

**Objectives** You may wish to call students' attention to the objectives in the Section Preview. The objectives are reflected in the main headings of the section.

**Bellringer** Write on the chalkboard: "Students must be in class when the bell rings." Ask students how this rule could be interpreted. For example, does it mean students must be seated? Explain that in this section, students will learn about how the rules governing congressional powers are also subject to interpretation.

**Vocabulary Builder** Have students explain the difference between *expressed*, *implied*, and *inherent* and the difference between *strict* and *liberal*. Point out the first five terms in the Political Dictionary, and tell students that each is related to the Constitution. Then have them suggest what each term means.

## Lesson Plan

### Teaching the Main Ideas L3

#### H-SS 12.4.1

**1. Focus** Tell students that the Constitution gives Congress certain limited powers. Have them discuss what they know about the three ways in which the Constitution grants powers to Congress.

**2. Instruct** Ask students why the expressed powers are least open to interpretation. Then discuss how the interpretation of constitutional powers was historically split into strict and liberal construction and which type of interpretation dominates today.

**3. Close/Reteach** Remind students that the extent of Congress's power is open to interpretation. Have students create an informational brochure to explain the scope of congressional powers, including how those powers have been interpreted.

## Point-of-Use Resources

 **Block Scheduling with Lesson Strategies** Activities for Chapter 11 are presented on p. 24.

# The Scope of Congressional Powers

## Section Preview

### OBJECTIVES

- Identify the three types of congressional power.
- Compare the strict construction and liberal construction positions on the scope of congressional power.

### WHY IT MATTERS

The Constitution makes Congress the lawmaking branch—the basic policy-making branch of the National Government. The powers of Congress are limited, yes—but those powers are many, and they are also far-reaching.

### POLITICAL DICTIONARY

- ★ **expressed powers**
- ★ **implied powers**
- ★ **inherent powers**
- ★ **strict constructionist**
- ★ **liberal constructionist**
- ★ **consensus**

A typical day in either chamber of Congress might suggest that there is no limit to what Congress can do. On any given day, the House might consider bills dealing with such varying matters as the interstate highway system, an increase in the minimum wage, and grazing on public lands. Meanwhile, the Senate might be considering aid to a famine-stricken country in Africa, the President's nomination of someone to fill a vacancy on the Supreme Court, or any number of other matters.

Still, remember that there are very real limits on what Congress can do. Recall that (1) the

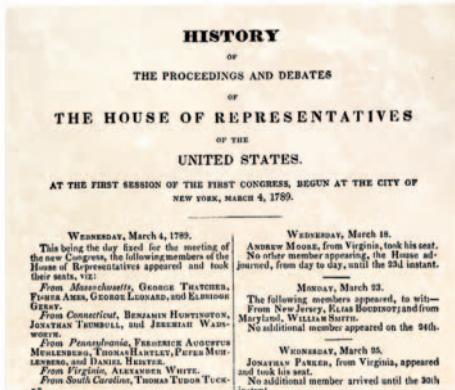
government in the United States is limited government, and (2) the American system of government is federal in form. These two fundamental facts work both to shape and to limit the powers of Congress.

### Congressional Power

Remember, Congress has only those powers delegated (granted, given) to it by the Constitution. Large areas of power are denied to Congress in so many words in the Constitution, by the Constitution's silence on many matters, and because the Constitution creates a federal system.

There is much that Congress cannot do. It cannot create a national public school system, require people to vote or attend church, or set a minimum age for marriage or drivers' licenses. It cannot abolish jury trials, confiscate all handguns, or censor the content of newspaper columns or radio or television broadcasts. Congress cannot do these and a great many other things because the Constitution does not allow it to do so.

Still, Congress *does* have the power to do many things. The Constitution grants it a number of specific powers—and, recall, it does so in three different ways: (1) explicitly, in its specific wording—the **expressed powers**; (2) by reasonable deduction from the expressed powers—the **implied powers**; and (3) by creating a national government for the United States—the **inherent powers**.



**Notes from the First Congress** The gavel came down on the first session of the House of Representatives on March 4, 1789, but the body lacked a quorum and had to adjourn every day until April 1, when enough members finally made it to New York City. The first order of business was to elect a Speaker. H-SS 12.4.1



## Block Scheduling Strategies

Consider these suggestions to manage extended class time:

- Have groups of students draw up a "constitution" for a school administration that stipulates expressed, implied, and inherent powers. Then present groups with problems the administration needs to solve. For each, groups should provide a solution and indicate which of the three kinds of powers the action they will take falls under.
- Remind students that the debate over how the Constitution should be interpreted has its roots

in the early years of the nation. Have students refer to Chapters 2 and 4 of their textbooks, and summarize the debates of the Federalists and Anti-Federalists. Then ask students how these arguments relate to the debate of strict vs. liberal construction of the Constitution today. Have students look through recent magazines or newspapers for examples of politicians who take a side in the debate, and ask students whether that position would be supported by Federalists or Anti-Federalists.

## Strict Versus Liberal Construction

The Framers of the Constitution intended to create a new and stronger National Government. The ratification of their plan was opposed by many, and that opposition was not stilled by the adoption of the Constitution. Rather, the conflict between the Federalists and the Anti-Federalists continued into the early years of the Republic. Much of that conflict centered on the powers of Congress. Just how broad, in fact, were those powers?

The **strict constructionists**, led by Thomas Jefferson, continued to argue the Anti-Federalist position from the ratification period. They insisted that Congress should be able to exercise only (1) its expressed powers and (2) those implied powers absolutely necessary to carry out those expressed powers. They wanted the States to keep as much power as possible. They agreed with Jefferson that “that government is best which governs least.”

Most of these Jeffersonians did acknowledge a need to protect interstate trade, and they recognized the need for a strong national defense. At the same time, they feared the consequences of a strong National Government. They believed, for instance, that the interests of the people of Connecticut were not the same as those of South Carolinians or Marylanders or Pennsylvanians. They argued that only the States—not the far-off National Government—could protect and preserve those differing interests.

### Interpreting Illustrations

**Illustrations** The debate over the scope of the powers of the Federal Government is as heated today as it was in early America. **What techniques does this illustration use to depict the conflict?** H-SS 12.4.1



Liberal Constructionists from Hamilton's time to today have favored a strong Federal Government...

while Strict Constructionists in the tradition of Jefferson have sought to limit the powers of the Federal Government.

## Organizing Information

To make sure students understand the main points of this section, you may wish to use the double web graphic organizer to the right.

Tell students that a double web compares and contrasts two ideas. Ask students to use the double web to compare the positions of strict and liberal constructionists.

## Voices on Government

**Xavier Becerra (D., California)**, who represents part of Los Angeles in the House, is an active member of the Congressional Hispanic Caucus. Improving education, especially for Hispanic students, is a major focus of his efforts in Congress.

**“Talk is not enough when the future of our children is at stake. We must end politics at the schoolhouse door. I urge Congress to work on [an] education . . . plan [that] would reduce class size to a national average of 18, modernize 5,000 schools nationwide, and make the needed investments to provide schools and students with after-school programs, technology and other tools to bring our schools into the 21st century.”**



### Evaluating the Quotation

**What does Becerra mean when he says “We must end politics at the schoolhouse door”?**

The **liberal constructionists**, led by Alexander Hamilton, had led the fight to adopt the Constitution. Now they favored a liberal interpretation of the Constitution, a broad construction of the powers given to Congress.

## Reading Strategy

### Drawing Inferences

As students read about the debate between liberal and strict construction of the Constitution, have them infer how their colonial experiences might have influenced the views of the strict constructionists.

## Background Note

### Government in History

The House has been keeping its *Journal* since it first convened, and the 1789–1875 sessions are now online, with more to follow. The Library of Congress has posted the printed versions in electronic form at: //memory.loc.gov/ammem/amlaw/lwhj.html. The *Journal* of the House of Representatives is not to be confused with the *Congressional Record*, a more complete, almost word-for-word record of Congress's daily business. The *Journal* is more like the minutes of a meeting, noting matters considered and votes taken rather than recording actual debates.

## Point-of-Use Resources

**Guided Reading and Review** Unit 3 booklet, p. 10 provides students with practice identifying the main ideas and key terms of this section.

**Lesson Planner** For complete lesson planning suggestions, see the Lesson Planner booklet, section 1.

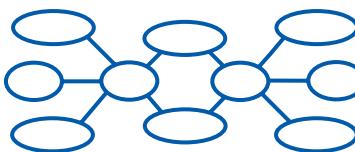
**Political Cartoons** See p. 40 of the Political Cartoons booklet for a cartoon relevant to this section.

**Section Support Transparencies** Transparency 43, *Visual Learning*; Transparency 142, *Political Cartoon*

### Answers to . . .

**Evaluating the Quotation** Possible answer: He feels that though there is a lot of political talk, it falls short of actions that would change the educational system.

**Interpreting Illustrations** Answers should be supported with examples.



## Point-of-Use Resources

 **Guide to the Essentials** Chapter 11, Section 1, p. 60 provides support for students who need additional review of section content. Spanish support is available in the Spanish edition of the Guide on p. 53.

 **Quiz** Unit 3 booklet, p. 11 includes matching and multiple-choice questions to check students' understanding of Section 1 content.

 **Presentation Pro CD-ROM** Quizzes and multiple-choice questions check students' understanding of Section 1 content.

## Answers to . . .

### Section 1 Assessment

- Expressed powers are stated explicitly in the Constitution; implied powers are those that can be reasonably deduced from the expressed powers; inherent powers are those traditionally held by national governments.
- Strict: Congress should only have expressed powers and those implied powers necessary to carry them out. Liberal: the Constitution can be interpreted more liberally to give additional powers to Congress.
- Allowed: Protect interstate trade, provide for a national defense, approve nominations of justices. Not allowed: Create a national public school system, set minimum ages for marriage or driver's licenses, use censorship.
- Americans generally agree that the Constitution should be interpreted broadly.
- Because the powers of the National Government have expanded in a way that would have been unimaginable to all of the Framers.
- While most Americans have supported the growth of the Federal Government's powers, the constitutionality of expansion is always debated.

## Answer to . . .

**Interpreting Political Cartoons** That if the government gets too small, it becomes ineffectual. The fact that the tree has no branches on which apples can grow help make this point.



### How much pruning can we do and still get apples?

**Interpreting Political Cartoons** What point is the cartoonist making about the big government/small government debate? What details in the drawing help to make the point?

They believed that the country needed, as Hamilton put it, "an energetic government."

The liberal constructionists won that conflict in the early years of the Republic, as you will see. Their victory set a pattern that, in general, has been followed ever since. Over the years, the powers wielded by the National Government have grown to a point that even the most

ardent supporters of liberal construction could not have imagined.

Several factors, working together with the liberal construction of the Constitution, have been responsible for that marked growth in national power. They have included wars, economic crises, and other national emergencies. Spectacular advances, especially in transportation and communication, have also had a real impact on the size and the scope of government. Equally important have been the demands of the people for more and more services from government.

Congress has been led by these and other factors to view its powers in broader and broader terms. Most Presidents have regarded their powers in like fashion. The Supreme Court has generally taken a similar position in its decisions in cases involving the powers of the National Government.

Moreover, the American people have generally agreed with a broader rather than a narrow reading of the Constitution. This **consensus**, this general agreement, has prevailed even though our political history has been marked, and still is, by controversies over the proper limits of national power.

## Section 1 Assessment

### Key Terms and Main Ideas

- Explain the differences among Congress's **expressed powers**, **implied powers**, and **inherent powers**.
- Compare the views of a **strict constructionist** and a **liberal constructionist**.
- Give three examples of laws that Congress can enact under the Constitution and three examples of laws that Congress cannot enact.
- Explain this sentence: *Historically, there has been a consensus in this country with regard to a broad rather than a narrow construction of the Constitution.*

### Critical Thinking

- Understanding Point of View** Why might Alexander Hamilton, a supporter of a strong National Government, be



### Standards Monitoring Online

For: Self-quiz with vocabulary practice  
Web Code: mqa-3111

surprised at the scope of the powers of the National Government today?

- Making Comparisons** Explain why these two seemingly contradictory statements are both true: (a) Most Americans agree with a broad reading of the Constitution. (b) The issue of the extent of the Federal Government's power is hotly debated today.



For: An activity on the Framers  
Web Code: mqd-3111



### Standards Monitoring Online

For additional assessment, have students access **Standards Monitoring Online** at  
Web Code: mqa-3111



Typing in the Web Code when prompted will bring students directly to detailed instructions for this activity.

In the Balanced Budget Act of 1997, Congress and President Clinton vowed to eliminate deficit financing by 2002. Their goal was realized much sooner than that, however. The nation's economy was so robust at the time that the government's income rose dramatically—and the Treasury reported a modest surplus for fiscal year 1998, and somewhat larger ones for 1999, 2000, and 2001.

Deficits are once again the order of the day, however. Three major factors combined to make those four years of budget surpluses only a brief interlude: (1) a sharp downturn in the nation's economy; (2) several major tax cuts pushed by President Bush and enacted by Congress in 2001, 2002, 2003, and 2004; (3) the onset of the global war on terrorism in 2001 and the ongoing conflicts in Afghanistan and Iraq.

