**Unit IV. District Question #1-** June 2014

* *In the Constitution, why are the powers of and limits on Congress addressed first and in greater detail than those of other branches?*
* *In addition to the powers granted to Congress in Article 1, what other provisions in the Constitution address legislative powers? Why?*
* *How have the “enforcement” provisions of amendments adopted since the Civil War increased Congressional power?*

**P1.** It is significant that of the three branches of government, the legislative branch is addressed first. Corwin and Peltason support this position in Understanding the Constitution that in the 1936 decision in *United States v. Curtiss Wright,* the Court held that the Framers of the Constitution desired “a government of laws and not of men,” and they expected Congress, except in times of war or emergency, to be the central and directing organ of government. Additionally, in Federalist #48, Madison argued that in a representative republic the legislative branch is the *most* powerful and the most likely to *abuse* its power.

**P2.**The powers and limits on Congress are listed in greater detail than those of the other branches, because at the convention and in the ratifying debates, there was anxiety over whether Congress would be competent to legislate directly over the people. Some Framers said that it was not competent, and that Congress could legislate only in the areas of its enumerated powers. Therefore, both powers and limits on those powers had to be spelled out in specific terms. Article I Sect. 8 lists Congressional powers and Article I Sect.9 lists powers denied to Congress.

**P3.** In addition, the Tenth Amendment expressly states that Congress has only those powers delegated to it; all others belong to the states or the people. That said, in 1819 and 1824, Chief Justice John Marshall revised the playing field. In both *McCulloch v. Maryland and Gibbons v. Ogden,* the Supreme Court laid the foundations for a powerful Congress that can and does legislate in detail over people's lives. Today, Congress also delegates its powers to executive agencies to fill in the details of most national policies and programs, thus creating what one author has called the "headless fourth branch of government."

**P4.** Because the Framers feared the abuse of power, they separated the powers of government by incorporating a system of checks and balances and provided that the legislature be composed of two houses - called a bicameral legislature - where each house checks the other. Some of the provisions other than those found in Article I are intended as part of this system. Article II contains the provisions for the House of Representatives to choose the president when no candidate obtains a majority in the Electoral College, and Article V gives Congress a role in proposing amendments.

**P5.** Congress also rightfully holds the power to enforce amendments, beneath the Articles of Confederation, there was no driving power or authority behind its actions. The power to carry out and enforce laws is an executive power, but, characteristic of our government, this power is shared in these instances, with the legislature. Although eight amendments include specific congressional enforcements provisions, the 13th, 14th, and 15th Amendments have received the most attention. The Framers of the amendments were afraid that the Supreme Court might be too slow in enforcing legislation enacted during Reconstruction, and their fears were confirmed with the decisions in the Civil Rights Cases of 1883 and the Slaughterhouse Cases of 1873.

**P6.** At one time, Congress relied on the Interstate Commerce Clause as a hook on which to hang powers in the area of civil rights, as seen in *Heart of Atlanta v. U.S.* In the 1960s, however, attention became focused on the enforcement provisions of the Civil War Amendments. For example, in 1996, in *Katzenbach v. Morgan,* the Court held that congress had the authority to prohibit literacy tests for voting, but in 1997 in *City of Boerne v. Flores* the decision of the Court was that Congress had crossed the line between enforcing the Constitution and interpreting it insofar as the Religious Restoration Act was concerned.

**P7.** In conclusion, Congress is not the sole organ of legislative power. The president can wield the veto pen, and the Court can declare a law passed by Congress and signed by the President to be unconstitutional; however, in the struggle to govern, Congress has the power, but not always the will, to be the predominant branch of government. It can be contended that Congress has gone off track because of partisan bickering and lack of oversight, but the chambers are still the linchpin to our constitutional system because of their legislative supremacy.

**P8.** Thank you for your time. We are now eager to answer your questions.