

DOCUMENT A

United States Constitution, Article I, Section 8, Clause 1 (1787)

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States;

- 1. For what purposes can Congress spend the tax money it collects?**
- 2. Craft a definition of “general welfare.”**

DOCUMENT B

Brutus #6 (1787)

I would ask ... Are these terms [*common defense and general welfare*] definite, and will they be understood in the same manner, and to apply to the same cases by every one? No one will pretend they will. It will then be matter of opinion, what tends to the general welfare; and the Congress will be the only judges in the matter.

To provide for the general welfare, is an abstract proposition, which mankind differ in the explanation of ... the most opposite measures may be pursued by different parties, and both may profess, that they have in view the general welfare; and both sides may be honest in their professions, or both may have sinister views.

It is absurd to say, that the power of Congress is limited by these general expressions, to 'provide for the common defense and general welfare'...The government would always say, their measures were designed and calculated to promote the public good; and there being no judge between them and the people, the rulers themselves must, and would always, judge for themselves.

- 1. What was Brutus' primary concern about the meaning of the General Welfare (Spending) Clause of the Constitution?**
- 2. Does the General Welfare (Spending) Clause serve to limit the powers of Congress, or expand them, according to Brutus?**
- 3. Put this passage in your own words: *the most opposite measures may be pursued by different parties, and both may profess, that they have in view the general welfare; and both sides may be honest in their professions, or both may have sinister views.***

DOCUMENT C

Federalist #41 by James Madison (1788)

It has been urged and echoed, that the power to ... 'provide for the common defense and general welfare of the United States,' amounts to an unlimited commission to exercise every power which may be alleged necessary for the common defense or general welfare. Had no other enumeration or definition of the powers of the Congress been found in the Constitution, than the general expressions just cited, the authors of the objection might have had some color [proof] for it...

But what color can the objection have, when a specification of the objects alluded to by these general terms immediately follows, and is not even separated by a longer pause than a semicolon?... For what purpose could the enumeration of particular powers be inserted, if these and all others were meant to be included in the preceding general power?

Nothing is more natural nor common than first to use a general phrase, and then to explain and qualify it by a recital of particulars. But the idea of an enumeration of particulars which neither explain nor qualify the general meaning, and can have no other effect that to confound and mislead, is an absurdity...

- 1. How did Madison refute Brutus' concern that the General Welfare (Spending) Clause grants Congress unlimited power to interpret its meaning?**
- 2. Did Madison view - as Brutus seemingly did - the General Welfare (Spending) Clause as an enumerated power in and of itself, allowing Congress to spend in any way it wishes? What does Brutus say will necessarily happen if the federal government is to succeed at all? Why?**
- 3. Find an example (in current events or other sources) of the style of writing that Madison described here: the use of a general phrase which is then explained and qualified by listing details. Do you agree with Madison's assertion that separating the details from the general statement leads to "an absurdity"?**

DOCUMENT D

Federalist #45 by James Madison (1788)

The powers delegated by the proposed Constitution to the federal government, are few and defined. Those which are to remain in the State governments are numerous and indefinite. The former will be exercised principally on external objects, as war, peace, negotiation, and foreign commerce; with which last the power of taxation will, for the most part, be connected. The powers reserved to the several States will extend to all the objects which, in the ordinary course of affairs, concern the lives, liberties, and properties of the people, and the internal order, improvement, and prosperity of the State.

- 1. How does this quotation illustrate our Founders' vision of the principle of federalism?**
- 2. Following this principle, how do you know what areas of power properly belong with the national government? With the state governments?**
- 3. Against what danger was the system of federalism crafted?**

DOCUMENT E

The Tenth Amendment (1791)

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

- 1. Rephrase the 10th Amendment, in your own words**
- 2. Does the 10th Amendment adequately address Brutus' concerns that Congress will interpret the General Welfare (Spending) Clause broadly, to spend and act in areas that are not delegated to it by the Constitution?**

DOCUMENT F

***United States v. Butler* (1936), Majority Opinion**

The [General Welfare] clause confers a power separate and distinct from those later enumerated, is not restricted in meaning by the grant of them, and Congress consequently has subsequent power to tax and to appropriate, limited only by the requirement that it shall be exercised to provide for the general welfare of the United States ... the power of Congress to authorize expenditure of public moneys for public purposes is not limited by the direct grants of legislative power found in the Constitution. But [*the spending power is*] subject to limitations.

