

## POWERS IN THE U.S. CONSTITUTION

**SS.912.CG.3.6** Explain expressed, implied, concurrent and reserved powers in the U.S. Constitution.

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### 2023 BENCHMARK UPDATES

- Updated from SS.912.C.14
  - Changed from “~~Examine constitutional powers~~ (expressed, implied, concurrent, reserved).” to “Explain expressed, implied, concurrent and reserved powers in the U.S. Constitution.”
- Depth of Knowledge Changes within Benchmark
  - Changed from “Examine” to “Explain”
- Addition of Benchmark Clarifications
  - Benchmark clarifications are an addition to the 2023-2024 high school civics and government benchmarks. Benchmark clarifications are listed in the lesson summary below.

# Essential Teacher Content Background Information

[Teacher Content Notes Not Appropriate For Student Use]

## This section addresses the following topics:

1. Federalism in the U.S. Constitution
2. Federal and State Powers in the U.S. Constitution
3. The Tenth Amendment
4. The Role of the General Welfare and Necessary and Proper Clauses in Granting Congress Implied Powers

## 1. Federalism in the U.S. Constitution

The framing of the U.S. Constitution was organized around the power of the national and state governments. The first national government formed by the colonists following independence in 1776 was the Articles of Confederation, which focused power at the state level giving little power to the national government. The problems experienced under the Articles of Confederation became evident soon afterward: no unified foreign policy, state governments working against one another when facing common concerns, and a lack of coordination among states and between the states and the central government.

Adding to these concerns is that most of those attending the Constitutional Convention attended for the purpose of retaining the confederal system while addressing and fixing those factors that weakened it. James Madison worked with George Washington and Alexander Hamilton to shift the direction and purpose of the convention such that the final document, the U.S. Constitution, presented a federal structure.

Federalism is a system of government in which power is divided and shared between the national, state, and local governments. This division of powers extends exclusive powers to the national government only (known as expressed, enumerated, or delegated), the state governments only (reserved), or to both (concurrent). Federalism is found throughout the U.S. Constitution.

## 2. Federal and State Powers in the U.S. Constitution

Article and Section in the U.S. Constitution	Explanation of Power	Example of Power	Type of Power
Article I, Section 4 (The Legislative Branch; elections)	States organize elections although the national government may set national standards	The national government sets the date for presidential and congressional elections; the states may determine the date for scheduling primaries	Concurrent
Article I, Section 8 (The Legislative Branch; powers of Congress)	Congress, as the national legislature, enjoys specific powers.	<u>Core powers of Congress include:</u> <ul style="list-style-type: none"><li>● Laying and collecting taxes</li><li>● Providing for the common defense</li><li>● Borrowing money on the credit of the U.S.</li><li>● Regulating commerce</li><li>● Establishing a uniform rule of naturalization</li><li>● Coining money</li></ul>	Enumerated or delegated

Article and Section in the U.S. Constitution	Explanation of Power	Example of Power	Type of Power
		<ul style="list-style-type: none"> <li>• Declaring war</li> <li>• Raising and supporting armies and navies</li> </ul>	
Article I, Section 10 (The Legislative Branch; restrictions on state power)	The states are forbidden from engaging in certain activities	<u>State may not (partial list):</u> Enter into treaties  Coin money  Keep troops during peacetime	N/A; Article I, Section 10 restricts power; it does not extend power
Article II, Section 1 (Executive Branch; Electoral College)	State legislatures determine the rules for appointing members of the Electoral College (the Electoral College elects the president).	State legislatures give to each political party the power to select Electors from that party; all Electors are assigned to the party of the presidential candidate earning the most votes in that state (except Maine and Nebraska).	Reserved
Article III, Section 1 (Judicial Branch; creation of courts)	Congress establishes courts inferior to the U.S. Supreme Court	Congress created the federal appellate court system.	Enumerated or delegated
Article VI (Supremacy Clause)	State law may not conflict with federal law	Federal law mandates that no state may require residency exceeding 30 days for purposes of voter registration.	N/A

### 3. The Tenth Amendment

The Tenth Amendment was added to the U.S. Constitution as part of the Bill of Rights, which is comprised of the first ten amendments. The Tenth Amendment reads:

