

## Lesson: Article I – The Legislative Branch

### 1. Introduction

Begin the lesson by explaining that in this session, students will be learning about the legislative branch of government as described in Article I of the Constitution. Ask students the following questions:

- What is the main function of the legislative branch? (lawmaking)
- Why do you think the Framers of the Constitution put the legislative branch in the first Article?

*Answers will vary but may include:*

- *In a nation where the people are sovereign, their collective representation in the United States Congress is the heart and core of our system.*
- *The Articles had provided for a Congress so they started there.*
- *Congress was given the most power in the Constitution.*

### 2. Quotations:

Refer students to the first page of their handout. Share one or more of the following quotations with the group:

*Quote 1 --- President Monroe*

"The whole system of the National Government may be said to rest essentially on the powers granted to [the legislative] branch. They mark the limit within which, with few exceptions, all the branches must move in the discharge of their respective functions."

*Quote 2 --- Washington to Hamilton in 1788*

"It is clearly my opinion, unless Congress have powers competent to all general purposes, that the distresses we have encountered, the expense we have incurred, and the blood we have spilt, will avail us nothing."

Ask students, **"Does this quotation (or both) change their views about why the legislative branch is listed first in the Constitution?"** Encourage them to share their thoughts.

### 3. Historical Context

Explain to students that you are going to share some historical background on the Constitution. Share the following with the class:

After the Declaration of Independence in 1776, there were thirteen little free countries in place of the thirteen colonies. Most of the animosities and jealousies of colonial times still continued. A committee of the Second Continental Congress (which comprised of thirteen independent sovereign states) wrote the Articles of Confederation during the early part of the American Revolution. The Articles of Confederation were ratified and became effective on March 1, 1781. The Articles were not a constitution; it did not make a nation. It was considered a "league of friendship". The Articles of Confederation served as a bridge between the initial government by the Continental Congress of the Revolutionary period and the federal government provided under the Constitution of the United States.

The Congress which had existed under the Articles of Confederation consisted of only one House, which was made up of "delegates . . . appointed in such manner as the

legislature of each State shall direct", who might be replaced by others at any time within the period for which they were chosen.

Ask student, "What were some of the problems that occurred under the Articles of Confederation?" (Note that students probably learned this in middle school so it may be helpful to prompt students as to some of the problems that occurred under the Articles.)

Some of the problems encountered under the Articles included:

- **Taxation:** The federal government under the Articles had no independent power of taxation. The national government relied on the good faith of the states to pay bills sent to them for the maintenance of the national treasury. In several instances, such notices were ignored, and since the national government had no power of enforcement, there was little that could be done about the defaults.
- **Commerce:** The Articles did not provide Congress with power to regulate commerce between and among the states. This led to bitter tariff wars among the states.
- **Decisions of Congress:** The national government did not have a system to enforce the decisions of Congress.
- **Courts:** Under the Articles, there was no national court system to help interpret laws. Each state maintained its own judicial system.
- **Amendments:** Amendments to the Articles were allowed only with unanimous consent of the 13 states.
- **Decisions involving Money:** Any decision by the national government that involved money required 9 of the 13 states to ratify it.

Explain that the Constitutional Convention of 1787 proposed a new constitution establishing a much stronger national government. A Congress consisting of two houses marked the first fundamental difference between the new Constitution and the Articles of Confederation. On September 17, 1787, the final draft of the Constitution was signed. Of the 55 people who attended the Convention, 39 actually signed.

Although this controversial new Constitution provoked a great deal of resistance, the necessary number of states eventually ratified it. The Constitution replaced the Articles of Confederation as the framework of the United States government.

#### 4. Powers of the Legislative Branch

Using the poster provided in the courtroom or page two of the student handout, review with students some of the powers of Congress under Article I, Section 8. Some of the most significant powers include:

- The power to tax and to spend tax money;
- To borrow money on the credit of the United States;
- To regulate commerce with foreign nations, and among the several states, and with Indian tribes;
- To coin money, regulate its value, and to fix the standard of weights and measures;

- To constitute tribunals inferior to the Supreme Court (lower federal courts) and approve federal judges;
- To impeach the president or other federal officials;
- To pass criminal and civil laws;
- To declare war;
- To raise and support armies;
- To provide and maintain a navy;
- To make rules for the Government and the military;
- 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.

## 5. Separation of Powers/Checks and Balances/Limited Government

Ask students to identify some of the powers that overlap with other branches using the poster. Discuss how these represent the principle of checks and balances among the branches. Explain to students that the Framers were careful to put in a system of checks and balances in order to preserve a limited government. Some overlaps include the war powers which overlap with the power of given to the executive branch (President as Commander in Chief). The power of the legislature to impeach judges and remove them from office also demonstrates this limit on the power of the judicial branch.

