments (Senate); can remove federal executive and judicial officers from office for high crimes and misdemeanors

#### Executive (President)

- Is the [commander-in-chief](#) of the [armed forces](#)
- Executes the instructions of Congress.
- May veto bills passed by Congress (but the veto may be overridden by a two-thirds majority of both houses)
- Executes the spending authorized by Congress.
- Declares states of emergency and publishes regulations and [executive orders](#).
- Makes executive agreements (does not require ratification) and signs treaties (ratification requiring by two-thirds of the Senate)
- Makes appointments to the federal judiciary, [federal executive departments](#), and other posts with the advice and consent of the Senate. Has power to make [temporary appointment during the recess of the Senate](#)
- Has the power to grant "reprieves and pardons for offenses against the United States, except in cases of impeachment."

#### Judicial (Supreme Court)

- Determines which laws Congress intended to apply to any given case
- Exercises [judicial review](#), reviewing the constitutionality of laws
- Determines how Congress meant the law to apply to disputes
- Determines how a law acts to determine the disposition of prisoners
- Determines how a law acts to compel testimony and the production of evidence
- Determines how laws should be interpreted to assure uniform policies in a top-down fashion via the appeals process, but gives discretion in individual cases to low-level judges. The amount of discretion depends upon the [standard of review](#), determined by the type of case in question.
- Federal judges [serve for life](#)

**Institutions of National Government**  
**Legislative, Executive (and Bureaucracy), and Judicial Branches**

**1. LEGISLATIVE BRANCH**

**Who?** Congress (House and Senate)

**What they do:** Make laws

**Why they're important:** The branch with most power as they're closest to people (directly elected and most numerous)

**Associated terms:** bicameral

**Expressed Powers (a.k.a. Enumerated/Delegated) (Article I, Section 8 of US Constitution)**

- Collect taxes
- Spend
- Provide for the common defense and general welfare
- Borrow money
- Regulate commerce (trade) among the states (interstate commerce) and with foreign countries
- Make immigration and naturalization and laws
- Coin money
- Declare war
- Raise and support an army and navy
- Set bankruptcy laws
- Set up federal courts
- Acquire, manage and sell federal lands
- Make copyright and patent laws
- Establish a postal system
- Investigative / oversight—look into any matter that falls within the scope of its powers
- Give advice and consent to the President
- Approve presidential appointments (Senate)
- Approve treaties (Senate)
- Impeachment (bring charges against federal officials (House) AND try impeachment cases (Senate))
- Elect a president (House) and VP (Senate) if no winner in election
- Amendments—propose amendments (2/3 vote) or call a convention to propose amendments

**Implied Powers**

- **The Necessary and Proper Clause (a.k.a. the Elastic Clause)**—grants Congress the ability to make any law that is “necessary and proper” for carrying out its expressed powers.

- **Examples:**

<b><u>Expressed Power</u></b>	<b><u>Implies the power to</u></b>
<b>Tax</b>	*create tax laws and punish tax evaders *use tax revenues to fund welfare, public schools, health and housing programs *require States to meet certain conditions to qualify for federal funding
<b>Borrow</b>	*establish the Federal Reserve System of banks
<b>Regulate commerce</b>	*establish a minimum wage *ban discrimination in workplaces and public places *pass laws protecting the disabled *regulate banking
<b>Raise army and navy</b>	*draft Americans into the military

## **2. EXECUTIVE BRANCH**

**Who?** The President (and cabinet, White House Office and Bureaucracy)

**What they do:** Execute or carry out the laws passed by Congress

**Why they're important:** The branch with most members / employees; exercises discretion in carrying out laws; has a single leader in the President; contains the bureaucracy and closest advisors to the President.