The Treasury has reported a deficit for each fiscal year since 2001. The shortfall topped \$331 billion in 2005, and it will almost certainly exceed that stupendous sum in fiscal year 2006.

The interest the Federal Government pays out cannot be taxed by the States. That fact makes the Federal Government's notes and bonds quite attractive to investors.

## The Commerce Power

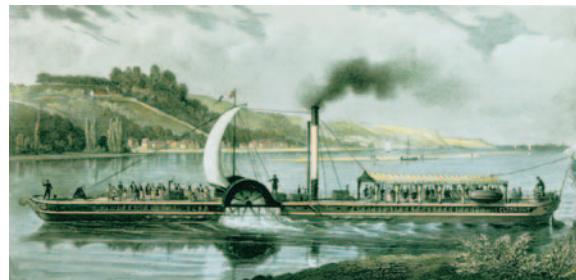
The **commerce power**—the power of Congress to regulate interstate and foreign trade—is as vital to the welfare of the nation as is the taxing power. As you know, the commerce power played a major role in the formation of the Union. The weak Congress created under the Articles of Confederation had no power to regulate interstate trade and little authority over foreign commerce. The Critical Period of the 1780s was marked by intense commercial rivalries and bickering among the States. High trade barriers and spiteful State laws created chaos and confusion in much of the country.

Consequently, the Framers wrote the Commerce Clause. It gives Congress the power



**"To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."**

—Article I, Section 8, Clause 3



▲ This engraving from the 1830s shows Robert Fulton's steamboat, the *Clermont*. **Critical Thinking** If Fulton had held on to his riverboat monopoly in New York, what might have been the effects on interstate commerce?

The Commerce Clause proved to be more responsible for the building of a strong and *United States* out of a weak confederation than any other provision in the Constitution. Its few words have prompted the growth in this country of the greatest open market in the world.

### Gibbons v. Ogden, 1824

The first case involving the Commerce Clause to reach the Supreme Court was *Gibbons v. Ogden*, decided in 1824. The case arose out of a clash over the regulation of steamboats by the State of New York, on the one hand, and the Federal Government, on the other. In 1807 Robert Fulton's steamboat, the *Clermont*, had made its first successful run up the Hudson River, from New York City to Albany. The State legislature then gave Fulton an exclusive, long-term grant to navigate the waters of the State by steamboat. Fulton's monopoly then gave Aaron Ogden a permit for steamboat navigation between New York City and New Jersey.

Thomas Gibbons, operating with a coasting license from the Federal Government, began to carry passengers on a line that competed with Ogden. Ogden sued him, and the New York courts held that Gibbons could not sail by steam in New York waters.

Gibbons appealed that ruling to the Supreme Court. He claimed that the New York grant conflicted with the congressional power to regulate commerce. The Court agreed. It rejected Ogden's argument that "commerce" should be defined narrowly, as simply "traffic" or the mere buying and selling of goods. Instead, it read the Commerce Clause in very broad terms:

## Make It Relevant

### Students Make a Difference

Gina Gribow of Palm Desert, California, recently spent a year working in Congress as a congressional page. While in Washington, Gina's life was very different from that of a typical high school junior. The pages rise early, attend school at the Library of Congress from 6:45 A.M. until 10:05 A.M. Then they go to the Capitol, where they spend the day—and sometimes well into the night—answering the telephone and delivering correspondence, legislative material, and small packages to members of Congress. "I didn't realize how much they worked and how they put in such long hours," Gina said, recalling sessions lasting until 2:00 A.M. Twin brothers Niko and Theo Milonopoulos of Los Angeles also served as pages recently. They later wrote: "We had heard that Congress could remain in session late into the night. We had not been prepared, however, to see the more than 400 representatives filing into the chamber to vote at 3 A.M. . . . We learned that it takes great dedication and hard work for many diverse voices to create one law."

## Point-of-Use Resources

**Close Up on the Supreme Court**  
*Gibbons v. Ogden* (1819), pp. 30–31

**The Enduring Constitution**  
Judicial Review, p. 7

**Basic Principles of the Constitution**  
Transparencies Transparencies 37–43, Judicial Review

## CONSTITUTIONAL PRINCIPLES

### Judicial Review

The Supreme Court's decision in *Gibbons v. Ogden* helped to expand federal authority into many areas of American life, while its decision in *United States v. Lopez* effectively protected the reserved powers of the States. The differences between the decisions can be linked to the Court's interpretation of the Commerce Clause and how it applied to the laws in question.

### Activity

Ask students to conduct additional research into *Gibbons v. Ogden* and *United States v. Lopez* to see how the Court's interpretation of the Commerce Clause and the purpose of the laws in question shaped its opinion. Have students summarize this information and explain why they agree or disagree. **H-SS 12.5.3**

### Answer to . . .

**Critical Thinking** Possible answer: There would have been less competition, hampering the development of the national transportation system.

## Background Note

### Common Misconceptions

For as long as any American has been alive, the United States has had strong Presidents with definite agendas for Congress. So most Americans think of the President as the most powerful individual in the National Government. In fact, at many points, congressional leaders held more sway than the President. During the 19th century, Presidents initiated few policies. They tended to yield to a strong Congress, and to powerful congressional leaders like Daniel Webster and John C. Calhoun in the Senate and Henry Clay and Thomas B. Reed in the House. For much of American history, congressional leaders have wielded as much, or more, power than the chief executive.



▲ Congress's commerce power affects the daily lives of all Americans—including these workers cleaning up after an oil spill and this student on a school bus wheelchair lift in Berlin, Maryland. **Critical Thinking** How might the Commerce Clause affect these people?



**PRIMARY SOURCES** “Commerce undoubtedly is traffic, but it is something more—it is intercourse. It describes the commercial intercourse between nations, and parts of nations, in all its branches, and is regulated by prescribing rules for carrying on that intercourse.”

—Chief Justice John Marshall

The Court’s ruling was widely popular at the time because it dealt a death blow to steamboat monopolies. Freed from restrictive State regulation, many new steamboat companies came into existence. As a result, steam navigation developed rapidly. Within a few years, the railroads, similarly freed, revolutionized transportation within the United States.

Over the decades, the Court’s sweeping definition of commerce has brought an extension of federal authority into many areas of American life—a reach of federal power beyond anything the Framers could have imagined. As another of the many examples of the point, note this: It is on the basis of the commerce power that the Civil Rights Act of 1964 prohibits discrimination in access to or service in hotels, motels, theaters, restaurants, and in other public accommodations on grounds of race, color, religion, or national origin.<sup>2</sup>

Based on the expressed powers to regulate commerce and to tax, Congress and the courts have built nearly all of the implied powers.

Most of what the Federal Government does, day to day and year to year, it does as the result of legislation passed by Congress in the exercise of these two powers.

### Limits on the Commerce Power

Like Congress’s taxing power, its commerce power is not unlimited. It, too, must be exercised in accord with all other provisions in the Constitution. Thus, the Supreme Court struck down the Gun-Free School Zone Act of 1990 in *United States v. Lopez*, 1995. That act had made it a federal crime for anyone other than a police officer to possess a firearm in or around a school. The Court could find no useful connection between interstate commerce and guns at school, and it held that Congress in this case had invaded the reserved powers of the States.

In more specific terms, the Constitution places four explicit limits on the use of the commerce power. Congress

(1) cannot tax exports, Article I, Section 9, Clause 5;

(2) cannot favor the ports of one State over those of any other in the regulation of trade, Article I, Section 9, Clause 6;

<sup>2</sup>The Supreme Court upheld this use of the commerce power in *Heart of Atlanta Motel v. United States* in 1964. The unanimous Court noted that there was “overwhelming evidence of the disruptive effect of racial discrimination on commercial intercourse.” You will look at this case again in Chapter 21.

## Point-of-Use Resources

 **ABC News Civics and Government Videotape Library**  
*Cutting Interest Rates* (time: about 4 minutes)

### Answer to . . .

**Critical Thinking** The power to pass laws to protect the environment comes from the commerce power; the commerce power also led to the prohibition of discrimination in public places. No person can be discriminated against because of race or disability.

**Objectives** You may wish to call students' attention to the objectives in the Section Preview. The objectives are reflected in the main headings of the section.

**Bellringer** Ask students how the designs of coins and bills have changed in recent years. Show an example of a newly designed dollar bill, dollar coin, or State quarter. Ask students who authorizes such changes in our currency. Tell students that the power to print and coin money is an expressed power of Congress.

**Vocabulary Builder** Have students read the terms in the Political Dictionary. Ask them which term is found on a dollar bill. (*legal tender*) Have a student read aloud, from a dollar bill, the sentence containing this term, and ask the class to discuss the term's meaning.

### Lesson Plan

#### Teaching the Main Ideas L3

##### H-SS 12.2.3

**1. Focus** Tell students that the Constitution expressly gives Congress the power to regulate money and commerce. Ask students whether they know any examples of how Congress uses these powers.

**2. Instruct** Ask students to name the four limits on Congress's power to tax. Then have students describe Congress's other money and commerce powers and any limits on these powers.

**3. Close/Reteach** Remind students that the expressed powers of Congress include the power to regulate money and commerce. Have students draw a web diagram to organize the information in this section, starting with "the expressed powers of money and commerce" in the center circle.

# The Expressed Powers of Money and Commerce

### Section Preview

### OBJECTIVES

- Summarize key points relating to Congress's power to tax.
- Describe how Congress uses its power to borrow money.
- Analyze the importance of Congress's commerce power.
- Identify the reasons that the Framers gave Congress the power to issue currency.
- Explain how the bankruptcy power works.

### WHY IT MATTERS

Its powers to tax and to regulate both interstate and foreign trade give Congress a critical role in the nation's economy. Neither its taxing power nor its commerce power are unlimited, however.

### POLITICAL DICTIONARY

- ★ tax
- ★ direct tax
- ★ indirect tax
- ★ deficit financing
- ★ public debt
- ★ commerce power
- ★ legal tender
- ★ bankruptcy

**M**ost, but not all, of the expressed powers of Congress are found in Article I, Section 8 of the Constitution. There, in 18 separate clauses, 27 different powers are explicitly given to Congress.<sup>1</sup>

These grants of power are brief. What they do and do not allow Congress to do often cannot be discovered by merely reading the few words involved. Rather, their meaning is found in the ways in which Congress has exercised its powers since 1789, and in scores of Supreme Court cases arising out of the actions taken by Congress.

As a case in point, take the Commerce Clause, which gives to Congress the power



▲ When they wrote the Commerce Clause, the Framers could not have envisioned this: a warehouse worker in Massachusetts filling orders for an online grocery service.

**FROM THE CONSTITUTION** “To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.”

—Article I, Section 8, Clause 3

What do these words mean? Congress and the Court have had to answer hundreds of questions about the scope of the Commerce Clause. Here are but a few examples: Does “commerce” include people crossing State lines or entering or leaving the country? What about business practices?

Working conditions? Radio and television broadcasts? The Internet? Does the Commerce Clause give Congress the power to ban the shipment of certain goods from one State to another? To prohibit discrimination? To regulate the Internet? What trade is “foreign” and what is “interstate”? What trade is neither?

In answering these and dozens upon dozens of other questions arising out of this one provision, Congress and the Court have defined—and are still defining—the meaning of the Commerce Clause. So it is with most of the other constitutional grants of power to Congress.

### The Power to Tax

The Constitution gives Congress the power

**FROM THE CONSTITUTION** “To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States. . . .”

—Article I, Section 8, Clause 1

<sup>1</sup>Several of the expressed powers of Congress are set out elsewhere in the Constitution. Thus, Article IV, Section 3 grants Congress the power to admit new States to the Union (Clause 1) and to manage and dispose of federal territory and other property (Clause 2). The 16th Amendment gives Congress the power to levy an income tax. The 13th, 14th, 15th, 19th, 24th, and 26th amendments grant Congress the “power to enforce” the provisions of the amendments “by appropriate legislation.”