[However] ... the Act [*the Agricultural Adjustment Act*] invades the reserved rights of the states. It is a statutory plan to regulate and control agricultural production – a matter beyond the powers delegated to the federal government. The tax, the appropriation of funds raised, and the direction for their disbursements are but parts of the plan. They are but means to an unconstitutional end.

The Government asserts that [*the Act*] is constitutionally sound because the end is accomplished by voluntary cooperation. The regulation is not, in fact, voluntary. ...The amount offered [*or withheld*] is intended to be sufficient to exert pressure on him to agree to the proposed regulation. The power to confer or withhold unlimited benefits is the power to coerce or destroy. ...At best, it is a scheme for purchasing with federal funds submission to federal regulation of a subject reserved to the states.

Congress has no power to enforce its commands on the farmer to the ends sought by the Agricultural Adjustment Act. It must follow that it may not indirectly accomplish those ends by taxing and spending to purchase compliance.

- 1. Which interpretation of the General Welfare (Spending) Clause – Brutus' or Madison's – does the Supreme Court appear to be adopting in the first paragraph? Explain.**
- 2. Despite adopting a broad interpretation of the General Welfare (Spending) Clause, the Court does spell out a restriction on the way Congress can spend money in areas it does not have the direct power to act. Explain the restriction.**
- 3. Define coercion. How do you know when conditions have become coercive?**

***South Dakota v. Dole (1987)***

The Constitution empowers Congress to ‘lay and collect Taxes ... and provide for the common Defense and general Welfare of the United States.’ Incident to this power, Congress may attach conditions on the receipt of federal funds. ...The breadth of this power was made clear in *United States v. Butler*, ...Thus, objectives not thought to be within Article I’s [enumerated powers] may nevertheless be attained through the use of the spending power and the conditional grant of federal funds.

The spending power is not unlimited, but is instead limited by several general restrictions ...[1] the exercise of the spending power must be in pursuit of ‘the general welfare’...[2] if Congress desires to condition the States’ receipt of federal funds, it ‘must do so unambiguously, enabling States to exercise their choice knowingly, ...[3] conditions [*must be related*]’to the federal interest in particular national projects or programs’...[4, *given that*] other constitutional provisions [do not] provide an independent bar to the conditional grant of federal funds.

Congress found that the differing drinking ages in the States created particular incentives for young persons to combine their desire to drink with their ability to drive, and that this interstate problem required a national solution. The means it chose to address this dangerous situation [withholding 5% of highway funds available to States that refused to raise their drinking age to 21] were reasonably calculated to advance the general welfare. The conditions upon which States receive the funds, moreover, could not be more clearly stated by Congress. By enacting [the National Minimum Legal Drinking Age Act, 1984], Congress conditioned the receipt of federal funds in a way reasonably calculated to address this particular impediment to a purpose for which the funds are expended [a safe interstate highway system].

Our decisions have recognized that, in some circumstances, the financial inducement offered by Congress might be so coercive as to pass the point at which ‘pressure turns into compulsion.’ Here, however, Congress has directed only that a State desiring to establish a minimum drinking age lower than 21 lose a relatively small percentage [5%] of certain federal highway funds.

Here, Congress has offered relatively mild encouragement to the States to enact higher minimum drinking ages than they would otherwise choose. But the enactment of such laws remains the prerogative of the States not merely in theory, but in fact. Even if Congress might lack the power to impose a national minimum drinking age directly, we conclude that encouragement to state action [through the attachment of conditions to federal funds] is a valid use of the spending power.

- 1. In what way(s) does the Court use the Butler decision to justify the federal government influencing state decisions through the use of its spending power?**
- 2. What restrictions does the Court place on Congress that guide or limit how it may use the spending power?**
- 3. Referring back to your answers to Document D, *Federalist #45*, and Document E, Amendment 10, is the establishment of a minimum drinking age a power of the national government or the state governments? Or, could it be both? Explain.**
- 4. What does the Court argue with regard to whether federal conditions were “coercive” in directing state decision-making in this area? Do you agree?**

DOCUMENT H

South Dakota v. Dole, 1987, Dissenting Opinion

...[T]he Court's application of the requirement that the condition imposed be reasonably related to the purpose for which the funds are expended is cursory and unconvincing. In my view, establishment of a minimum drinking age of 21 is not sufficiently related to interstate highway construction to justify so conditioning funds for that purpose.

When Congress appropriates money to build a highway, it is entitled to insist that the highway be a safe one. But it is not entitled to insist as a condition of the use of highway funds that the State impose or change regulations in other areas of the State's social and economic life because of attenuated [weak] or tangential relationship to highway use or safety. Indeed, if the rule were otherwise, the Congress could effectively regulate almost any area of a State's social, political, or economic life on the theory that use of the interstate transportation system is somehow enhanced.