**Associated terms:** cabinet, bureaucracy (agencies, departments)

### **Expressed Powers of the President / Executive Branch**

- Enforce the law (carry out the laws passed by Congress as he interprets them)
- Administer the law
- Issue executive orders
- Appoint and remove executive officials (Justices, judges, cabinet members, ambassadors...)
- Make treaties with other nations (and Senate approval)
- May extend and withdraw recognition of other countries
- May make executive agreements with heads of other nations (no Senate approval required)
- As commander-in-chief, may send US troops into combat without congressional authorization for up to 60 days
- May recommend legislation to Congress
- May veto legislation with a regular veto or pocket veto
- May allow a bill to become law with or without signature
- May grant a reprieve on a sentence of someone convicted of a federal crime
- May grant a pardon for a federal crime
- May commute (reduce) the length of a sentence or amount of a fine
- May grant amnesty (forgiveness) to a group of law violators

### **Executive Departments**

Department of State

Department of Treasury

Department of Defense

Department of Justice

Department of the Interior

Department of Agriculture

Department of Commerce

Department of Labor

Department of Health and Human Services

Department of Housing and Urban Development

Department of Veterans' Affairs

Department of Energy

Department of Transportation

Department of Education

Department of Homeland Security

### **Independent Agencies**

- **Independent Executive Agencies**
  - Organized like departments
  - Do not have cabinet status
  - NASA (National Aeronautic Space Agency) is an example
- **Independent Regulatory Agencies**
  - Regulate parts of the economy
  - Are quasi-legislative and quasi-judicial
  - Exist outside of presidential control
  - Environmental Protection Agency (EPA), Food and Drug Administration (FDA), Federal Reserve Board (the Fed) are examples.
- **Government Corporations**
  - Carry out business-like activities
  - Amtrak, US Post Office are examples

### **3. JUDICIAL BRANCH**

**Who?** The Federal Courts: District, Circuit and US Supreme Court and judges and justices (US Supreme Court).

**What they do:** Determines the constitutionality of laws passed by Congress and acts of federal government.

**Why they're important:** Interpret the meaning of the US Constitution.

**Associated terms:** Judicial review, impeachment, life term, original jurisdiction, appellate jurisdiction, writ of certiorari

#### **Expressed Powers of the Judicial Branch**

- Very few expressed powers of the Judicial Branch exist (any?)
- The Constitution creates the US Supreme Court and leaves to Congress the creation of all other courts (inferior courts)
- The power to interpret the constitutionality of laws and acts of government (judicial review) is the key power.
- *Marbury v. Madison* is the key case in which the US Supreme Court established the principle of judicial review—the Courts' greatest power—to determine the constitutionality of all laws and acts of government.

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#### **Federal Court Structure**

- There are three separate court levels in this branch, **District Courts, Court of Appeals (Circuit),** and the **Supreme Court.**
- The Constitution created the Supreme Court and gave the power of establishing other courts to the Congress. In 1789, the first Congress used this power to establish the district and appeals courts called the lower or inferior courts.
- The power given to courts to interpret the law is called **jurisdiction.** The jurisdiction granted to the judicial branch is limited to federal and constitutional laws. The federal courts hear cases where a person or group disobeyed the constitution, violated a treaty, committed a crime on federal property, or broke a federal law.
- They also hear cases when a citizen from one state sues a citizen of another state. The federal courts also hear cases when a foreign country accuses a government official or U.S. citizen of a crime against their nation, or a person commits a crime on a U.S. ship at sea.
- The lower courts' decisions in these cases set **precedent.** The lower court judges are required to give legal reasons for their decisions. Precedent sets an example to follow for future cases with related subjects. The decisions reached in these courts can have a significant effect on the citizens of our country.
- There are **ninety-four U.S. District Courts** with original jurisdiction. They are trial courts.
- There are **12 Circuit Courts of Appeal** at the federal level that hear cases on appeal from district courts.
- The US Supreme Court is the highest court in the US. They have original (rarely) and appellate (more often) jurisdiction.
- The Supreme Court takes only 1-2% of cases requested. Lower court decisions stand on cases it refuses. There is no higher US court.

#### **US Federal Court Structure**

##### **Supreme Court**

##### **US Supreme Court**

-Court of last resort for federal and state

##### **Appellate Courts**

##### **US Circuit Courts of Appeals**

-12 Regional Circuit Courts of Appeal

- 1 US Court of Appeals for the Federal Circuit

##### **Trial Courts**

##### **U.S. District Courts**

-94 Judicial Districts

-US Bankruptcy Courts