### Block Scheduling Strategies

#### Point-of-Use Resources

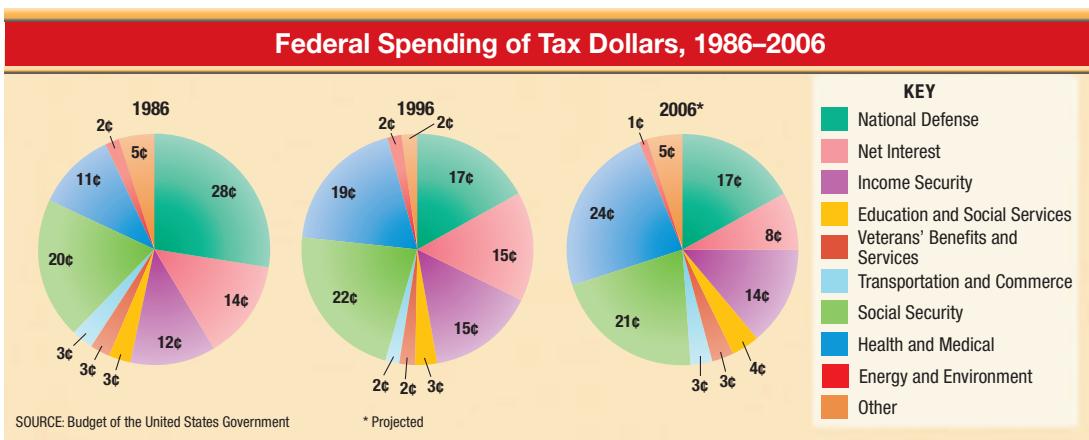


**Section Support Transparencies**  
Transparency 44, Visual Learning;  
Transparency 143, Political Cartoon

Consider these suggestions to manage extended class time:

■ Describe the many expressed powers that Congress has regarding money. Then have student groups create two laws. One law should be based on these expressed powers. The other should be a law that Congress could not pass because of the limitations placed on expressed powers. Ask for volunteers to share their laws, and have the class determine whether Congress could or could not pass them.

■ Have students complete the Constitutional Principles activity on p. 297. Then ask students to consider why congressional powers and limitations regarding commerce are so important. Have student pairs create scenarios of what could happen if each power or limitation was not in place. Encourage volunteers to share their scenarios with the class.



**Interpreting Graphs** Congress's priorities can be seen in the way it spends tax revenues. These graphs show what proportions of a tax dollar were spent on what federal programs. **What major shifts in federal spending occurred (a) between 1986 and 1996 and (b) between 1996 and 2006?** H-SS 12.4.1

Recall that the Articles of Confederation had not given Congress the power to tax. Congress did have the power to requisition (request) funds from the States; that is, Congress could ask (in reality, beg) each of the thirteen States for money. But, through the 1780s, not a single State came even remotely close to meeting the requisitions Congress made, and some States paid nothing at all. The government was impotent, and the lack of a power to tax was a leading cause for the creation of the Constitution.

### The Purpose of Taxes

We shall take another and longer look at the taxing power in Chapter 16. But, here, a number of important points: The Federal Government will take in some \$2.2 trillion in fiscal year 2006, and almost certainly an even larger sum in 2007. Most of that money—well over 95 percent of it—will come from the various taxes levied by Congress.

A **tax** is a charge levied by government on persons or property to raise money to meet public needs. But notice, Congress does sometimes impose taxes for other purposes as well. The protective tariff is perhaps the oldest example of this point. Although it does bring in some revenue every year, its real goal is to “protect” domestic industry against foreign competition by increasing the cost of foreign goods.

Taxes are also sometimes levied to protect the public health and safety. The Federal Government’s regulation of narcotics is a case in point. Only those who have a proper federal license can legally manufacture, sell, or deal in those drugs—and licensing is a form of taxation.

### Limits on the Taxing Power

Congress does not have an unlimited power to tax. As with all other powers, the taxing power must be used in accord with all other provisions of the Constitution. Thus, Congress cannot lay a tax on church services, for example—because such a tax would violate the 1st Amendment. Nor could it lay a poll tax as a condition for voting in federal elections—for that would violate the 24th Amendment.

More specifically, the Constitution places four explicit limitations on the taxing power:

(1) Congress may tax only for public purposes, not for private benefit. Article I, Section 8, Clause 1 says that taxes may be levied only “to pay the Debts and provide for the common Defense and general Welfare of the United States. . . .”

(2) Congress may not tax exports. Article I, Section 9, Clause 5 declares “[n]o Tax or Duty shall be laid on Articles exported from any State.” Thus, customs duties (tariffs), which are taxes, can be levied only on goods brought into the country (imports), not on those sent abroad (exports).

### Preparing for Standardized Tests

Have students read the passages under *The Power to Tax* on pp. 294–295 and then answer the question below.

What is a protective tariff?

- A** a low tax on imported goods to encourage their purchase by Americans
- B** a tax on exports
- C** a tax on cigarettes to make them more expensive and thus protect the public from the health risks of smoking
- D** a tax on imported goods to increase their price and make them less popular than American goods

### Reading Strategy

#### Predicting

Tell students that each of the five major headings in the section refers to an expressed power. Encourage students, when they reach a major heading, to predict how Congress uses each power. Have them write their predictions and then check them against the text as they read.

#### Universal Access

L3

**Enrichment** On the chalkboard, write “Article I, Section 8.” Remind students that most of the expressed powers of Congress are described in this part of the Constitution. Assign each student one of the expressed powers. Ask them to prepare a brief presentation of their expressed power, stating the importance of the congressional power and providing examples from real life where this power has been exercised.

**H-SS 12.4.1**

### Point-of-Use Resources

**Guided Reading and Review** Unit 3 booklet, p. 12 provides students with practice identifying the main ideas and key terms of this section.

**Lesson Planner** For complete lesson planning suggestions, see the Lesson Planner booklet, section 2.

**Political Cartoons** See p. 41 of the Political Cartoons booklet for a cartoon relevant to this section.

### Answers to . . .

**Interpreting Graphs** (a) Spending on national defense decreased, while health and medical spending increased the most. (b) Spending on net interest decreased; several other areas remained the same. Only health and medical spending increased significantly.

**Universal Access****L4**

Have students write a position paper on the following topic: There is no constitutional limit on the amount of money that Congress can borrow. Encourage students to consider the pros (borrowing to finance war) and cons (deficit spending) of the issue before taking a stand. Ask them to provide specific examples of past government borrowing of money to support their position. Ask for volunteers to share their papers with the class. **GT H-SS 12.4.1**

**Universal Access****L2**

Have students create charts or other graphic organizers that highlight the limits on both the commerce power and the taxing power. For each explicit limit placed on Congress by the Constitution, encourage students to provide a real-life example or illustration that further explains the limitation. Have students compare their charts for accuracy of information.

**LPK H-SS 12.4.1****Point-of-Use Resources****Simulations and Data Graphing**

**CD-ROM** offers data graphing tools that give students practice with creating and interpreting graphs.

**Answer to . . .**

**Political Cartoons** Not particularly successful; tax payers still must read through pages of directions, fill out several different forms, and interpret complicated tables in order to file their taxes.

(3) Direct taxes must be apportioned among the States, according to their populations:

**FROM THE Constitution**

**"No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census of Enumeration herein before directed to be taken."**

—Article I, Section 9, Clause 4

A **direct tax** is one that must be paid directly to the government by the person on whom it is imposed—for example, a tax on the ownership of land or buildings, or a capitation (head or poll) tax.

An income tax is a direct tax, but it may be laid without regard to population:

**FROM THE Constitution**

**"The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."**

—16th Amendment

Wealth (which translates to the ability to pay taxes) is not evenly distributed among the States. So, a direct tax levied in proportion to population would fall more heavily on the residents of some States than it would on others—and would, therefore, be grossly unfair. Consequently, Congress has not levied any



**Interpreting Political Cartoons** Paying taxes often requires following complicated instructions. **According to this cartoon, how successful have been repeated efforts to simplify federal income tax forms?**

direct tax—except for the income tax—outside the District of Columbia since 1861.

(4) Article I, Section 8, Clause 1 provides that “all Duties, Imposts and Excises, shall be uniform throughout the United States.” That is, all indirect taxes levied by the Federal Government must be levied at the same rate in every part of the country. These include the federal taxes on gasoline, alcoholic beverages and tobacco products.

As a general rule an **indirect tax** is one first paid by one person but then passed on to another. It is indirectly paid by that second person. Take, for example, the federal tax on cigarettes. It is paid to the Treasury by the tobacco company, but is then passed on through the wholesaler and retailer to the person who finally buys the cigarettes.

**The Borrowing Power**

Article I, Section 8, Clause 2 gives Congress the power “[t]o borrow Money on the credit of the United States.” There are no constitutional limits on the amount of money that Congress may borrow, and no restriction on the purposes for which the borrowing can be done.

Congress has put a statutory ceiling on the public debt, however. The **public debt** is all of the money borrowed by the Federal Government over the years and not yet repaid, plus the accumulated interest on that money. That legal limit has never amounted to much more than a political gesture, however. Congress has always raised the ceiling whenever the debt has threatened to exceed it. The public debt is now (2006) more than \$8.5 trillion.

For decades, the Federal Government has practiced **deficit financing**. That is, it regularly spends more than it takes in each year—and then borrows to make up the difference. Thus, the government relied on deficit financing, or borrowing to deal with the Depression of the 1930s, to meet the huge costs of World War II, and to fund wars and social programs over the next several decades.

In fact, the government’s books showed a deficit in all but seven years from 1931 to 1969. And they were in the red *every* year from 1969 to 1998. As a result, the public debt climbed over those years—to more than \$5.5 trillion at the beginning of fiscal year 1998.

**Universal Access**

L4

Have students choose one of the expressed powers of Congress listed in the Constitution. Ask them to research the history of this power, including major events or pieces of legislation that have been a direct result of it. Encourage students to find information about any Supreme Court cases that arose out of the actions taken by Congress and any decisions that were rendered. Allow student projects to be in the form of an oral report, written report, visual display, or multimedia presentation.

**GT H-SS 12.4.1**

(3) cannot require that “Vessels bound to, or from, one State, be obliged to enter, clear or pay Duties in another,” Article I, Section 9, Clause 6; and, finally,

(4) could not interfere with the slave trade, at least not until the year 1808, Article I, Section 9, Clause 1. This last limitation, part of the curious slave-trade compromise at the Constitutional Convention, has been a dead letter for nearly two centuries now.

## The Currency Power

Article I, Section 8, Clause 5 gives Congress the power “[t]o coin Money [and] regulate the Value thereof.” The States are denied that power.<sup>3</sup>

Until the Revolution, the English money system, built on the shilling and the pound, was in general use in the colonies. With independence, that stable currency system collapsed. The Second Continental Congress and then the Congress under the Articles issued paper money. Without sound backing, and with no taxing power behind it, however, the money was practically worthless. Each of the 13 States also issued its own currency.

<sup>3</sup>Article I, Section 10, Clause 1 forbids the States the power to coin money, issue bills of credit (paper money), or make anything but gold and silver legal tender.

In several States, this amounted to little more than the State’s printing its name on paper and calling it money. Adding to the confusion, people still used English coins, and Spanish money circulated freely in the southern States.

Nearly all the Framers agreed on the need for a single, national system of “hard” money. So the Constitution gave the currency power to Congress, and it all but excluded the States from that field. From 1789 on, among the most important of all of the many tasks performed by the Federal Government has been that of providing the nation with a uniform, stable monetary system.

From the beginning, the United States has issued coins—in gold, silver, and other metals. Congress chartered the first Bank of the United States in 1791 and gave it the power to issue bank notes—that is, paper money. Those notes were not legal tender, however. **Legal tender** is any kind of money that a creditor must by law accept in payment for debts. Congress did not create a national paper currency, and make it legal tender, until 1863.

The new national notes, known as Greenbacks, had to compete with other paper currencies already in the marketplace. Although the States could not issue paper money themselves, State governments chartered (licensed) private banks, whose notes did circulate as

### The Development of a National Currency

CONTINENTAL CURRENCY	DEMAND CURRENCY	STATE CURRENCY	SILVER CERTIFICATE
 <b>One third dollar, 1776</b> This “Continental” note, engraved by Benjamin Franklin, was issued to finance the American Revolution.	 <b>\$10 demand note, 1861</b> With metal badly needed for the Civil War, Congress issued this “Greenback,” the first paper currency since the Continental. Congress made these notes legal tender in 1863.	 <b>\$5 Louisiana state bank note, 1862</b> From 1837 to 1863, just about anyone could issue currency—from States to stores to individuals—creating economic chaos.	 <b>\$1 silver certificates, 1896</b> George Washington was not the only member of his family to have his face on a bill; this note, redeemable for silver, features his wife, Martha.
<b>U.S. COINAGE</b>  <b>United States half cent, 1834</b> On the face of this early American coin is a woman representing Liberty; on the reverse is a laurel wreath.			<small>SOURCE: Federal Reserve Bank of San Francisco</small>

**Interpreting Charts** The colonies, the States, and the young United States experimented with a variety of coins and paper notes in the effort to build a stable currency. For a long time, people trusted coins more than paper. **Why do you think some forms of currency succeeded while others failed?**



Use this complete suite of powerful teaching tools to make planning lessons and administering tests quicker and easier.

### Background Note

#### Economics

In 1997, Congress passed a bill requiring the creation of a new dollar coin to replace the Susan B. Anthony dollar, which had “flopped,” partly because it was easily confused with a quarter. The United States One Dollar Coin Act of 1997 specified a new golden-colored coin with a distinctive edge. The Mint chose Sacagawea, Lewis and Clark’s Shoshone guide, to appear on the new coin. Then, recalling the fate of the Anthony dollar, the Mint launched an unprecedented \$40 million advertising campaign to promote the new “golden dollar.” Several years later, however, the success of that advertising blitz was in doubt. The coin’s failure to catch on in the general public was attributed to several causes: People were unaware of the new coins and they were more accustomed to using dollar bills. Many collected, rather than spent, the golden dollars. Not all vending machines accepted the new coins. Experts concluded that the best way to boost the use of the metal dollar would be to eliminate its major competitor—the paper dollar—altogether.