*The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.*

It is in the Tenth Amendment where one finds the reserved powers. This amendment extends powers to the states that are not granted to the national government. An interesting contrast is found between the powers extended to the national government and the state governments. In the U.S. Constitution, the powers that are granted to Congress are listed out, or enumerated. This suggests that, because the framers were concerned about giving too much power to the national government, they gave specific powers (noted above) to Congress. Critics, including the Anti-Federalists, argued that the last phrase in Article I, Section 8, called the “elastic” or “necessary and proper” clause (*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*), extended so much power to Congress that it violated the concept of enumerating congressional powers. By comparison, the Tenth Amendment does not identify any powers. Instead, the Tenth Amendment extends to the states and by extension, the people, powers that are not specifically granted to Congress or denied to the states.

#### A. A Note on Tax Policy

One of the best known powers of government is the power to tax. The power to “lay and collect taxes” is a power of Congress, as found in Article I, Section 8. However, state and local governments are also permitted to lay and collect taxes because these powers are not forbidden in Article I, Section 10.

Consequently, even though the power to “lay and collect” taxes is enumerated in Article I, Section 8 among the powers delegated to Congress, the power to tax is a concurrent power because it is not forbidden to the states.

#### **4. The Role of the General Welfare and Necessary and Proper Clauses in Granting Congress Implied Powers**

The General Welfare and Necessary and Proper Clauses of the United States Constitution play central roles in implying that Congress has powers beyond those that are expressly enumerated in Article I.

The General Welfare Clause is part of the larger Taxing and Spending Clause found in Article I, Section 8 of the Constitution, which states that “*Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States.*” This implies that Congress has the flexibility to take actions that promote the well-being and prosperity, or general welfare, of the United States beyond its enumerated powers.

The Necessary and Proper Clause, also called the Elastic Clause, is also found in Article I, Section 8 of the Constitution and states: “*The Congress shall have Power... 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.*” This clause expands on Congress's expressed powers by stating it has the authority to take those actions that are deemed necessary and proper to carry out its enumerated powers and responsibilities under the Constitution, implying a wide range of potential powers not otherwise spelled out.

Taken together, these clauses establish that Congress has powers beyond those expressed in Article I, giving the national legislative branch the flexibility to expand at times deemed appropriate and necessary. The presence of implied powers has played a central role in the development of the power of the national government and its ability to meet challenges which arise. At times, individuals and states have questioned whether actions of Congress fall within its implied powers or whether such actions are an overreach of its power. When those questions arise, the judicial branch, using its power of judicial review, steps in and interprets the constitutionality of the actions.

## Lesson Summary

BENCHMARK		
SS.912.CG.3.6 Explain expressed, implied, concurrent and reserved powers in the U.S. Constitution.		
BENCHMARK CLARIFICATIONS		
<ul style="list-style-type: none"><li>Students will identify powers that are expressed in the U.S. Constitution to Congress (e.g., coin money, declare war, assess taxes, citizenship).</li><li>Students will identify that expressed powers are also known as enumerated powers found in Article I of the U.S. Constitution.</li><li>Students will analyze the role of the “general welfare clause” and “necessary and proper clause” in granting Congress implied powers.</li><li>Students will describe examples of concurrent powers as those powers shared by both state and national governments (e.g., build roads, tax citizens, make laws).</li><li>Students will explain how reserved powers define issues as matters for the people or the state governments.</li><li>Students will compare the roles of expressed, implied, concurrent and reserved powers in United States’ federalism.</li></ul>		
FLORIDA CIVIC LITERACY EXAM COMPETENCY CONNECTION		
<b>Competency 2:</b> Understanding of the United States Constitution and its application		
OVERVIEW		
In this lesson, students will learn how the U.S. Constitution divides powers between the national government and states through expressed, implied, concurrent and reserved powers.		
ESSENTIAL QUESTION		
How does the U.S. Constitution divide power between the national government and states?		
GOVERNMENT CONTENT VOCABULARY		
<ul style="list-style-type: none"><li>10th Amendment, Article I, concurrent powers, Congress, delegated powers, enumerated powers, expressed powers, federalism, General Welfare Clause, implied powers, inherent powers, national government, Necessary and Proper Clause, reserved powers, separation of powers, state government, Supremacy Clause</li></ul>		
INSTRUCTIONAL STRATEGIES		
Close reading of text	Compare/Contrast Diagram	Quiz-Quiz-Trade
MATERIALS		
<ul style="list-style-type: none"><li>Federalism Review slide</li><li>Power to the States! reading</li></ul>		

