



# We the People

## THE CITIZEN AND THE CONSTITUTION

Directed by the Center for Civic Education

### Illinois WTP STATE HEARING QUESTIONS 2016

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

1. How did the different principles and ideas of classical republicanism and natural rights philosophy influence the Founders' thoughts and views about government?
  - What might be the possible consequences for society if either individual rights or the common good are emphasized at the expense of the other?
  - How are the principles and ideas of classical republicanism and natural rights philosophy represented in our governmental institutions and public policies today?
2. In the Declaration of Independence, Thomas Jefferson stated that "governments are instituted among men, deriving their just powers from the consent of the governed." From what source do the people derive the right to establish government?
  - How is "consent of the governed" related to the concept of popular sovereignty?
  - Does natural rights philosophy justify a right to revolution? Why or why not?

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

1. In Federalist 1, Alexander Hamilton observed, "It has been frequently remarked, that it seems to have been reserved to the people of this country, by their conduct and example, to decide the important question, whether societies of men are really capable or not, of establishing good government from reflection and choice, or whether they are forever destined to depend, for their political constitutions, on accident and force."\* Do you agree or disagree with Hamilton's opinion about the American experiment? Why or why not?
  - Does Hamilton's remark reflect social contract theory? Why or why not?
  - Is Hamilton's observation relevant to today's thinking about government? Why or why not?

\* Alexander Hamilton, James Madison, and John Jay, *The Federalist*, ed. J.R. Pole (Indianapolis, IN: Hackett Publishing Company, Inc., 2005), 1.

2. **“What truly distinguishes the founding generation, in contrast to our own, is their lack of reverence for existing constitutional systems, and their willingness to experiment. They rejected the parliamentary system then emerging in Britain, improvised on existing state constitutional experiments, and created a new federal republic with a system of separated powers.”\*** What might be the benefits and costs of Americans’ current reverence for our constitutional system? Explain your position.

- What experiences did the Founders have that led them to think differently about government?
- What new ideas about government, if any, did the founding generation embrace?

\* Jack M. Balkin, “Sanford Levinson’s Second Thoughts about Constitution Faith,” *Tulsa Law Review*, 48 no. 2, (2013): 1–17.

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

1. **President Lyndon B. Johnson signed the Voting Rights Act into law on August 6, 1965, saying, “Today is a triumph for freedom as huge as any victory that has ever been won on any battlefield. Yet to seize the meaning of this day, we must recall darker times.”\*** Why did Congress think it was necessary to pass the Voting Rights Act?

- How did the decision in *Shelby County v. Holder* in 2013 impact voting rights? How have recent court decisions impacted voting rights?
- How should the government deal with issues of voter fraud and disenfranchisement?

\* Lyndon B. Johnson, “Remarks on the Signing of the Voting Rights Act” (speech, Capitol Rotunda, Washington D.C., August 6, 1965), <http://millercenter.org/president/speeches/speech-4034>.

2. **In *Ex parte Milligan* (1866) Justice David Davis stated, “The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances.”\*** Do you agree with Justice Davis’s opinion? Why or why not? What are the facts surrounding this case?

- Under what circumstances, if any, should a president declare martial law?
- Should suspected terrorists held at Guantanamo Bay, Cuba, be tried in civilian or military courts? Why or why not?

\* *Ex parte Milligan*, 71 U.S. (4 Wall.) 2 (1866).

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

1. Justice Stephen Breyer said, "I write an opinion and you write a dissent. I read what you say and I think, 'Did I really say that? Oh dear. He has a good point. I better rewrite what I did. I better be certain that my argument is as good as I thought it was the first time.' The impact of your dissent will be, at the least, to make me write a better decision."\* Do you agree with Justice Breyer's opinion about the value of dissents? Why or why not?

- What purpose, if any, does the dissent serve in furthering justice?
- What are some of the most important dissents in American history, and why are they important?

\* Brian Lamb, Susan Swain, and Mark Farkas, eds., *The Supreme Court: A C-SPAN Book Featuring the Justices in Their Own Words* (New York: Public Affairs, 2010), 142.

2. Former congressman Lee Hamilton once said, "Congress is the most important link between the American people and their national government."\* Do you agree with Congressman Hamilton's statement? Why or why not?

- What are the advantages and disadvantages of the two-year congressional term?
- What disagreements about representation were made at the Philadelphia Convention? Are any of these arguments relevant today? Why or why not?

\* Lee H. Hamilton, "Ten Things I Wish Political Scientists Would Teach about Congress" (Pi Sigma Alpha Lecture, American Political Science Association annual meeting, Washington, D.C., August 31, 2000), <http://centeroncongress.org/ten-things-i-wish-political-scientists-would-teach-about-congress>.

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

1. In *Brandenburg v. Ohio* the Supreme Court created a two-part test for limiting free expression. Speech can be limited if it is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action."\* What are the advantages and disadvantages of using this test to limit free expression, and how should this test apply to posts on social media?

- Does the decision in *Tinker v. Des Moines Independent Community School District* apply to student speech on social media sites? Why or why not?
- Should public schools limit student speech posted on social media sites that criticizes teachers or administrators? Why or why not?

\* *Brandenburg v. Ohio*, 395 U.S. 444 (1969).

2. Chief Justice John Roberts stated, "The fact that technology now allows an individual to carry such information in his hand does not make the information any less worthy of the protection for which the Founders fought. Our answer to the question of what police must do before searching a cell phone seized incident to an arrest is accordingly simple—get a warrant."\* Do you agree or disagree with the decision of the Supreme Court? Why?

- When is it reasonable, if ever, to conduct a search and seizure without a warrant? Why?

- Does the government have a compelling interest in collecting and storing Internet communications? Why or why not? Should the collection of such information by the government require a warrant? Why or why not?

\* *Riley v. California*, 573 US \_ (2014).

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

- 1. What is the history of United States immigration policy, and how effective have these policies been? What changes, if any, would you suggest to U.S. immigration policy? Why?**
  - The Immigration Reform and Control Act of 1986 made it illegal to hire or recruit undocumented immigrants. Do you agree or disagree with this policy? Why?
  - What are the advantages and disadvantages of immigration?
- 2. The U.S. Constitution says very little about the relationship between the national and state governments and American Indian nations. However, Chief Justice John Marshall's Supreme Court decided cases that helped define that relationship and formed the basic framework of federal Indian law in the United States. Do you agree or disagree with the opinions in the "Marshall Trilogy?"\* Why?**
  - According to David E. Wilkins, "tribal citizens who live within reservations enjoy tribal, state, and federal citizenship."\*\* What are the advantages and disadvantages of treble citizenship?
  - If tribal law conflicts with United States constitutional law, which law should prevail? Why?

\* *Johnson v. M'Intosh*, 21 U.S. 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831); *Worcester v. Georgia* 31 U.S. 515 (1832).

\*\* David E. Wilkins and Heidi Kiiwetinepinesiik Stark, *American Indian Politics and the American Political System*, 3rd ed. (Latham, MD: Rowman & Littlefield Publishers, Inc., 2011), 113.