#### Answer to . . .

**Interpreting Charts** Possible answer: Forms of currency can only succeed if they have public confidence and are perceived as useful by the people.

## Point-of-Use Resources

 **Guide to the Essentials** Chapter 11, Section 2, p. 61 provides support for students who need additional review of section content. Spanish support is available in the Spanish edition of the Guide on p. 54.

 **Quiz** Unit 3 booklet, p. 13 includes matching and multiple-choice questions to check students' understanding of Section 2 content.

 **Presentation Pro CD-ROM** Quizzes and multiple-choice questions check students' understanding of Section 2 content.

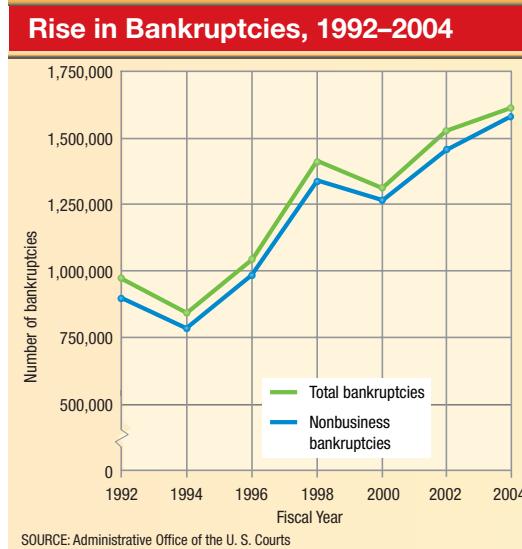
## Answers to . . .

### Section 2 Assessment

1. A direct tax must be paid by the person on whom it is imposed; an indirect tax is paid by one person, but is in fact passed on to be paid by another. A tax on land ownership is an example of a direct tax, while a cigarette tax is an indirect tax.
2. A sharp downturn in the nation's economy, major tax cuts in 2001, 2002, and 2003, and the global war on terrorism, including the conflicts in Afghanistan and Iraq.
3. Regulating commerce with foreign powers and between States; preventing monopolies and discrimination in access to public places.
4. The worthlessness of money that had no sound backing or taxing power; competition between State currencies; and the use of foreign currency.
5. Possible answer: They did not want Congress to be able to derive personal gain from taxes, nor did they want State competition.
6. Answers will vary, but should be supported with relevant facts and examples.

## Answer to . . .

**Interpreting Graphs** The overall trend has been a steady increase, with two brief periods of decline (1992–1994 and 1998–2000).



**Interpreting Graphs** Congress, along with the States, has the power to set bankruptcy laws. *Describe the change in nonbusiness bankruptcies from 1992 to 2004 as shown in the graph.* H-SS 12.4.1

money. When those private bank notes interfered with the new national currency, Congress (in 1865) set a ten percent tax on their production. The private bank notes soon disappeared. The Supreme Court upheld the 1865 law as a proper exercise of the taxing power in *Veazie Bank v. Fenn*, 1869.

At first, the Greenbacks could not be redeemed for gold or silver coin at the Treasury.

## Section 2 Assessment

### Key Terms and Main Ideas

1. Explain the difference between a **direct tax** and an **indirect tax**, and give examples of each.
2. What three factors brought about the recent return to **deficit financing** at the federal level?
3. Give three examples of how Congress uses its **commerce power**.
4. What problems led the Framers to give Congress the power to coin money and make it **legal tender**?

### Critical Thinking

5. **Making Inferences** Reread the four ways that the Constitution limits Congress' power to tax (pages 295–296). What can you infer about the Framers' reasons for limiting this power?

Their worth fell to less than half of their face value. Then, in 1870, the Supreme Court held their issuance to be unconstitutional. In *Hepburn v. Griswold* it said "to coin" meant to stamp metal and so the Constitution did not authorize paper money.

The Court soon changed its mind, however, in the *Legal Tender Cases* in 1871 and again in *Juliard v. Greenman* in 1884. In both cases it held the issuing of paper money as legal tender to be a proper use of the currency power. The Court also declared this a power properly implied from the borrowing and the war powers.

## The Bankruptcy Power

Article I, Section 8, Clause 4 gives Congress the power "[t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." A bankrupt individual or company or other organization is one a court has found to be insolvent—that is, unable to pay debts in full. **Bankruptcy** is the legal proceeding in which the bankrupt's assets—however much or little they may be—are distributed among those to whom a debt is owed. That proceeding frees the bankrupt from legal responsibility for debts acquired before bankruptcy.

The States and the National Government have concurrent power to regulate bankruptcy. Today federal bankruptcy law is so broad that it all but excludes the States from the field. Nearly all bankruptcy cases are heard now in federal district courts.



### Standards Monitoring Online

For: Self-quiz with vocabulary practice  
Web Code: mqa-3112

6. **Expressing Problems Clearly** This issue is hotly debated today: Should Congress regulate the Internet—for example, to ban false advertising? Do you think the Commerce Clause gives Congress the power to regulate Internet activity? Explain your reasoning.

### Go Online

PHSchool.com

For: An activity on the Necessary and Proper Clause  
Web Code: mqd-3112



### Standards Monitoring Online

For additional assessment, have students access **Standards Monitoring Online** at  
Web Code: mqa-3112

### Go Online

PHSchool.com

Typing in the Web Code when prompted will bring students directly to detailed instructions for this activity.

## Section Preview

### OBJECTIVES

- Identify** the key sources of Congress's foreign relations powers.
- Describe** the power-sharing arrangement between Congress and the President on the issues of war and national defense.
- List** other key powers exercised by Congress.

### WHY IT MATTERS

The Constitution gives Congress several other expressed powers—powers that cover matters that range from foreign affairs and national security to the mail you send and receive and the copyrights on your CDs and DVDs.

### POLITICAL DICTIONARY

- ★ naturalization
- ★ copyright
- ★ patent
- ★ eminent domain

We have just reviewed the several expressed powers that Congress has with regard to money and to foreign and interstate commerce. The Constitution grants a number of other very important powers to Congress, and they are the focus of this section.

## Foreign Relations Powers

The National Government has greater powers in the field of foreign affairs than in any other area. Congress shares power in this field with the President, who is primarily responsible for the conduct of our relations with other nations. Because the States in the Union are not sovereign, they have no standing in international law. The Constitution does not allow them to take part in foreign relations.<sup>4</sup>

The foreign relations powers of Congress come from two sources: (1) from various expressed powers, especially the war powers and the power to regulate foreign commerce, and (2) from the fact that the United States is a sovereign state in the world community. As the nation's lawmaking body, Congress has the inherent power to act on matters affecting the security of the nation—for example, the regulation of immigration and measures to combat terrorism here and abroad. You will explore this vitally important subject at much greater length in Chapter 17.

<sup>4</sup>See Article I, Section 10, Clauses 1 and 3.

**Objectives** You may wish to call students' attention to the objectives in the Section Preview. The objectives are reflected in the main headings of the section.

**Bellringer** Ask students whether they have weighed produce in a grocery store. Then ask whether they would expect grocers' scales in every State to show the same weight for the same amount of produce. Finally, ask who makes sure that all scales give the same reading. Tell students that Congress has the expressed power to fix standards of weights and measures.

**Vocabulary Builder** Ask students to look at the terms in the Political Dictionary. Have various students read aloud the definition of each term from a dictionary. Then discuss how each term might relate to the powers of Congress.

## Lesson Plan

### Teaching the Main Ideas L3

#### H-SS 12.7.8

**1. Focus** Tell students that Congress shares several expressed powers with the President and holds other powers exclusively. Ask students to discuss what they know about the shared powers.

**2. Instruct** Ask students to name the expressed powers that Congress shares with the President. Lead a discussion of these powers and then ask for examples of expressed powers held exclusively by Congress.

**3. Close/Reteach** Remind students that Congress has a broad range of expressed powers. Have students create a chart to show Congress's exclusive expressed powers and those it shares with the President.



## Block Scheduling Strategies

Consider these suggestions to manage extended class time:

■ Discuss the role of Congress in foreign relations, war, and national defense. Then ask student groups to write scenarios that accurately depict the role that Congress plays in foreign relations, war, and national defense. Call on groups to enact their scenarios for the class. Finally, review how students depicted the roles that Congress plays in protecting the nation.

■ Ask students to point out the congressional powers described in the "Other Expressed Powers" section of the text. Then ask each student to decide which of the expressed powers in this section they think is the most important, and which they think is the least important. Call on volunteers to explain their reasoning for their opinions. You might want to organize a class debate between groups of students whose opinions differ.

## Reading Strategy

### Getting the Main Idea

Tell students that Congress's expressed powers can often affect people's daily lives. Have students list, as they read the section, the expressed powers of Congress and note ways in which each power might affect them personally.

## Point-of-Use Resources

 **Guided Reading and Review** Unit 3 booklet, p. 14 provides students with practice identifying the main ideas and key terms of this section.

 **Lesson Planner** For complete lesson planning suggestions, see the Lesson Planner booklet, section 3.

 **Political Cartoons** See p. 42 of the Political Cartoons booklet for a cartoon relevant to this section.

 **Simulations and Debates** War Powers Resolution, pp. 53–55, helps students organize a debate on this controversial law.

 **Section Support Transparencies** Transparency 45, *Visual Learning*; Transparency 144, *Political Cartoon*



For career-related links and activities, visit the *Magruder's American Government* companion Web site in the Social Studies area at the Prentice Hall School Web site.

combat in areas where a state of war does not exist; see Chapters 14 and 17.

## Other Expressed Powers

The Constitution sets out a number of other expressed powers. Many of these powers have a direct influence on the daily lives of Americans.

### Naturalization

The process by which citizens of one country become citizens of another is called **naturalization**. Article I, Section 8, Clause 4 gives Congress the exclusive power “[t]o establish an uniform Rule of Naturalization.” Today, our population includes more than 11 million naturalized citizens; we shall return to this matter in Chapter 21.

### The Postal Power

Article I, Section 8, Clause 7 says that Congress has the power “[t]o establish Post Offices and post Roads.” Post roads are all postal routes,

including railroads, airways, and waters within the United States, during the time that mail is being carried on them.

The United States Postal Service traces its history back to the early colonial period. Benjamin Franklin is generally credited as the founder of the present-day postal system. Today some 38,000 post offices, branches, stations, and community post offices serve the nation. The Postal Service and its some 750,000 employees handle more than 200 billion pieces of mail a year.

Congress has established a number of crimes based on the postal power. Thus, it is a federal crime for anyone to obstruct the mails, to use the mails to commit any fraud, or to use the mails in the committing of any other crime.

Congress has also prohibited the mailing of many items. Any articles prohibited by a State's laws—for example, firecrackers or switchblade knives—cannot be sent into that State by mail. A great many other items, including chain letters and obscene materials, cannot be sent through the mails.

The States and their local governments cannot interfere with the mails unreasonably. Nor can they require licenses for Postal Service vehicles or tax the gas they use, or tax post offices or any other property of the United States Postal Service.

### Copyrights and Patents

The Constitution gives Congress the power

 “To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.”

—Article I, Section 8, Clause 8

A **copyright** is the exclusive right of an author to reproduce, publish, and sell his or her creative work. That right may be assigned —transferred by contract—to

### Answer to . . .

**Interpreting Tables** Answers will vary, but should demonstrate understanding that such powers—critical to the stability of the nation—were seen as falling within the domain of Congress.

### Congressional Powers Expressed in Article 1, Section 8

PEACETIME POWERS		WAR POWERS	
Clause	Provision	Clause	Provision
1	To impose and collect taxes, duties, and excises	11	To declare war; to make laws regarding captures on land and water
2	To borrow money	12	To raise and support armies
3	To regulate foreign and interstate commerce	13	To provide and maintain a navy
4	To provide for naturalization; to create bankruptcy laws	14	To make laws governing land and naval forces
5	To coin money and regulate its value; to regulate weights and measures	15	To provide for summoning the militia to execute federal laws, suppress uprisings, and repel invasions
6	To punish counterfeiters of federal money and securities	16	To provide for organizing, arming, and disciplining the militia and governing it when in the service of the Union
7	To establish post offices and post roads		
8	To grant patents and copyrights		
9	To create courts inferior to the Supreme Court		
10	To define and punish crimes at sea and violations of international law		
17	To exercise exclusive jurisdiction over the District of Columbia and other federal properties		
18	To make all laws necessary and proper to the execution of any of the other expressed powers		

**Interpreting Tables** This table sets out the expressed powers of Congress. Choose two war powers and two peacetime powers and explain why you think the Framers felt it important to give these powers to Congress. H-SS 12.4.1

## Make It Relevant

### Careers in Government—Capitol Police Officer

The mission of the United States Capitol Police has grown since 1828 from providing security at the Capitol to providing “the Congressional community and its visitors with the highest quality of a full range of police services. . . . Today’s Capitol Police Officer has the primary responsibility for protecting life and property, preventing, detecting, and investigating criminal acts, and enforcing traffic regulations

throughout a large complex of congressional buildings, parks, and thoroughfares.” The Capitol Police have earned the nickname “The Nation’s Finest.”