Rather than a condition determining how federal highway money shall be expended, it is a regulation determining who shall be able to drink liquor. As such, it is not justified by the spending power.

The immense size and power of the Government of the United States ought not obscure its fundamental character. It remains a Government of enumerated powers. Because [the National Minimum Legal Drinking Age Act, 1984] cannot be justified as an exercise of any power delegated to the Congress, it is not authorized by the Constitution.

- 1. On what basis does the Dissenting Opinion disagree with the Court's ruling in *South Dakota v. Dole*?**
- 2. The Dissenting Opinion makes a distinction between a 'condition' and a 'regulation.' Define each in your own words. In your opinion, does such a distinction matter to the principle of federalism? Why or why not?**

DOCUMENT I

State Minimum Legal Drinking Age 21 History - National Highway Traffic Safety Administration, 1991

(Found online at: <http://www.nhtsa.gov/people/injury/research/FewerYoungDrivers/appendix.htm>) Adapted from: O'Malley and Wagenaar, National Highway Traffic Safety Administration, Insurance Institute for Highway Safety, 1991.

State	Date when Minimum Drinking Age was set at 21
	Dec. 5, 1933: Repeal of prohibition by 21st Amendment. Most states set their legal drinking age at 21.
Oregon	1933
California	1933
Washington	1934
New Mexico	1934
Indiana	1934
Utah	1935
Nevada	1935
Pennsylvania	1935
Arkansas	1935
North Dakota	1936
Kentucky	1938
Missouri	1945
Michigan	1978
Illinois	1980
Maryland	1982
New Jersey	1983
Delaware	Jan. 1, 1984
Rhode Island	July 1, 1984
	July 17, 1984: President Reagan signed MLDA
Tennessee	Aug. 1, 1984
Alaska	Nov. 1, 1984
Nebraska	Jan. 1, 1985
Arizona	Jan. 1, 1985
New Hampshire	June 1, 1985
Massachusetts	June 1, 1985

State	Date when Minimum Drinking Age was set at 21
Virginia	July 1, 1985
Maine	July 1, 1985
Kansas	July 1, 1985
Florida	July 1, 1985
Connecticut	Sep. 1, 1985
Alabama	Oct. 1, 1985
Oklahoma	Nov. 1, 1985
New York	Dec. 1, 1985
West Virginia	July 1, 1986
Vermont	July 1, 1986
Wisconsin	Sep. 1, 1986
Texas	Sep. 1, 1986
North Carolina	Sep. 1, 1986
Minnesota	Sep. 1, 1986
Iowa	Sep. 1, 1986
South Carolina	Sep. 14, 1986
Georgia	Sep. 30, 1986
Mississippi	Oct. 1, 1986
Hawaii	Oct. 1, 1986
Louisiana	Mar. 15, 1987
Montana	Apr. 1, 1987
Idaho	Apr. 10, 1987
	June 23, 1987: Supreme Court announced its ruling in <i>South Dakota v. Dole</i> .
Colorado	Jul. 1, 1987
Ohio	Jul. 31, 1987
South Dakota	Apr. 1, 1988
Wyoming	July 1, 1988

- 1. What does the data contained in the chart tell you about the diversity of drinking age laws throughout the states prior to the enactment on July 17, 1984 of the National Minimum Legal Drinking Age Act of 1984 (MLDA 1984)? In what ways does this chart illustrate the principle of federalism at work?**
- 2. How many states changed their drinking age to 21 in response to the passage of the MLDA 1984 (i.e. within 3 years of its passage)? How many states did not change their drinking age until the Supreme Court announced its decision in *South Dakota v. Dole* to uphold the MLDA 1984 on June 23, 1987 (i.e. within 1 year of the decision)? What other forces might have influenced states to raise their legal drinking age?**
- 3. In Document G, Majority Opinion, Question 4 you were asked whether you agreed with the Court that the MLDA 1984's provision to cut 5% of each state's federal highway funding – if they did not raise their drinking age - was not coercive. Given your interpretation of the data above, have you changed your opinion? Why or why not?**

DIRECTIONS

Read the Case Background and Key Question. Then analyze the Documents provided. Finally, answer the Key Question in a well-organized essay that incorporates your interpretations of the Documents as well as your own knowledge of history

KEY QUESTION

Evaluate the extent to which each of these is consistent with the principle of federalism:

- The Court's interpretation of the General Welfare (Spending) Clause
- The attachment of conditions to federal funds given to states