***We the People: the Citizen & the Constitution***

2019-2020 High School Hearing Questions

Information, Tips, Analysis, & Resources from the Oregon high school We the People community

Unit Four / Q. 2

**According to historian Joseph Ellis, “there was no single source of sovereignty in the new Constitution. What he [James Madison] had initially regarded as the great failure at the Constitutional Convention—the coexistence of federal and state claims to authority—was, albeit inadvertently, in fact the great achievement.”\* Do you agree or disagree with Ellis’s assessment of Madison’s view of shared sovereignty? Why or why not?**

* How has this “shared sovereignty” led to ongoing arguments in our federal system today?
* How has our federal system created both majority and minority control of state and national governments? What are the advantages and disadvantages of this system?

\*Joseph J. Ellis, *American Dialogue: The Founders and Us* (New York: Alfred A. Knopf, 2018), 139.

**Collaboration Tips**

**5** different questions are in this overall question.

Historical events/context that connects to this question:

* **Constitutional Convention**
* **Federalist papers**
* **New Deal**
* **Immigration issues**
* **Marijuana legalization**
* **EPA/ADA regulations**

Sections of the US Constitution that apply:

* **Referendum process v. Republican process**

People/historical figures connected to the question: **Ellis, Madison**

Source material for this question:

* ***McCullogh v. Maryland***
* ***Printz***
* ***Reno***

**Comments from Justice Jack Landau:**

*James Madison's views on the subject of federalism have always proved challenging. That's because his views about the proper relationship between states and the federal government shifted over the years and didn't always remain consistent. At first, Madison was something of a nationalist. He came to the Convention with the view that what was needed was a vigorous national government, as evidenced by his role in promoting the Virginia Plan. There followed a shift, as Madison contributed to The Federalist, especially 10, 39, and 51. He advocated a strong national government and expressed concern that state governments will interfere with its authority. At the same time, he advocated a "compound republic" in which government power is divided not only between branches (horizontal) but also between states and the national government (vertical), thereby providing "double security" against oppression. Then, with the national bank controversy, Madison shifted again, leading the opposition to the bank because the federal government lacked the power under the Constitution, taking a very narrow view of national authority.*

*Shared sovereignty has led to multiple tensions between states and the federal government. The poster child for this is the debate over civil rights in the 1950s and 1960s. Opponents of federal civil rights legislation complained that it trampled on "states' rights." There's also Arizona's attempt to refuse state resources to carry out federal immigration policy and its legislation authorizing state law enforcement officers to arrest undocumented immigrants and making it a crime to be in the state without valid immigration papers, struck down in Arizona v. US (2012). The Missouri legislature passed a law (that the governor vetoed) preventing the state from enforcing federal gun laws. Similarly, the Wyoming House approved a bill that would have made it illegal for state police to enforce federal gun laws. The 1996 Defense of Marriage Act injected federal law into the traditionally state-controlled area of domestic relations, part of which was later declared unconstitutional in US v. Windsor (2006). California auto fuel economy standards are running into recent federal efforts to loosen them. Auto companies like Ford, Honda, BMW, and Volkswagen say they are voluntarily going to comply with the tougher California standards. The Trump administration responded by sending a warning to California that such an agreement could be illegal, claiming that only the federal government has the authority to set fuel economy standards. Of course, then there's the recent spate of state marijuana laws, "legalizing" recreational and medicinal marijuana use even though possession and distribution remain federal crimes.*