**Skills Activity** Direct pairs of students to write fictional descriptions of what they think a day in the life of a Capitol Police officer would be like. Then have them explain why they would or would not be interested in this career.

**Universal Access**

L2

Have students choose one of the “other” expressed powers described in Section 3. For that power, they should create a poster with illustrations and captions that show the power being depicted. Allow time in class for students to present their posters. During presentations, have the class guess which power is being described. **ELL H-SS 12.4.1**

**Types of Intellectual Property**

**Utility patents** protect useful processes, machines, articles of manufacture, and compositions of matter. Examples: fiber optics, computer hardware, medications.



**Design patents** prohibit the unauthorized use of new, original, and ornamental designs for manufactured articles. Examples: the look of an athletic shoe, a bicycle helmet, Star Wars characters.



**Plant patents** protect certain invented or discovered plant varieties. Examples: hybrid tea roses, Silver Queen corn, Better Boy tomatoes.



**Copyrights** protect works of authorship, such as writings, music, and works of art that have been “tangibly expressed”—that is, in some way published, written, recorded, or made.

Examples: *Gone With the Wind* (book and film), Beatles recordings, video games.



SOURCE: United States Patent and Trademark Museum

**Trademarks** protect words, names, symbols, sounds, or colors that distinguish goods and services. Trademarks, unlike patents, can be renewed forever, as long as they are being used in business. Examples: the roar of the lion in MGM movies, the pink of the Owens-Corning Pink Panther, the word “three-peat”—coined by former Los Angeles Lakers basketball coach Pat Riley in 1989 in reference to record-setting three-in-a-row NBA championship victories.



**Trade secrets** are information that companies keep secret to give them an advantage over their competitors. Examples: the recipe for Coca-Cola, the recipe for Kentucky Fried Chicken.



**Interpreting Charts** In 2000, the government created a stir by granting an Internet store, Amazon.com, a patent on the structure of its Web page, which links to other merchants. (a) **Which type of patent listed above might have been given to Amazon.com?** (b) **Why do you think the granting of this patent was controversial?** **H-SS 12.2.2**

another, as to a publishing firm by mutual agreement between the author and the other party.

Copyrights are registered by the Copyright Office in the Library of Congress. Under present law they are good for the life of the author plus 70 years. They cover a wide range of creative efforts: books, magazines, newspapers, musical compositions and lyrics, dramatic works, paintings, sculptures, cartoons, maps, photographs, motion pictures, sound recordings, and much more.<sup>8</sup>

The Copyright Office does not enforce the protections of a copyright. If a copyright is infringed or violated, the owner of the right may sue for damages in the federal courts.

A **patent** grants a person the sole right to manufacture, use, or sell “any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” A patent is good for up to 20 years. The term of a patent may be extended only by a special act of Congress. The Patent and Trademark Office in the Department of Commerce administers patent laws.<sup>9</sup>

<sup>8</sup>Not all publications can be protected by copyright. Thus, the Supreme Court has held that such “factual compilations” as telephone directories “lack the requisite originality” for copyright protection, *Feist Publications, Inc., v. Rural Telephone Service Co.*, 1991.

**Weights and Measures**

Article I, Section 8, Clause 5 gives Congress the power to “fix the Standard of Weights and Measures” throughout the United States. The power reflects the absolute need for accurate, uniform gauges of time, distance, area, weight, volume, and the like.

In 1838 Congress set the English system of pound, ounce, mile, foot, gallon, quart, and so on, as the legal standards of weights and measures in this country. In 1866 Congress also legalized the use of the metric system of gram, meter, kilometer, liter, and so on.

In 1901, Congress created the National Bureau of Standards in the Commerce Department. Now known as the National Institute of Standards and Technology, the agency keeps the original standards for the United States. It is these standards by which all other measures in the United States are tested and corrected.

<sup>9</sup>The power to protect trademarks is an implied power, drawn from the commerce power. A trademark is some distinctive word, name, symbol, or device used by a manufacturer or merchant to identify his goods or services and distinguish them from those made or sold by others. A trademark need not be original, merely distinctive. The registration of a trademark carries the right to its exclusive use in interstate commerce for 10 years. The right may be renewed an unlimited number of times.

**Background Note****Recent Scholarship**

While many predictions have been made about how the Internet would change the way government is conducted, very few of them have yet become reality. It is no doubt, however, that cyberspace offers a unique opportunity to those in government with the willingness—and know-how—to harness it. *Congress Online* by Dennis W. Johnson explores the nature of this opportunity. In it, Johnson explores the history and current state of information technology in Congress, which is lagging behind the rest of the country. As one reviewer points out, some legislators are lost in cyberspace, and laptops and Palm Pilots are banned from the House and Senate. Johnson goes on to highlight some people in government who are making effective use of the information superhighway and offers suggestions about how to proceed toward a future in which the Internet and government are closely intertwined.

**Answer to . . .**

**Interpreting Charts** (a) Possible answer: A utility patent. (b) Possible answer: A Web site that provides links to other merchants is not a new or original idea.

## Point-of-Use Resources

 **Guide to the Essentials** Chapter 11, Section 3, p. 62 provides support for students who need additional review of section content. Spanish support is available in the Spanish edition of the Guide on p. 55.

 **Quiz** Unit 3 booklet, p. 15 includes matching and multiple-choice questions to check students' understanding of Section 3 content.

 **Close Up on Primary Sources** The Northwest Ordinance (1787), p. 68

 **Presentation Pro CD-ROM** Quizzes and multiple-choice questions check students' understanding of Section 3 content.

## Answers to . . .

### Section 3 Assessment

**1. Foreign relations:** the President has primary responsibility, but Congress has various expressed and inherent powers regarding foreign commerce and national security. **Defense:** the President is commander in chief of the armed forces, but only Congress can declare war, maintain armies and navies and make various rules pertaining to the military.

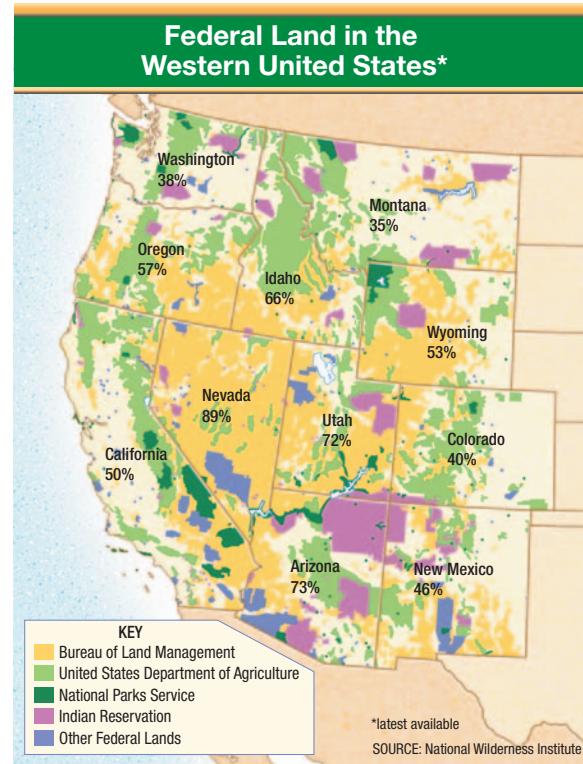
**2. Naturalization:** is the process by which citizens of one country become citizens of another; Congress is given this power expressly in the Constitution.

**3. A copyright:** is the exclusive right of an author to reproduce, sell, and publish his or her work, and is granted for the author's lifetime plus 70 years; a patent is the right to manufacture, use or sell any new invention and expires after 20 years.

**4. Examples will vary,** but inferences should relate to areas of national concern or foreign relations in which States are not sovereign.

## Answer to . . .

**Interpreting Maps** **(a)** Nevada, Arizona, and Utah. **(b)** Opinions should be supported with examples.



**Interpreting Maps** The Federal Government owns vast areas of the West. **(a) In which States is most of the land owned by the Federal Government? (b) Why do certain agencies own so much land?**

### Power Over Territories and Other Areas

Article I, Section 8, Clause 17 and Article IV, Section 3, Clause 2 give Congress the power to

## Section 3 Assessment

### Key Terms and Main Ideas

- Explain how Congress and the President share power in the fields of foreign relations and defense.
- Where does Congress get its power to regulate **naturalization**?
- How does a **copyright** differ from a **patent**?

### Critical Thinking

- Drawing Inferences** Choose three congressional powers discussed in this section and indicate why the Framers gave these powers to Congress rather than to the States.
- Making Decisions** Some people suggest that the U.S. Postal Service be abolished because they say today's

- Answers will vary, but might suggest that postal power must come under the domain of the National Government as it concerns national and international laws and safety issues.

acquire, manage, and dispose of various federal areas. That power relates to the District of Columbia and to the several federal territories, including Puerto Rico, Guam, and the Virgin Islands. It also covers hundreds of military and naval installations, arsenals, dockyards, post offices, prisons, parks and forest preserves, and many other federal holdings.

The Federal Government may acquire property by purchase or gift. It may also do so through the exercise of **eminent domain**, the inherent power to take private property for public use.<sup>10</sup> Territory may also be acquired from a foreign state based on the power to admit new States, on the war powers, and on the President's treaty-making power.

### Judicial Powers

As a part of the system of checks and balances, Congress has several judicial powers. These include the expressed power to create all of the federal courts below the Supreme Court and to structure the federal judiciary.

Congress also has the power to define federal crimes and set punishment for violators of federal law. The Constitution mentions only four. Three are found in Article I, Section 8: counterfeiting, piracies and felonies on the high seas, and offenses against international law. Treason is listed in Article III, Section 3. Congress has used its implied powers to establish more than one hundred other federal crimes.

<sup>10</sup>The 5th Amendment restricts the government's use of the power with these words: "nor shall private property be taken for public use, without just compensation."



### Standards Monitoring Online

For: Self-quiz with vocabulary practice  
Web Code: mqa-3113

for-profit mail companies could operate more efficiently, effectively, and economically. Do you agree? Explain.

### Go Online

PHSchool.com

For: An activity on the U.S. Postal Service  
Web Code: mqd-3113



### Standards Monitoring Online

For additional assessment, have students access **Standards Monitoring Online** at  
Web Code: mqa-3113

### Go Online

PHSchool.com  
Typing in the Web Code when prompted will bring students directly to detailed instructions for this activity.

## Section Preview

### OBJECTIVES

- Explain** how the Necessary and Proper Clause gives Congress flexibility in lawmaking.
- Summarize** the key developments in the battle over the implied powers of Congress.

### WHY IT MATTERS

The Necessary and Proper Clause sparked an early battle over the extent of the powers granted to Congress by the Constitution, and that debate has continued for more than two centuries.

### POLITICAL DICTIONARY

- ★ appropriate
- ★ Necessary and Proper Clause
- ★ doctrine

**W**hat does the Constitution say about education? Nothing, not a word. Still, Congress **appropriates**—assigns to a particular use—more than \$60 billion a year for the U.S. Department of Education to spend in various ways throughout the country. Look around you. What evidence of these federal dollars can you find in your school? If you attend a public school anywhere in the United States, those indications should not be hard to see.

How can this be? You know that Congress has only those powers delegated to it by the Constitution, and the Constitution says nothing about education. The answer lies in the implied powers of Congress.

## The Necessary and Proper Clause

Remember that the implied powers are those powers that are not set out in so many words in the Constitution but are implied by those that are. The constitutional basis for the implied powers is found in one of the expressed powers. The **Necessary and Proper Clause** gives to Congress the expressed 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."**

—Article I, Section 8, Clause 18

Much of the vitality and adaptability of the United States Constitution can be traced directly to this provision—and even more so to the ways both Congress and the Supreme Court have interpreted and applied it over the years. For good reason, the Necessary and Proper Clause has often been called the “Elastic Clause,” because it has been stretched so far and made to cover so much over the years.

## The Battle Over Implied Powers

The Constitution had barely come into force when the meaning of the Necessary and Proper Clause was called into question. In 1790



**Interpreting Political Cartoons** This cartoon depicts New York State's ratification of the Constitution in 1788. (a) **What does the ship represent?** (b) **What does the cartoon imply about the Federal Government?** (c) **Was the cartoonist a Federalist or an Anti-Federalist?**



## Block Scheduling Strategies

Consider these suggestions to manage extended class time:

- Discuss the significance of the Necessary and Proper Clause with the class. Have students identify significant achievements in U.S. history that would not have been possible if Congress didn't have the power to legislate on topics considered necessary and proper. Finally, have students write humorous stories on what life would be like without the implied powers clause.

