**Unit I, District Question #2- May 2014**

*What are the fundamental characteristics of constitutional government?*

* *In what ways does constitutional government mean limited government?*
* *Describe at least three provisions of the Constitution that provide a means of preventing the abuse or misuse of government power. Explain how these provisions work in our system of government today.*

**P1.** A constitution is a set of customs, traditions, rules, and laws that sets forth the basic way a government is organized and the way it operates. Having a constitution does not necessarily mean that a nation has a constitutional government. These are the essential or fundamental characteristics of constitutional government:

**P2.** First: Most importantly, constitutional government means limited government, because constitutional governments are controlled by law, and not by the whims of a ruler. If a constitution provides for the unlimited exercise of political power, it is not the basis for a constitutional government. The legitimate constitution also must provide for ways to enforce the limitations.

**P3.** For example, in order to prevent the use or misuse of governmental power, our constitution includes a system in which separate branches share power, and each branch has the means to check the power of the others. As James Madison learned from the writing of the French philosopher, Baron de Montesquieu, and wrote in *Federalist 51*, “Ambition must be made to counteract ambition”

**P4.** There are many examples of these checks and balances that prevent the misuse and abuse of governmental power. The Article I, Section 9 *writ of habeas corpus* clause and the *ex post facto* clause protect the rights of individuals, and the Article III, Section 3 restrictions on treason convictions all protect people from governmental abuse.

**P5.** We can apply such provisions to stop governmental abuse through the court system. In both *Hamdi v. Rumsfield* and *United States v. Marcus,* citizens were able to use the court to effectively challenge violations of habeas corpus and ex post facto laws.

**P6.** Second: Higher law. The constitution must be considered a higher law, which those in government must and do obey. This higher law provides for individual rights, establishes a private domain, and includes due process of law provisions. The Supremacy Clause in Article VI makes clear that our constitution, laws, and treaties are the highest form of law in the land.

**P7.** In spite of the clarity of the Supremacy Clause in Article VI there are still difficulties. For example, same-sex marriage is an issue that involves both state and national governments. While the Supreme Court in United States v. Windsor has ruled that the Section 3 of the Defense of Marriage Act is unconstitutional, and same-sex marriages are now recognized by the federal government, it did not dictate that states are now obligated to legalize same sex marriage. It remains to be seen whether or not federal recognition of same sex marriage will trump state laws the continue to prohibit marriages on the basis of orientation.

**P8.** A good constitution should hold stability and continuity at a high value for providing for the governing of a country. It should be flexible enough to allow for change, but stable enough to remain effective throughout any changes that may occur. As the great parliamentary leader Edmund Burke wrote, “Change is the means of preservation”.

**P9**. Our Constitution allows for both formal and informal change to ensure its relevance. The amendment procedures of Article V create a formal method at the federal level, while Supreme Court rulings can informally reinterpret the Constitution. Individual states can also amend their constitutions; for example, in the state of Michigan, Senate Democrats are proposing an amendment that would overturn the state’s constitutional ban on same-sex marriage.

**P10.** In conclusion, we use the words of Daniel Webster, speaking in Springfield, Massachusetts, in 1847: “We may be tossed upon an ocean where we can see no land- nor, perhaps, the sun or stars. But there is a chart and a compass for us to study, to consult and to obey. That chart is the Constitution”.

**P11.** Thank you for your time. We are now eager to answer your questions.