- Comparing Powers in the U.S. Constitution Organizer
- Federalism Powers Diagram
- Constitution Hall Pass: Federalism video (external link)
- Index cards

### **B.E.S.T. STANDARDS**

The grade in which this lesson is taught will determine the specific B.E.S.T. standards correlation.  
Thematically, this lesson aligns to:

- ELA.R.2.2 Central Idea
- ELA.R.3.2 Paraphrase and Summarize

## Suggested Student Activity Sequence & Pace

DAY	ACTIVITY SEQUENCE
DAY 1	<p><b>Planning Note:</b> Content this lesson/benchmark overlaps with SS.912.CG.1.5, SS.912.CG.3.3, SS.912.CG.3.12, and SS.912.CG.3.13.</p> <ol style="list-style-type: none"> <li>1. Begin class by opening the “Federalism Review” slide.</li> <li>2. Have students individually work through the three scenarios, identifying whether each applies to local, state, or the national government. Then they should craft a definition for the term ‘federalism’.</li> <li>3. Review responses. Ensure students understand that the Framers established a federal system of government in which powers and responsibilities are split and shared between the national government and state/local governments.</li> <li>4. Explain to students that in this lesson, they will learn more about how the U.S. Constitution divides powers between the national government and states by examining the different types of powers: expressed, implied, concurrent and reserved.</li> <li>5. Distribute a “Power to the States!” reading to each student.</li> <li>6. Provide each student with a “Comparing Powers in the U.S. Constitution Organizer”.</li> <li>7. Instruct students to read the text, using appropriate text-marking strategies, and work to fill in the organizer as they read. They can wait on answering the short response at the bottom.</li> <li>8. Provide students time to work, monitoring the room for engagement and understanding.</li> <li>9. Once all students have completed the task, engage students in a review of the organizer. Students should fill in any gaps during the class discussion.</li> </ol> <p><b>Teacher Note:</b> Use the answer key provided to help guide the discussion.</p> <ol style="list-style-type: none"> <li>10. After discussing the powers, draw student attention to the two clauses from Article I at the bottom of the organizer. Read them together as a class.</li> <li>11. Have students answer the short response question underneath and review the connections between enumerated and implied powers of Congress.</li> <li>12. Ask students: Who determines when or if Congress oversteps their implied powers? (judicial branch/judicial review)</li> </ol>
DAY 2	<ol style="list-style-type: none"> <li>1. Begin class today by providing each student a “Federalism Powers Diagram”.</li> <li>2. Review with students the meaning of the terms/powers on the diagram.</li> <li>3. Using their organizer and reading from yesterday, have students begin to fill in examples of the various constitutional powers in the appropriate place on the venn diagram.</li> </ol> <p><b>Teacher Note:</b> It is expected that they may not have many examples yet or that the examples they do have may be more for one power over another.</p> <ol style="list-style-type: none"> <li>4. Next, play for students the “<a href="#">Constitutional Hall Pass: Federalism</a>” video from the National Constitution Center. As they listen to the information, instruct them to fill in any additional examples they hear related to the various powers in the appropriate place in the venn diagram.</li> <li>5. Lead students in a whole class discussion to finish comparing the roles of expressed, implied, concurrent, and reserved powers in the United States’ federalism. It is recommended that you build a venn diagram with them as you go.</li> </ol> <p><b>Teacher Note:</b> Use the answer key provided to help guide discussion.</p> <ol style="list-style-type: none"> <li>6. Provide each student a blank index card.</li> </ol>