- Have students complete the *Close Up on Supreme Court Cases* activity on *McCulloch v. Maryland* in the Teaching Resources. You might also want to have them reread Chapter 4, Section 1. Then ask them to read the statements from Chief Justice John Marshall found in the section. Have students consider Marshall's statements and write a response either supporting or refuting them. Encourage volunteers to share their responses with the class.

**Objectives** You may wish to call students' attention to the objectives in the Section Preview. The objectives are reflected in the main headings of the section.

**Bellringer** Ask students whether they have ever had to verbally justify some action they have taken. What words did they use to prove that the action was justified? Explain that in this section, students will learn about how the words *necessary and proper* have been used to justify many actions taken by Congress.

**Vocabulary Builder** Point out the term *Necessary and Proper Clause* in the Political Dictionary. Tell students that this term is the key to understanding the implied powers of Congress. Tell students to consider the meaning of the words *necessary and proper* and to keep the meaning in mind as they read the section.

## Lesson Plan

### Teaching the Main Ideas

#### H-SS 12.5.3

**1. Focus** Tell students that Congress can do only what the Constitution says it can do. Ask students to discuss what they know about how Congress has expanded its powers well beyond what is expressed in the Constitution.

**2. Instruct** Ask a student to read aloud the Necessary and Proper Clause (p. 305). Discuss how this clause has led to battles over the powers of Congress and what the results of those battles have been.

**3. Close/Reteach** Remind students that broad interpretation of the Necessary and Proper Clause has led to a doctrine of implied powers. Have students write a paragraph explaining this doctrine and identifying the historical events that shaped it.

### Answer to . . .

**Interpreting Political Cartoons** (a) The Federalists. (b) That it is strong and has popular support. (c) Federalist.

## The Enduring Constitution

### Expansion of Congressional Power

By the beginning of the 20th century, America had transformed itself into a modern urban and industrial society. Americans had also begun to call on government to regulate their increasingly complex and impersonal society. This reform movement, called Progressivism, was an important factor in the expansion of congressional power. Antitrust, food and drug, and banking regulation all set important precedents for the broad regulatory powers of the Federal Government.

### Using the Time Line

Have students use library or Internet resources to fill in additional information about each event on the time line. Then, ask them to tie each event to another that occurred before or after it. How did one event set the precedent for another? Point out that more information about the growth of congressional power is available at [PHSchool.com](#)

### Reading Strategy

#### Finding Evidence

Have students find evidence, as they read, to support the idea that Congress and the Supreme Court have encouraged a broad interpretation of the Necessary and Proper Clause.

#### Universal Access

L3

Tell students to assume the roles of newspaper reporters covering the case *McCulloch v. Maryland*. Ask them to write a brief newspaper report summarizing the key events and issues in the case, including its outcome. Student reports should conclude with a prediction about how the decision will affect the country in the future. Encourage students to be dramatic in their reporting.

**H-SS 12.5.3**

Alexander Hamilton, as Secretary of the Treasury, urged Congress to set up a national bank. That proposal touched off one of the most important disputes in all of American political history.

The opponents of Hamilton's plan insisted that nowhere did the Constitution give to Congress the power to establish such a bank. Remember, those strict constructionists, led by Thomas Jefferson, believed that the new government had only (1) those powers expressly granted to it by the Constitution, and (2) those few other powers *absolutely* necessary to carrying out the expressed powers.

Hamilton and other liberal constructionists looked to the Necessary and Proper Clause. They said that it gave Congress the power to do anything that was reasonably related to the exercise of the expressed powers. As for the national bank, they argued that its creation was clearly related to the execution of the taxing, borrowing, commerce, and currency powers.

The strict constructionists were sorely troubled by that broad view of the powers of Congress. They were sure that it would give the new

government almost unlimited authority and all but destroy the reserved powers of the States.<sup>11</sup>

Reason and practical necessity carried the day for Hamilton and his side. Congress established the Bank of the United States in 1791. Its charter (the act creating it) was to expire in 1811. During those 20 years, the constitutionality of both the bank and the concept of implied powers went unchallenged in the courts.

### McCulloch v. Maryland, 1819

In 1816 Congress created the Second Bank of the United States. Its charter came only after

<sup>11</sup>In 1801 a bill was introduced in Congress to incorporate a company to mine copper. As Vice President, Jefferson ridiculed that measure with this comment: "Congress is authorized to defend the nation. Ships are necessary for defense; copper is necessary for ships; mines necessary for copper; a company necessary to work the mines; and who can doubt this reasoning who has ever played at 'This Is the House That Jack Built'?" While Jefferson himself was President (1801–1809), he and his party were many times forced to reverse their earlier stand. Thus, for example, it was only on the basis of the implied powers doctrine that the Louisiana Purchase in 1803 and the embargo on foreign trade in 1807 could be justified.

## The Enduring Constitution

Congressional Power	1825	1875	1925
<i>The concept of implied powers has been a major factor in the growth and development of the powers of Congress—and so of the National Government—over the past two centuries.</i>	<b>1819</b> Supreme Court upholds the concept of implied powers, declaring that the powers to tax, borrow, and regulate commerce give Congress the power to establish a national bank.		<b>1890</b> Sherman Antitrust Act, based on the commerce power, regulates monopolies and other practices that limit competition.
	<b>1871</b> Supreme Court holds that the issuing of paper money is a proper exercise of the currency power. ( <i>Legal Tender Cases</i> )		
		<b>1849</b> Supreme Court rejects State efforts to regulate immigration, declaring it a Congressional issue. ( <i>Passenger Cases</i> )	



### Analysis Skills

**CS1** Students compare the present with the past, evaluating the consequences of past events and decisions and determining the lessons that were learned.

**CS2** Students analyze how change happens at different rates at different times; understand that some aspects can change while others remain the same; and understand that change is complicated and affects not only technology and politics but also values and beliefs.

**HI1** HI1 Students show the connections, causal and otherwise, between particular historical events and larger social, economic, and political trends and developments.

another hard-fought battle over the extent of the powers of Congress.

Having lost in Congress, opponents of the new bank now tried to persuade several State legislatures to cripple its operations. In 1818 Maryland placed a tax on all notes issued by any bank doing business in the State but not chartered by the State legislature. The tax was aimed directly at the Second Bank's branch in Baltimore. James McCulloch, the bank's cashier, purposely issued notes on which no tax had been paid. The State won a judgment against him in its own courts. Acting for McCulloch, the United States then appealed to the Supreme Court.

Maryland took the strict-construction position before the Court. It argued that the creation of the bank had been unconstitutional. The United States defended the concept of implied powers, and also argued that no State could lawfully tax any agency of the Federal Government.

In one of its most important decisions, the Court unanimously reversed the Maryland courts. It held that the Constitution need not expressly empower Congress to create a bank.

The creation of the Second Bank, said the Court, was "necessary and proper" to the execution of four of the expressed powers of Congress: the taxing, borrowing, currency, and commerce powers. In short, the Court gave sweeping approval to the concept of implied powers.<sup>12</sup>

Chief Justice John Marshall wrote the Court's opinion in the case. For the Court, he said:

**PRIMARY SOURCES** *"We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people."*

—McCulloch v. Maryland, Opinion of the Court

<sup>12</sup>The Court also invalidated the Maryland tax. Because, said the Court, "the power to tax involves the power to destroy," no State may tax the United States or any of its agencies or functions.

## Universal Access

L4

Share the following quotation with students:

*"Politics: a strife [conflict] of interests masquerading as a conflict of principles. The conduct of public affairs for private advantage."*

—Ambrose Bierce

**Discussion** Have students identify the cynicism in Bierce's definition. Then ask students how the powers of Congress might be used by its members for private advantage. Does this often happen? What prevents it from happening more often? **GT**

## Point-of-Use Resources

**Guided Reading and Review** Unit 3 booklet, p. 16 provides students with practice identifying the main ideas and key terms of this section.

**Lesson Planner** For complete lesson planning suggestions, see the Lesson Planner booklet, section 4.

**Political Cartoons** See p. 43 of the Political Cartoons booklet for a cartoon relevant to this section.

**Basic Principles of the Constitution Transparencies** Transparency 3, *The Living Constitution: Expansion of Congressional Power*

**The Enduring Constitution** Two extension activities for this time line can be found on pp. 13–14.

**1937** Supreme Court upholds the Social Security Act of 1935, as a proper exercise of the powers to tax and provide for the general welfare. (*Steward Machine Co. v. Davis; Helvering v. Davis*)

**1964** Supreme Court upholds the public accommodations provisions of the Civil Rights Act of 1964, as a valid exercise of the commerce power. (*Heart of Atlanta Motel v. United States*)

**1950**

**1935** Wagner Act, based on the commerce power, recognizes labor's right to organize and bargain collectively.



**1956** Interstate and National Defense Highway Act, based on the commerce and war powers, provides for a national interstate highway system.



**1975**

**1965** Congress amends the Social Security Act of 1935 to create Medicare, to cover most hospital and other health-care costs of the elderly.



**2000**

**1990** The Americans with Disabilities Act, based on the commerce power, prohibits discrimination against the physically impaired.

### Analyzing Time Lines

- Which expressed power has been the basis for most of the expansion of Congress's powers? Why do you think this is so?
- According to this time line, through what means has congressional power expanded over time?

### Answers to . . .

#### Analyzing Time Lines

- The Necessary and Proper Clause; because it is broad and nonspecific, Congress has been able to interpret it in ways that allow congressional expansion.
- The Court decided that Congress had overstepped its commerce power and also that it had invaded the reserved powers of the States.

## Point-of-Use Resources

 **Guide to the Essentials** Chapter 11, Section 4, p. 63 provides support for students who need additional review of section content. Spanish support is available in the Spanish edition of the Guide on p. 56.

 **Quiz** Unit 3 booklet, p. 17 includes matching and multiple-choice questions to check students' understanding of Section 4 content.

 **Presentation Pro CD-ROM** Quizzes and multiple-choice questions check students' understanding of Section 4 content.

 **Section Support Transparencies** Transparency 46, *Visual Learning*; Transparency 145, *Political Cartoon*

### Answers to . . .

### Section 4 Assessment

1. **Appropriation** means “to assign money to particular uses.”

2. (a) The “Elastic Clause.” (b)

Because it has been interpreted in so many ways and expanded so much over the years.

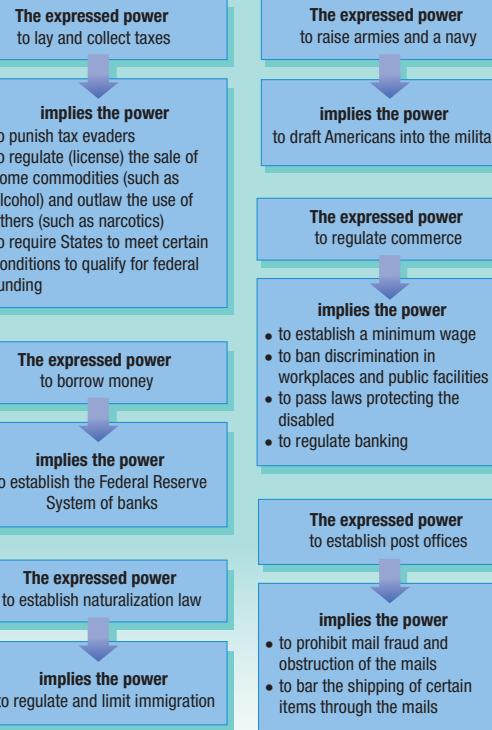
3. It is the principle that implied powers are proper and useful if they may be reasonably drawn from the expressed powers.

4. (a) *McCulloch v. Maryland* was a debate between strict constructionism and the expansion of implied powers. (b) The State of Maryland; the Second Bank of the United States; the bank's cashier, James McCulloch; and John Marshall, Chief Justice. (c) The Court gave approval to the concept of implied powers. (d) It set the precedent for the broad interpretation of constitutional powers which would characterize government after the case.

### Answer to . . .

**Interpreting Charts** Answers will vary, but should demonstrate an understanding that such powers are necessary for Congress to carry out its expressed powers.

### The Implied Powers of Congress



**Interpreting Charts** This chart indicates the sources of several implied powers, those that are not specifically spelled out in the Constitution but can be reasonably assumed. **Choose three of the implied powers listed above and explain specifically why we can assume that these powers belong to Congress.** H-SS 12.5.3

### Section 4 Assessment

#### Key Terms and Main Ideas

- Explain what it means to appropriate funds.
- (a) What is the **Necessary and Proper Clause** sometimes called? (b) How did it get that name?
- What is the **doctrine** of implied powers?

#### Critical Thinking

- Expressing Problems Clearly** (a) Write a one-sentence summary of the central dispute in the case of *McCulloch v. Maryland*. (b) Identify the key individuals and institutions involved in the case. (c) Summarize the outcome of the case. (d) Explain the long-term consequences of the decision.
- Evaluating the Quotation** Restate the first quotation from

5. Statements will vary but should reflect an understanding that the National Government cannot carry out its responsibilities without implied powers.

6. Answers will vary, but should suggest that many of the powers of Congress could not have evolved without liberal constructionism.

