**Unit IV, District Question #3** - June 2014

*How and why did the Founders create America's system of federalism?*

* *How does federalism limit the powers of both the national government and the states?*
* *How does federalism extend opportunities for citizen participation?*

**P1.** Federalism was not the only system the Framers of the Constitution could have adopted. Many nations in that era were under a unitary form of government. Others, like ours under the Articles, were confederate in form. In unitary governments, such as the United Kingdom, power is centralized. Regional or local governments exercise only those powers delegated to them by the central government. And what the central government gives, it can take away.

**P2.** The opposite is true in confederate systems. A confederation is a compact between independent states; each nation grants power to the central authority for such purposes as trade and banking regulation.

**P3.** Our new nation chose neither form. The Confederation under the Articles was too weak, and the states never would have ratified a constitution that took all power away from local and state levels. Our system divides the political power. Delegated powers, including mail delivery and war powers are exclusively national. The tenth amendment refers to reserved powers that belong to the states. Both levels of government share concurrent powers.

**P4.** At the Pennsylvania convention, it was believed that sovereignty could not be divided. James Wilson argued that only the people are sovereign and may delegate portions of their sovereign power to whatever sets of government they choose to create. Sovereignty resides with the people. That is why the Preamble begins with "We the People".

**P5.** Those powers not delegated to the national government nor reserved to the states belong to the people, who hold ultimate political sovereignty. Therefore, federalism limits the powers of both the national and state government, because the powers are, for the most part, spelled out. Article I Sections 9 and 10 list the powers denied to the national and state governments. With that said, conflicts over federalism have arisen in the past and still do so today.

**P6.** One cause of conflict can be illustrated by the issue of the national level preempting the powers of the states. The preemption doctrine is derived from the Supremacy Clause. In 2006 in *Gonzalez v. Oregon* the question before the Court was whether Congress, in enacting the Controlled Substances Act, intended to preempt a state law which authorized physician assisted suicide. The Court held that the Act did not authorize preemption of Oregon's Death with Dignity Act.

**P7.** Another conflict over federalism centers on the Congress's power to regulate commerce. In *Gibbons v. Ogden,* the Court defined commerce very broadly, expanding the power of Congress. However, in recent years, the Court has scrutinized some uses of the commerce power, especially in cases such as *United States v. Lopez* and *United States v. Morrison.* In 2012, the Court held that the mandate that everyone purchase health insurance under the Affordable Healthcare Act exceeded Congress's power under the commerce clause, but upheld the mandate on the basis of its power to tax.

**P8.** Federalism extends opportunities for citizens participation in several ways and has contributed to democracy. Participation is extended in the diversity of policy choices. Anyone who does not like the laws and practices in one state has the opportunity to move to another state. Thus, states can better reflect the preference of majority of their citizens. States can and do serve as laboratories of democracy. Citizens in states can dream up new plans and policies and try them out close to home without imposing policies on a national level.

**P9.** Opportunity is also extended through the various levels of government. State governments provide thousands of elected offices in which citizens may vote or run. Because of this, state governments are generally closer to their people than the federal government.

**P10.** In conclusion, in the tug of war over state powers versus federal powers, each side must remain strong enough to continue as a viable competitor. The very process of allocating power prevents excessive concentration in any level. As James Madison wrote in *Federalist 51:* "safety lies in power divided, ambition checking ambition.”

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