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|  | <ol style="list-style-type: none"><li>7. Instruct students to write one example of either an expressed, implied, concurrent, or reserved power on one side of the index card. (i.e. 'The power to levy taxes'). On the other side of the index card, they should identify the type of power that corresponds with their example. (i.e. 'Concurrent')</li><li>8. Have students stand up and find a partner.</li><li>9. Facing their partner, have them hold up their index card with the example/clue facing the other student and the answer should be facing them and hidden from their partner.</li><li>10. Partners should take turns reading each other's example and attempt to identify the correct answer/type of power.</li><li>11. After each student in the pair has taken their turn, have them trade index cards and go find a new partner.</li><li>12. Students should repeat the quizzing game with their new partner.</li><li>13. Continue having students trade index cards and find new partners for as many quiz rounds as you deem appropriate.</li></ol> |
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## Government Content Vocabulary

Word/Term	Definition
<b>10th Amendment</b>	the powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people
<b>Article I</b>	article of the U.S. Constitution that outlines the structures, functions, and processes of the legislative branch of government
<b>concurrent powers</b>	powers held jointly by the national and state governments
<b>Congress</b>	the legislative branch of the United States government, consisting of the House of Representatives and Senate
<b>delegated powers</b>	synonym for expressed powers
<b>enumerated powers</b>	synonym for expressed powers
<b>expressed powers</b>	the powers specifically named and assigned to the national government or prohibited to be exercised by the states under the U.S. Constitution
<b>federalism</b>	dividing the powers of government between the national government and state or provincial governments
<b>General Welfare Clause</b>	a clause in the U.S. Constitution understood to give the national government taxing and spending power to promote the general welfare
<b>implied powers</b>	powers granted to the U.S. government that aren't explicitly stated in the Constitution, but that are necessary to carry out its other responsibilities
<b>inherent powers</b>	synonym for implied powers
<b>national government</b>	the national level of government; the government of the United States
<b>Necessary and Proper Clause</b>	provides Congress the power to take any actions necessary to carry out their other enumerated powers; sometimes called the Elastic Clause
<b>reserved powers</b>	powers that the Constitution does not give to the national government that are kept by the states
<b>separation of powers</b>	the structure of the federal government, according to the U.S. Constitution, that sets up three branches with their own distinct powers and responsibilities
<b>state government</b>	the government of an individual state
<b>Supremacy Clause</b>	Article VI of the U.S. Constitution establishes that the national constitution and national laws take precedence over state laws and state constitutions

## ADDITIONAL RESOURCES

[Florida Department of Education: Florida Civic Literacy Exam Homepage](#)

Florida Department of Education's Civic Literacy Reading List

- *Notes on the Constitutional Convention* by James Madison
- *The Federalist Papers* by John Jay, Alexander Hamilton, and James Madison

## ANSWER KEYS

Sample Answers: Comparing Powers in the U.S. Constitution Organizer

Sample Answers: Federalism Powers Diagram

## SOURCES

Background on the General Welfare Clause:

<https://constitutioncenter.org/the-constitution/articles/article-i/clauses/755>

Background on the Necessary and Proper Clause:

[https://constitution.congress.gov/browse/essay/artI-S8-C18-1/ALDE\\_00001242/](https://constitution.congress.gov/browse/essay/artI-S8-C18-1/ALDE_00001242/)

Understanding Federalism from the National Archives:

<https://www.archives.gov/legislative/resources/education/federalism>

Power to the States! Activity from iCivics:

[https://www.icivics.org/teachers/lesson-plans/power-states-hs?overridden\\_route\\_name=entity.node.canonical&base\\_route\\_name=entity.node.canonical&page\\_manager\\_page=node\\_view&page\\_manager\\_page\\_variant=node\\_view-layout\\_builder-0&page\\_manager\\_page\\_variant\\_weight=-7](https://www.icivics.org/teachers/lesson-plans/power-states-hs?overridden_route_name=entity.node.canonical&base_route_name=entity.node.canonical&page_manager_page=node_view&page_manager_page_variant=node_view-layout_builder-0&page_manager_page_variant_weight=-7)

Constitutional Hall Pass: Federalism video from the National Constitution Center:

[https://www.youtube.com/watch?v=60G6oT2h\\_w4](https://www.youtube.com/watch?v=60G6oT2h_w4)

U.S. Constitution: <https://www.archives.gov/founding-docs/constitution-transcript>