Then he penned these deathless words:

#### PRIMARY Sources

“Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional.”

—*McCulloch v. Maryland*, Opinion of the Court

This broad interpretation of the powers granted to Congress has become firmly fixed in our constitutional system. Indeed, it is impossible to see how the United States could have developed as it has under the Constitution without the principle established by *McCulloch*.

### The Doctrine in Practice

A **doctrine** is a principle or fundamental policy. The doctrine of implied powers has been applied in instances almost too numerous to count. The way Congress has looked at and used its powers, along with the supporting decisions of the Supreme Court, have made Article I, Section 8, Clause 18 truly the Elastic Clause. Today the words “necessary and proper” really read “convenient and useful.”

This is most especially true when applied to the power to regulate interstate commerce and the power to tax. Yet, recall, Congress cannot do something merely because it seems to promote the “general welfare” or be in the “public interest.”



#### Standards Monitoring Online

For: Self-quiz with vocabulary practice  
Web Code: mqa-3114

the *McCulloch v. Maryland* decision on page 307 in your own words.

6. **Drawing Conclusions** If the strict constructionists had won their battle to limit Congress's implied powers, how might our government be different today?

#### Go Online

For: An activity on strict and liberal construction  
Web Code: mqd-3114



#### Standards Monitoring Online

For additional assessment, have students access **Standards Monitoring Online** at  
Web Code: mqa-3114

#### Go Online

For: Typing in the Web Code when prompted will bring students directly to detailed instructions for this activity.  
Web Code: mqd-3114

**Objectives** You may wish to call students' attention to the objectives in the Section Preview. The objectives are reflected in the main headings of the section.

**Bellringer** Tell students that one of the most dramatic political events of their parents' lifetime occurred on August 9, 1974. Challenge students to identify the event. (*President Nixon's resignation*) Explain that Nixon's resignation was a direct result of investigations by Congress—an example of nonlegislative power.

**Vocabulary Builder** Ask students to pick out the terms from the Political Dictionary that relate to law courts or legal proceedings. Have them suggest the meaning of each of these terms. Encourage them to revise their definitions as they read the section.

## Lesson Plan

### Teaching the Main Ideas L3

#### H-SS 12.4.1

**1. Focus** Tell students that Congress has other functions besides that of making laws. Ask students to discuss what they know about these nonlegislative powers and duties.

**2. Instruct** Ask students what Congress's role is in the process of amending the Constitution. Then have students list on the chalkboard the other nonlegislative powers of Congress. Lead a discussion of these powers, including historical examples where appropriate.

**3. Close/Reteach** Remind students that several of Congress's nonlegislative powers involve the President or the presidency. Have students list those powers and explain their relationship to the President.

### Answer to . . .

**Critical Thinking** Possible answer: They wanted to ensure that a change as major as an amendment had the support of most of the States; they wanted to avoid changes prompted by temporary political expediency.

## Section Preview

### OBJECTIVES

- Describe** Congress's role in amending the Constitution and in deciding elections.
- Describe** Congress's power to impeach, and summarize presidential impeachment cases.
- Identify** Congress's executive powers.
- Describe** Congress's investigatory power.

### WHY IT MATTERS

Impeachment trials, close elections, far-reaching constitutional change, congressional committee investigations, presidential appointments—Congress has often captured the undivided attention of the American people as it has exercised one of its several non-legislative powers.

### POLITICAL DICTIONARY

- ★ successor
- ★ impeach
- ★ acquit
- ★ perjury
- ★ censure
- ★ subpoena

**C**ongress is a legislative body; its primary function is to make law. But the Constitution does give it some other chores—several nonlegislative duties—to perform as well.

### Constitutional Amendments

Article V says that Congress may propose amendments by a two-thirds vote in each house. It has done so 33 times. Article V also provides that Congress may call a national convention of delegates from each of the States to propose an amendment—but only if requested to do so by at



▲ Suffragettes celebrate passage of the 19th Amendment, giving women the right to vote. In 1972, Congress proposed an Equal Rights Amendment (ERA), but after a long, divisive battle, the effort to win ratification failed. **Critical Thinking** Why did the Framers make the amendment process difficult, requiring State ratification in addition to congressional approval?

least two thirds (34) of the State legislatures. No such convention has ever been called.

In recent years several State legislatures have petitioned Congress for amendments—among them measures that would require Congress to balance the federal budget each year, prohibit flag burning, permit prayer in the public schools, outlaw abortions, impose term limits on members of Congress, and prohibit same-sex marriages.

### Electoral Duties

The Constitution gives certain electoral duties to Congress. But they are to be exercised only in very unusual circumstances.

The House may be called on to elect a President. The 12th Amendment says that if no one receives a majority of the electoral votes for President, the House, voting by States, is to decide the issue. It must choose from among the three highest contenders in the electoral college balloting. Each State has but one vote to cast, and a majority of the States is necessary for election.

Similarly, the Senate must choose a Vice President if no candidate wins a majority of the electoral votes for that office. In that situation, the vote is not by States but by individual senators, with a majority of the full Senate necessary for election.<sup>13</sup>

<sup>13</sup>Notice that the 12th Amendment makes it possible for the President to be of one party and the Vice President another.



### Block Scheduling Strategies

Consider these suggestions to manage extended class time:

- Discuss the nonlegislative powers of Congress with the class. Ask each student to choose one of these powers and to prepare a brief public-service message describing significant actions Congress has taken related to that power. Encourage students to use the text and outside resources to plan and develop their presentations.

- Point out to students that if a politician is impeached and convicted of the charges, it can effectively end his or her political career. Encourage students to investigate one of the cases of impeachment mentioned in the section or elsewhere in the text. (see footnote 4, p. 510) Have each student report on the reasons for the impeachment and the decision of the Senate.

The House has twice chosen a President: Thomas Jefferson in 1801 and John Quincy Adams in 1825. The Senate has had to pick a Vice President only once: Richard M. Johnson in 1837.

Remember, too, that the 25th Amendment provides for the filling of a vacancy in the vice presidency. When one occurs, the President nominates a **successor**—a replacement, someone to fill the vacancy, subject to a majority vote in both houses of Congress. That process has been used twice: Gerald Ford was confirmed as Vice President in 1973 and Nelson Rockefeller in 1974.

## Impeachment

The Constitution provides that the President, Vice President, and all civil officers of the United States may “be removed from Office on Impeachment for and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.”<sup>14</sup> The House has the sole power to **impeach**—to accuse, bring charges. The Senate has the sole power to try—to judge, sit as a court—in impeachment cases.<sup>15</sup>

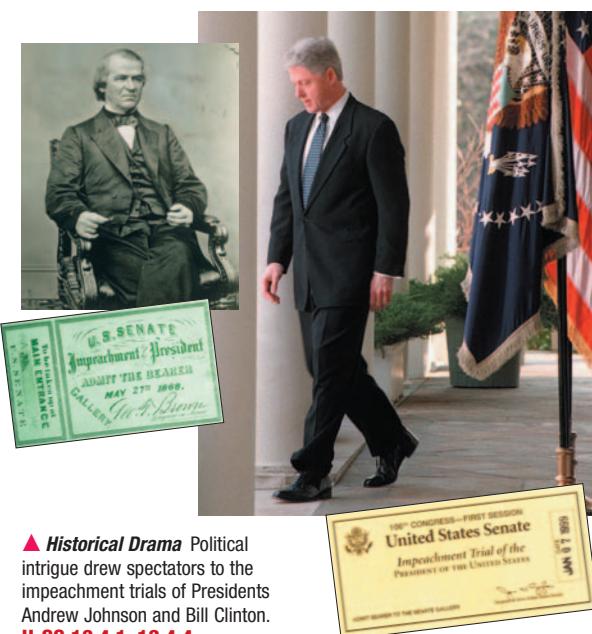
Impeachment requires only a majority vote in the House; conviction requires a two-thirds vote in the Senate. The Chief Justice presides over the Senate when a President is to be tried. The penalty for conviction is removal from office. The Senate may also prohibit a convicted person from ever holding federal office again; and he or she can be tried in the regular courts for any crime involved in the events that led to the impeachment. To date, there have been 17 impeachments and seven convictions; all seven persons removed by the Senate were federal judges.<sup>16</sup>

Two Presidents have been impeached by the House: Andrew Johnson in 1868 and Bill Clinton in 1998. The Senate voted to **acquit** both men—that is, it found them not guilty.

<sup>14</sup>Article II, Section 4. Military officers are not considered “civil officers,” nor are members of Congress.

<sup>15</sup>Article I, Section 2, Clause 5; Section 3, Clause 6.

<sup>16</sup>Four other federal judges were impeached by the House but later acquitted by the Senate. Two federal judges impeached by the House resigned before the Senate could act in their cases. One of the seven judges removed from office was later elected to Congress. The only other federal officer ever impeached was William W. Belknap, President Grant’s Secretary of War. Belknap had been accused of accepting bribes and, although he had resigned from office, was impeached by the House in 1876. He was then tried by the Senate and found not guilty.



**Historical Drama** Political intrigue drew spectators to the impeachment trials of Presidents Andrew Johnson and Bill Clinton.  
**H-SS 12.4.1, 12.4.4**

### Andrew Johnson

Andrew Johnson became the nation’s 17th President when Abraham Lincoln was assassinated in 1865. Johnson soon became enmeshed in disputes with the Radical Republicans who controlled Congress. Many of those disagreements centered on the treatment of the defeated Southern States in the immediate post–Civil War period.

Matters came to a head when Congress passed the Tenure of Office Act, over the President’s veto, in 1867. President Johnson’s deliberate violation of that law triggered his impeachment by a House bent on political revenge. The table on the next page summarizes the episode.

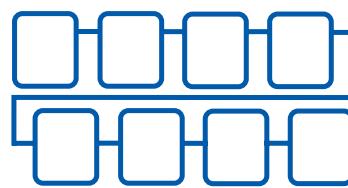
### Bill Clinton

Bill Clinton was impeached by the House in 1998. In proceedings steeped in partisanship, the House voted two articles of impeachment against him on December 19. Both articles arose out of the President’s admitted “inappropriate relationship” with a White House intern. As you can see in the table on the next page, the first article charged the President with **perjury**, or lying under oath. The second article accused him of obstruction of justice because he withheld information about his affair with the intern.

## Organizing Information

To make sure students understand the main points of this section, you may wish to use the flowchart graphic organizer to the right.

Tell students that a flowchart shows a sequence of events. Ask students to use it to record the events that took place in the impeachments of President Johnson or Clinton, or in the resignation of President Nixon.



## Reading Strategy

### Summarizing

Remind students that many political changes have occurred as a result of Congress applying its nonlegislative powers. Ask them to summarize these changes after they have finished the section.

## Background Note

### Behind the Scenes

Although the House has actually chosen a President only twice (1801 and 1825), representatives did intervene to settle an election dispute in 1876. Democrat Samuel Tilden had won the popular vote, but several States produced conflicting sets of electoral votes. One set made Republican Rutherford B. Hayes the winner, 185 votes to 184. Surprisingly, powerful Southern Democrats in the House agreed to accept the electoral vote that gave Hayes, rather than Tilden, the victory. Why? Republicans promised that Hayes would remove all federal troops from the former Confederacy and appoint a Southerner to his Cabinet.

## Point-of-Use Resources

**Guided Reading and Review** Unit 3 booklet, p. 18 provides students with practice identifying the main ideas and key terms of this section.

**Lesson Planner** For complete lesson planning suggestions, see the Lesson Planner booklet, section 5.

**Political Cartoons** See p. 44 of the Political Cartoons booklet for a cartoon relevant to this section.

**Section Support Transparencies** Transparency 47, *Visual Learning*; Transparency 146, *Political Cartoon*

**Universal Access**

L1

**Time** 90 minutes.**Purpose** Write a “matching” quiz for Chapter 11.**Grouping** Groups of four to six students.**Activity** Have students in each group work together to compile a list of 25–30 terms discussed in the chapter. Then have group members divide the list and work independently to write a definition for each term.**Roles** All group members will write definitions. Appoint one member of each group to act as recorder.**Close** Have the recorder prepare the final quiz, listing all of the group’s definitions in a “matching” format. Then have group members prepare an answer key. Duplicate quizzes and have groups exchange and complete them. **SN****Point-of-Use Resources** **Block Scheduling with Lesson Strategies**

Additional activities for Chapter 11 appear on p. 24.

 **Government Assessment Rubrics**

Cooperative Learning Project: Process, p. 20

Members of the House who supported the articles of impeachment contended that lying under oath and withholding evidence were within the meaning of the Constitution’s phrase “other high Crimes and Misdemeanors,” and justified the President’s immediate removal from office.

Their opponents argued that the facts involved in the case did not justify either charge. They insisted that, while the President’s conduct was deplorable and should be condemned, that conduct did not rise to the level of an impeachable offense. Many of them pressed for a resolution to censure the President—that

is, for a formal condemnation of his behavior.

The Senate received the articles of impeachment when the new Congress convened in 1999, and it began to sit in judgment of the President on January 7. The Senate trial and its outcome are summarized in the table below.