Use the following questions for discussion:

- **What are some of the reasons the Framers wanted to limit the power of government?** (This question should focus attention on the reasons for the Revolution, as well as the purposes of government – to wit; to protect life, liberty and property.)
- **How do you think the judicial branch exercises a check on the legislative branch?** *Through the power of judicial review, the courts can declare a law unconstitutional.*
- **How does the legislative branch check the judicial branch?** *The Senate has the power to confirm nominees for the Supreme Court. The legislative branch also has the power to impeach judges and remove them from office.*
- **How does the separation of powers among the branches serve to limit the power of government?**
- **How does the system of checks and balances serve to limit the power of government?**

## 6. The Commerce Clause

Explain to students that the legislative branch's power under Commerce Clause is often used to justify many types of legislation, some that seem remotely related to the regulation of interstate commerce. The Commerce Clause is the third bulleted item on the student handout of the list of powers of Congress. Explain to students that the Framers included the Commerce Clause as a response to one of the biggest problems under the Articles of Confederation – the lack of any federal commerce power.

## 7. **Gonzales v. Raich**

Tell students that you are going to tell them about a case decided by the Supreme Court last year that involves the Congress' power under the Commerce Clause. Share the following facts of this case:

- A California law (a state law) allowed limited marijuana use for medicinal purposes (Compassionate Use Act).
- A federal law (the Controlled Substances Act or CSA) prevented people from possessing, obtaining, or using marijuana, including for their personal medical use.
- The respondents, Raich and Monson, were California residents who used doctor-recommended marijuana for their serious medical conditions. Raich did not grow her own marijuana, but Monson did.
- The Federal Drug Enforcement Administration agents (DEA) seized and destroyed the cannabis (marijuana) plants that Monson had grown.
- Respondents Raich and Monson brought a legal action against the Attorney General of the United States to prohibit the enforcement of the federal law as unconstitutional exercise of the commerce power.

Three factors add particular interest to this case:

1. The respondents' actions were legal under state and local law.
2. It was undisputed that Raich would die without marijuana.
3. The marijuana was grown as part of a cooperative of patients and no money changed hands.

**Ask students how they think they would decide such a case.** After eliciting several responses, explain that in its decision, the Supreme Court set out to answer narrower question:

Does Congress' power to regulate interstate markets for medicinal substances include parts of those markets that are supplied with drugs produced and consumed locally?

## 8. **The Decision:**

Explain to students that in this case, the Court found that the federal drug law fell within Congress' constitutional commerce power. In fact, the Court reflected that "the Commerce Clause emerged as the Framers' response to the central problem giving rise to the Constitution itself: the absence of any federal commerce power under the Articles of Confederation."

The Court held that even if the activity at issue is local and not commerce, such as homegrown and personal consumption of marijuana, Congress can regulate it so long as "Congress had a rational basis for believing that failure to regulate the intrastate manufacture and possession of marijuana would leave a gaping hole" in the federal law (Controlled Substances Act).

The Court reasoned that the CSA (Controlled Substances Act) directly regulated economic, commercial interests. The mere fact that in this case, marijuana is used for medicinal purposes does not distinguish it from the core activities regulated by the federal law.

The Court also invoked the Supremacy Clause, noting that state law cannot limit Congress' commerce power.

The Court also reasoned that the activity (homegrown cultivation and medicinal use of marijuana) would have a substantial effect on the supply and demand for the commodity in the national market.

## 9. Closing:

Ask students the following questions:

- **How might this decision affect them in the future?** Encourage students to think about some things that people grow/create for their own use that might be affected in the future. Remind students that they should be related to an interstate market.
- **Do you agree with the Court's decision? Why or why not?**
- **How much power does the Commerce Clause give the government?**
- James Madison, in The Federalist No.45, explained our system of government in the following manner:

“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 powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.”

**Do you think Madison's assertion is true today? Why or why not?**

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***Quote 2 --- Washington to Hamilton in 1788***

"It is clearly my opinion, unless Congress have powers competent to all general purposes, that the distresses we have encountered, the expense we have incurred, and the blood we have spilt, will avail us nothing."

## **Some of the powers granted to Congress under Article I, Section 8 of the U.S. Constitution**

- The power to tax and to spend tax money;
- To borrow money on the credit of the United States;
- To regulate commerce with foreign nations, and among the several states, and with Indian tribes (Commerce Clause);
- To coin money, regulate its value, and to fix the standard of weights and measures;
- To constitute tribunals inferior to the Supreme Court (lower federal courts) and approve federal judges;
- To impeach the president or other federal officials;
- To pass criminal and civil laws;
- To declare war;
- To raise and support armies;
- To provide and maintain a navy;
- To make rules for the Government and the military;
- 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. (Necessary and Proper Clause).



## **Tenth Amendment to the United States Constitution**

“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.”

## **The Supremacy Clause, U.S. Constitution, Article VI, Paragraph 2**

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the contrary notwithstanding."

### **Facts of Gonzales v. Raich**

- A California law (a state law) allowed limited marijuana use for medicinal purposes (Compassionate Use Act).
- A federal law (the Controlled Substances Act) prevented people from possessing, obtaining, or using marijuana, including for their personal medical use.
- The respondents, Raich and Monson, were California residents who used doctor-recommended marijuana for their serious medical conditions. Raich did not grow her own marijuana, but Monson did.
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