

State-Federal Tug-of-War

Name: _____

Prime-Time Power Struggle

The 10th Amendment

The 10th Amendment to the Constitution makes sure it's clear that any power the Constitution does not give to the federal government belongs to the states (or to the people).

Is the Constitution clear about exactly which powers the federal government has?

The U.S. Constitution creates a **federalist system** where individual state governments share power with the central, "federal" government. The Constitution lists all the powers states agreed to give to the federal government, and powers not on this list belong to the states or the people. Sound pretty straightforward? It's not. The Founders knew it would be impossible to think of every tiny power the federal government would need, so the list they wrote in the Constitution is very basic. To cover the details, they added what we call the **Necessary and Proper Clause**:

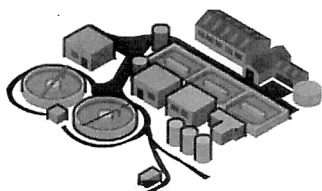
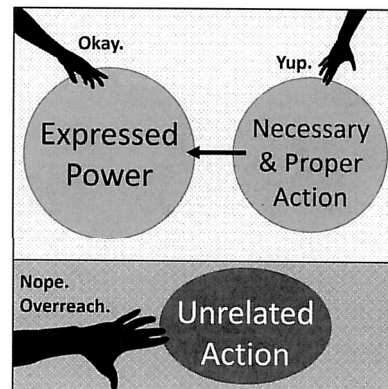
The Congress shall have Power... To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers...

States and the federal government have been arguing about what "necessary and proper" means ever since.

No, Really... It's Necessary

Over the years, there have been lots of things the U.S. Congress has wanted to do that were not clearly identified on the Constitution's list. In that case, Congress may find a power that *is* clearly on the list and explain that the action it plans to take is necessary for exercising that power. Sometimes the link between the law Congress passes and the power stated in the Constitution is obvious, but sometimes it's kind of a stretch. Those situations involve laws that states say only they have power to pass, and states may sue the federal government, arguing that Congress has **overreached** by using power it doesn't have.

The Reach of Congress's Power:



Police Power in Action:

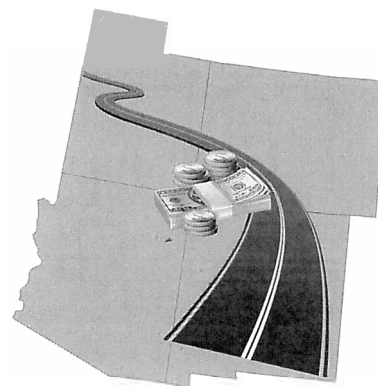
States protect citizens by setting standards that water treatment plants must follow when dealing with sewage.

Federal Police Power?

The **police power** is the states' power to protect citizens' health and safety and to promote the "general welfare" of state citizens. To accomplish this, states may limit private rights for the good of the public at large—for example, limiting your right to drive at any speed you want so other drivers can be safe. There's no such thing as a *federal* police power. Only states can make and enforce these kinds of laws, and yet we often see the federal government passing laws that seem an awful lot like exercising a police power. That's because Congress can pass just about any law it wants as long as that law is related to one of the federal constitutional powers. If Congress can demonstrate that the law is directly related, it's not considered overreach.

Commerce Controversy

One of the biggest sources of disagreement has come from Congress using its **commerce power** to justify passing laws that would otherwise fall under the states' police powers. The Constitution gives Congress the power "to regulate commerce... among the several states." That just means Congress has power over interstate commerce, which is trade or business activity that takes place across state lines. If something has "traveled in interstate commerce" (think shipping and transport), it is usually considered fair game for the commerce power. Over the decades, Congress has used its commerce power to pass laws about things like food safety, child labor, and civil rights.



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Works Both Ways

Congress's Constitutionally Expressed Powers



The federal government isn't the only one that tests the bounds of its lawmaking power. Sometimes, states pass laws that deal with issues the Constitution assigns to the federal government. The key difference is this: The federal government can only do what's listed in the Constitution, but states can do anything that is not listed. So if your state hasn't outlawed billboard advertising, Congress cannot step in and prohibit billboards because the Constitution doesn't give it that power. But when Congress hasn't acted on a particular issue related to one of its federal powers, states may try to fill that gap with laws of their own. Sometimes states can get away with this, and sometimes they can't.

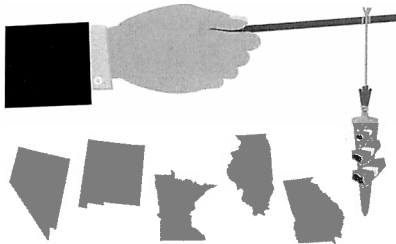
Show Us the Money!

States have a lot of independent power, but they don't always have a lot of cash. Very often, state and local governments rely on federal money in order to provide services to state citizens. Because Congress has the power to tax and spend, it has the power to offer states money. States may receive federal money in exchange for carrying out a federal program, or they may receive federal assistance for things only states have the power to control, such as schools. Usually, states have a choice about whether they want to accept this money. But if they don't, they may have to cut important services. For example, most states rely on federal money to help pay the cost of running schools because the tax money they collect isn't enough.



Strings Attached...

Most of the time, federal money comes with conditions. Congress is allowed to decide what states must do to receive federal money, which is one way Congress can make rules about things that normally only states have the power to govern. Education is a great example. In order to receive federal money to fund schools, states must follow rules that range from academic standards to providing certain programs and services. In another famous example, Congress wanted to reduce drunk driving crashes by having one uniform drinking age throughout the country. The Constitution doesn't give it this power, so Congress threatened to limit states' highway construction funding if they didn't set 21 as the legal drinking age. Within four years, all states complied.



Competing Policies

The way a given state may want to handle an issue could be very different from the way the federal government wants to handle it—or even the way another state would handle it. For example, what's the best way to deal with the threat of gun violence in schools? Restrict citizens' access to firearms generally? Prohibit all guns on school grounds? Allow teachers to carry guns at school? Both states and the federal government have laws about guns in schools. (One guess which federal power the federal law is based on...) Each level and division of government is trying to solve the same problem, but each may have a different policy approach for solving it. States may be especially protective of their own powers when the approach they want to follow is different from the federal government's.

Dependence on Oil?

A presidential administration wanting to reduce the nation's dependence on foreign oil might push states toward renewable energy solutions. But states with large oil reserves might want to increase oil production to spur job growth and boost the state's economy.