**Richard Nixon**

A few officeholders have resigned in the face of almost certain impeachment—most notably, Richard Nixon, who resigned the presidency in 1974. Nixon’s second term in office was cut short by the Watergate scandal.

**The Impeachment Process**

THE PROCESS	PRESIDENT ANDREW JOHNSON IMPEACHMENT 1868	PRESIDENT BILL CLINTON IMPEACHMENT 1998–1999
<b>Step One</b> The House Judiciary Committee debates charges against the accused and votes on whether to send articles of impeachment to the full House. A simple majority vote is needed to start the process.	<b>Feb. 22, 1868</b> House committee votes to send to the full House articles of impeachment against Johnson for having violated the Tenure of Office Act, by firing Secretary of War Edwin Stanton.	<b>Dec. 11–12, 1998</b> After three months of hearings, the House Judiciary Committee approves four articles of impeachment against Clinton: two counts of perjury, obstruction of justice, and making false statements relating to his relations with a White House intern.
<b>Step Two</b> Acting much like a grand jury, the House considers the charge(s) brought by the Judiciary Committee. It can subpoena witnesses and evidence. It hears and debates arguments.	<b>Feb. 22–24, 1868</b> The House, led by the Radical Republicans, holds a raucous debate on charges against Johnson, a Democrat. The outcome is never in doubt.	<b>Dec. 18–19, 1998</b> The House holds 13 hours of bitter, partisan debate, in which more than 200 House members speak. Democrats briefly walk out to protest Republican leaders’ refusal to consider the lesser punishment of censure.
<b>Step Three</b> The House votes on each article. If any article is approved by a majority vote, the official is impeached, which is similar to being indicted. The House sends the article(s) of impeachment to the Senate.	<b>Feb. 24, 1868</b> The House votes 126 to 47 to impeach. It drafts 11 articles of impeachment, including violation of the Tenure of Office Act and attempting to bring disgrace upon Congress.	<b>Dec. 19, 1998</b> The House votes to impeach Clinton on two counts. The votes are 228–206 on one count of perjury and 221–212 on obstruction of justice. Voting is mostly along party lines.
<b>Step Four</b> The Senate tries the case. If the President is to be tried, the Chief Justice of the United States presides. Selected members of the House act as managers (prosecutors).	<b>March 30, 1868</b> Opening statements begin in the Senate trial with Chief Justice Salmon P. Chase presiding. Johnson does not attend, but the gallery is packed with observers.	<b>January 7, 1999</b> Chief Justice William Rehnquist opens a televised trial. Rep. Henry Hyde of Illinois leads a team of 13 House managers. White House Counsel Charles Ruff leads Clinton defense.
<b>Step Five</b> Senators hear testimony and evidence. House prosecutors and lawyers for both sides present their cases. Additional witnesses may be called. Senators may also vote to curb testimony.	<b>March 30–May 15, 1868</b> The trial yields little new evidence. Votes are known from the start. The outcome rests on one swing vote, an undecided Republican, who is offered bribes by both sides.	<b>Jan. 7–Feb. 11, 1999</b> With public distaste for impeachment growing, the Senate limits testimony to four witnesses, the intern not among them. Closing arguments follow. For three days, the Senate deliberates in secret (despite Democrats’ objections).
<b>Step Six</b> The Senate debates the articles, publicly or privately. It need not render a verdict. It could, for example, vote to drop the case or censure the official. A two-thirds vote is required for conviction.	<b>May 16, May 26, 1868</b> In voting on two days, 35 Republicans vote to convict, one vote short of two thirds. Twelve Democrats and seven Republicans, including the swing vote, support acquittal.	<b>Feb. 12, 1999</b> In a televised session, the Senate acquits Clinton on both charges, falling well short of the two-thirds vote needed for conviction. On perjury, 45 Democrats and 10 Republicans vote not guilty. On obstruction, the vote splits 50–50.

**Interpreting Tables** This table details the complex process of impeaching a President.

- (a) **What measures did the Framers build into the impeachment process to try to make it fair?**  
 (b) **Why do you think both attempts to remove U.S. Presidents resulted in failure?** H-SS 12.4.1, 12.4.4

**Answer to . . .**

**Interpreting Tables** (a) A majority of members is required to start the process, secure impeachment, and convict; witnesses are heard and evidence presented as in a regular trial; debate is present at every level of the process. (b) Possible answer: In both cases, conviction did not have the support of the majority of participants.

**Spotlight on Technology****Magruder's American Government Video Collection**

The Magruder’s Video Collection explores key issues and debates in American government. Each segment examines an issue central to chapter content through use of historical and contemporary footage. Commentary from civic leaders in academics, government, and the media follow each segment. Critical-thinking questions focus students’ attention on key issues, and may be used to stimulate discussion.

Use the Chapter 11 video segment to explore the impact of congressional committees on daily life in the United States. (time: about 5 minutes) This video uses current events and contemporary footage to focus on a Senate committee. Students will view a committee firsthand as they follow the evolution of a piece of legislation.

The term *Watergate* comes from a June 1972 attempt by Republican operatives to break into the Democratic Party's national headquarters in the Watergate office complex in Washington, D.C. The investigation of that incident, by the *Washington Post* and then by other media, led to official investigations by the Department of Justice and by the Senate's Select Committee on Presidential Campaign Activities, popularly known as the Senate Watergate Committee.

The probes unearthed a long list of illegal acts, including bribery, perjury, income tax fraud, and illegal campaign contributions. They also revealed the use of the Federal Bureau of Investigation, the Internal Revenue Service, and other government agencies for personal and partisan purposes.

The House Judiciary Committee voted three articles of impeachment against President Nixon in late July 1974. He was charged with obstruction of justice, abuse of power, and failure to respond to the committee's subpoenas. A **subpoena** is a legal order directing one to appear in court and/or to produce certain evidence. Mr. Nixon had ignored the committee's subpoena of several tape recordings of Watergate-related conversations in the Oval Office.

It was quite apparent that the full House would impeach the President and that the Senate would convict him. Those facts prompted Mr. Nixon to resign the presidency on August 9, 1974.

Beyond doubt, the Watergate scandal involved the most extensive and the most serious violations of public trust in the nation's history. Among its other consequences, several Cabinet officers, presidential assistants, and others were convicted of various felonies and misdemeanors—and many of them served jail time.

## Executive Powers

The Constitution gives two executive powers to the Senate. One of those powers has to do with appointments to office, and the other with treaties made by the President.<sup>17</sup>

### Appointments

All major appointments made by the President must be confirmed by the Senate by majority vote.

<sup>17</sup>Article II, Section 2, Clause 2.



◀ **A Final Farewell** The threat of impeachment drove President Richard Nixon from office in 1974. He resigned the presidency on August 9, 1974, giving a final wave from his helicopter as he left the White House for the last time.

Each of the President's nominations is referred to the appropriate standing committee of the Senate. That committee may then hold hearings to decide whether or not to make a favorable recommendation to the full Senate for that appointment. When the committee's recommendation is brought to the floor of the Senate, it may be, but seldom is, considered in executive (secret) session.

The appointment of a Cabinet officer or of some other top member of the President's "official family" is rarely turned down by the Senate. To this point, only 12 of now more than 600 Cabinet appointments have been rejected.<sup>18</sup>

It is with the President's appointment of federal officers who serve in the various States (for example, U.S. attorneys and federal marshals) that the unwritten rule of "senatorial courtesy" comes into play. The Senate will turn down such a presidential appointment if it is opposed by a senator of the President's party from the State involved. The Senate's observance of this unwritten rule has a significant impact on the President's exercise of the power of appointment; in effect, this rule means that some senators virtually dictate certain presidential appointments.

<sup>18</sup>The first was Roger B. Taney, Andrew Jackson's choice for Secretary of the Treasury. Jackson later named Taney Chief Justice. The most recent rejection came in 1989, when the Senate refused President George H.W. Bush's nomination of John Tower as Secretary of Defense.

## Universal Access

Separate the class into three groups. Assign each group one of the following Presidents: *Andrew Johnson*, *Bill Clinton*, or *Richard Nixon*. Have groups prepare a fact sheet for the President they have been assigned that highlights the negative aspects of that President's term in office. Ask them to create a fact sheet that includes the following sections: *acts of controversy*, *congressional response*, *formal charges*, and *final determination of guilt*. Create a bulletin board where students can display their work. **H-SS 12.4.4**

## Point-of-Use Resources

**Close Up on the Supreme Court**  
*United States v. Nixon* (1974), pp. 54–55

## Preparing for Standardized Tests

Have students read the passages under *Richard Nixon* on pp. 312–313 and then answer the following question.

Which of the following was the first event in the chain of events leading to impeachment proceedings against Nixon?

- A** investigations by the Senate Watergate Committee
- B** the reporting of the Democratic national headquarters break-in by the *Washington Post*
- C** Nixon's resignation
- D** the subpoena of Nixon by the House Judiciary Committee

## Point-of-Use Resources

 **Guide to the Essentials** Chapter 11, Section 5, p. 64 provides support for students who need additional review of section content. Spanish support is available in the Spanish edition of the Guide on p. 57.

 **Quiz** Unit 3 booklet, p. 19 includes matching and multiple-choice questions to check students' understanding of Section 5 content.

 **Presentation Pro CD-ROM** Quizzes and multiple-choice questions check students' understanding of Section 5 content.

## Answers to . . .

### Section 5 Assessment

- If the vice presidency becomes vacant mid-term, the President appoints a successor, which both houses of Congress must approve by a majority vote.
- (a) The President, Vice President, and all civil officers. (b) Johnson and Clinton. (c) Both men were acquitted.
- Many supporters believed that while Clinton had not broken any laws, he had behaved improperly, and thus should be censured.
- To retrieve secret tape recordings Nixon had made in the White House as part of the impeachment investigation.
- In order to preserve the balance of power between the judicial and legislative branches of government.
- (a) Republican Party members accused Democrats of not pressing impeachment simply because Clinton was a Democrat, while Democrats accused Republicans of pressing for impeachment simply because Clinton was not of their party. (b) The vast



▲ Teenagers testify in Congress about fatal shootings that took place at West Paducah High School in Kentucky. Congress launched an investigation of school gun violence after a series of mass murders in public schools around the country. **Critical Thinking** What purpose do congressional investigations serve?

#### Treaties

The President makes treaties “by and with the Advice and Consent of the Senate, . . . provided two thirds of the Senators present concur.”<sup>19</sup> For a time after the adoption of the Constitution, the President asked the advice of the Senate when a treaty was being negotiated and prepared. Now the President most often consults the members of the Senate Foreign Relations Committee and other influential senators of both parties.

The Senate may accept or reject a treaty as it stands, or it may decide to offer amendments, reservations, or understandings to it. Treaties are sometimes considered in executive session. Because the House has a hold on the public purse strings, influential members of that body are often consulted in the treaty-making process, too.

#### Investigatory Power

Congress has the power to investigate any matter that falls within the scope of its legislative powers. Congress exercises this authority through its standing committees, and their subcommittees, and often through special committees, as well.

Congress may choose to conduct investigations for several reasons. Most often, those inquiries are held to (1) gather information useful to Congress in the making of some legislation; (2) oversee the operations of various executive branch agencies; (3) focus public attention on a particular subject, from the drug war to movie violence; (4) expose the questionable activities of public officials or private persons; and/or (5) promote the particular interests of some members of Congress.

<sup>19</sup>Article II, Section 2, Clause 2. It is often said that the Senate “ratifies” a treaty. It does not. The Senate may give or withhold its “advice and consent” to a treaty made by the President. Once the Senate has consented to a treaty, the President ratifies it by exchanging “instruments of ratification” with other parties to the agreement.

## Section 5 Assessment

#### Key Terms and Main Ideas

- If the vice presidency becomes vacant, how is a **successor** chosen?
- (a) What public officers can the House **impeach**?  
(b) Which two Presidents were impeached by the House?  
(c) Describe the outcomes of their trials.
- Why did some Clinton supporters want to **censure** him during his impeachment?
- What did the House Judiciary Committee seek in the **subpoenas** it served on President Nixon?

#### Critical Thinking

- Making Inferences** Why does the Chief Justice—not the President of the Senate—preside over the impeachment trial of a President?



#### Standards Monitoring Online

For: Self-quiz with vocabulary practice  
Web Code: mqa-3115

- Recognizing Bias** During the Clinton impeachment hearings and trial, members of Congress from both parties were accused of excessive partisanship. (a) Explain this accusation. (b) What evidence might support this claim?

#### Go Online

PHSchool.com  
For: An activity on impeachment  
Web Code: mqd-3115



#### Standards Monitoring Online

For additional assessment, have students access **Standards Monitoring Online** at  
Web Code: mqa-3115

#### Go Online

Typing in the Web Code when prompted will bring students directly to detailed instructions for this activity.

## Answer to . . .

**Critical Thinking** They gather legislative information; oversee executive agencies; rouse public attention; expose questionable activities of public officials; and promote congressional interests.