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## A Quiz on Federal Power and States' Rights

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# A quiz on federal power and states' rights

ALAN GARFIELD

This is the 11th year that Delaware Law School and The News Journal have teamed up to provide you with a collection of essays to celebrate Constitution Day, September 17, the national observance marking the date in 1787 when the Framers signed the Constitution in Philadelphia. This year's collection is a series of quizzes to test your knowledge of constitutional law. Of course, we realize that most of you are not judges or lawyers so don't feel badly if you get stumped by some or all of the questions. But we do hope you welcome this opportunity to expand your knowledge of constitutional law. Lawyers and judges did not "ordain and establish" the Constitution; "We the People" did. If our nation is to continue becoming an ever "more perfect Union," it needs citizens who are educated and engaged, and who are eager to participate in the democratic process with their voices and votes. That's why Justice Louis Brandeis said "the greatest menace to freedom is an inert people" and "public discussion is a political duty."

1. The federal government is said to be a government of limited and enumerated powers. This means that Congress can act only pursuant to a power listed in the Constitution. The Constitution's list of congressional powers is surprisingly short, yet the federal government's actual reach is quite expansive. How is that

possible?

Which power does Congress rely upon to enact the vast bulk of federal regulatory laws?

- The power to declare war
- The power to establish a uniform rule of naturalization
- The power to regulate commerce among the several states
- The power to establish post offices

2. The constitutionality of the Affordable Care Act (or "Obamacare") was challenged on the ground that Congress lacked the power to create the "individual mandate," which requires individuals who do not have health insurance to buy health insurance. Individuals who fail to purchase insurance must pay a penalty when they submit their annual income taxes.

In a 5 to 4 decision, the Supreme Court upheld Congress' power to create the individual mandate. Chief Justice John Roberts provided the crucial fifth vote. According to Roberts, which congressional power allowed Congress to create the individual mandate?

- The power to tax
- The power to regulate commerce among the several states
- The power to enact copyright and patent laws
- The power to borrow money on the credit of the United States

3. The Constitution creates the federal government and divides power among

the three branches (legislative, executive, and judicial). This separation of power helps ensure that power is not concentrated in one place, but it also makes the government less efficient and can sometimes result in gridlock. It is also sometimes difficult to know the boundaries between one branch's power and another's because branches can have overlapping powers.

Which of the following is an example of the checks and balances created by separation of powers?

a. The President's power to appoint justices to the Supreme Court and the Senate's power to give its "advice and consent" on these nominees by confirming them

b. Congress' power to enact criminal laws against counterfeiting and the judiciary's power to try suspects who have been accused of violating these laws

c. Congress' power to declare war and the President's power as Commander in Chief

d. All of the above

4. What happens when a state law conflicts with a federal law?

- The state law prevails
- The federal law prevails
- Both laws are valid and people must comply with both, even if they create conflicting obligations
- The Supreme Court will resolve the conflict by upholding whichever law, in the justices' opinions, is more just

## ANSWERS

1. The answer is C. The Supreme Court has construed Congress' power to regulate interstate commerce very expansively so that Congress can regulate virtually any activity that can be characterized as economic. For example, there is a federal law that prohibits doctors from performing partial birth abortions. Congress likely had the power to enact it because abortion procedures are provided for a fee.

2. The answer is A. Roberts said that Congress could not create the individual mandate using its power to regulate interstate commerce because that power only permits regulation of an economic activity, not economic inactivity (such as a person not purchasing health insurance). Roberts said that Congress could create the mandate using its taxing power because the only consequence of a person's failure to purchase insurance is a higher tax bill.

3. The answer is D. A, B, and C are all examples of the checks and balances created by separation of powers.

4. The answer is B. The "Supremacy Clause" in Article VI of the Constitution says that the Constitution and the laws of the United States are "the supreme Law of the Land." This has been interpreted to mean that federal law prevails over state or local laws in a conflict.

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