



AP[®] United States Government and Politics 2005 Sample Student Responses

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Unlike the other two branches, the judiciary is not greatly influenced by public opinion. It was designed this way so that judges could use their discretion to interpret the laws and make decisions regarding policies without dwelling on public approval. Judges are ~~appointed by~~ nominated by the president, screened by the Justice Department and ABA, and finally approved by Senate. Because they are not directly voted on, judges have no need to try and win votes by compromising their values or ideologies. When in office, they remain their "under good behavior" (life), which in turn exempts them from campaigning for reelection and winning votes. Once in office, judges are free to base their decisions on their political values and the constitution, which is what the courts were created to do.

While the Supreme Court has been ahead of the times in ~~many~~ several areas, (desegregation, prayer in school), it typically follows public opinion. In understanding why this occurs, we must examine who is nominating and approving the justices. The president and congress both represent the people: the president mainly the general public while congress members tend to represent their people within their region. In order to maintain approval and support, they must appoint/approve justices that will make decisions that will most likely be in the people's best interest. ~~So even though~~ while the courts can interpret the law, they lack the power to enforce their decisions. If the general public is opposed to a decision, the ~~legislature~~ ~~legislature~~

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#1

the other branches will face difficulty in trying to implement them. Therefore decisions usually reflect the opinions of the public.

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Question 1

The judicial branch of the US government is designed to be more independent of public opinion than the legislature or the executive. However, the Supreme Court rarely deviates very much for long from public opinion.

The judicial branch is insulated in several ways. First, the judges are appointed by the president. Therefore, they never need to run in a popular election, and they don't need support from the public. They don't have to make any promises to be elected. Secondly, judges are appointed for a life term. They never have to worry that their actions or decisions will anger the public because they ~~can't~~ don't run for re-election or re-appointment.

However, there are several reasons why the Supreme Court does follow public opinion. For one thing, if a decision was issued that was very much against public opinion, that decision would be very difficult to uphold. Secondly, ~~presidential~~ presidential appointees need to be approved by the Senate. ~~the~~ ~~appointees~~ ~~has~~ ~~the~~ ~~tends~~ ~~to~~ ~~disagree~~ ~~or~~ Senators do run for re-election, so if an appointee's opinion differs drastically from public opinion, the appointee is not likely to be approved.

The judicial branch of the US government is designed as independent from the influence of public opinion. However, public opinion does influence the judiciary, though not to the degree that the legislature and executive are influenced.

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The judicial branch is designed to be more free from public opinion compared to the Executive and/or legislative branches of our government. They have shown this with several of their Court cases. The U.S. Supreme Court is very insulated from public opinion, although it rarely deviates far from public opinion.

There are several reasons the Supreme Court is protected or insulated from public opinion. The first reason is because it doesn't really have to worry about pleasing the people. Justices have life terms, so they don't have to make decisions exactly how the majority of people want them to, rather the way the justices feel would be best for society.

One case the justices showed they didn't have to make decisions according to public opinion but rather for the interests in society was *Brown v. Board of Education of Topeka*. Segregation had been a part of all Americans lives up to this point, but the Supreme Court felt it was in the best interests of society for the schools to be combined. Many cases have been fought on religion, such as *Lemon v. Kurtzman* about the Establishment clause of the first Amendment. There was also *Abington School District v. Schempp* and *Engel v. Vitale* which banned prayer in public school when there were many conservatives who believed that prayer was necessary in schools and the Supreme Court went against public opinion and did their job interpreting the Constitution.

One factor that keeps the Supreme Court from drifting too far from public opinion is that a majority of the people believe in what the Constitution says and/or how the Supreme Court interprets the Constitution. The

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Supreme Court helps develop public opinion, so they won't drift far from one another.

The Supreme Court is insulated and protected from public opinion for many reasons. These include the life terms of Supreme Court justices so they don't have to worry about being elected, or pleasing the people to be elected. Also, the Supreme Court's main job is to interpret the Constitution, and that's what they ~~have~~ usually do. The Court doesn't often drift far from public opinion because public opinion and the Supreme Court greatly influence one another.

When the Framers created the constitution, they were still smarting from the wounds of British Rule. They were uncomfortable with the notion of a strong central government, feeling that because it was farther from the people, it would be more likely to infringe on their rights. However, since the ratification of the constitution, the federal government has steadily gained more and more power through various constitutional provisions and acts of Congress.

There are two provisions in the U.S. constitution providing for an increase in federal power. The "necessary and proper" clause of the constitution allows Congress to have a huge amount of power. This clause basically hands Congress the right to do whatever it ~~is~~ sees as important, and to enact legislation considered "necessary and proper." The second constitutional provision is the commerce clause. This clause, giving the federal government certain powers to regulate issues of commerce, has become a pervasive force in the federal government's increase in power. Particularly since the passage of the interstate commerce act, the federal government has wielded immense power over the states.

The regulation of commerce between states has been expanded so much that it now holds influence in things like travel.

Since the ratification of the ~~Constitution~~ Constitution, however, Congress has enacted legislation expanding the power of the federal government even further. The passage of the Civil Rights Act of 1964 ~~has~~ had tremendous implications for the shift in federalism. This act banned discrimination in public places. This means that any discrimination, normally monitored by state governments, is now a federal issue. Any institution carrying federally allowed licenses is subject to the jurisdiction not of the state or local governments, but of the federal government.

This shift in federalism has been a dramatic one. The strong state governments the framers had envisioned have all but disappeared. The federal government has grown in scope and strength of influence. As the Federal Government becomes larger and more powerful, the state government alternately shrinks more and more.

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a) The power to tax and spend by Congress, located in Article I Section 9 of the Constitution, helped to expand the power of the federal government. Before the Constitution was ratified in 1787 the Articles of Confederation did not allow much power to tax and spend. Since the ratification of the Constitution Congress is allowed to levy taxes and spend the money where it sees fit. This power once held by states was given to the federal government.

The "necessary and proper" or "elastic" clause, also located in Article I Section 9, ~~also~~ expanded the power of the federal government, too. The "elastic" clause gave the government the power to carry out actions it deemed necessary and proper to ensure the safety of US citizens. This was a triumph for the federal government because it could overturn state level decisions in favor of federal decisions thus greatly expanding federal power.

b) The Americans with Disabilities Act definitely increased the power of the federal government relative to the power of state governments. The Americans with Disabilities Act was ~~intended~~ geared toward the discrimination of Americans with disabilities in the work force. The act stated that if a person with a disability could reasonably do a job then it was unlawful to deny them that job. This act went against state policies who did not mandate the hiring of people with disabilities and proved the supremacy of the federal government in overturning state legislation.

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(a) Constitutional powers have been the impetus for many in a situation since the ratification of the constitution. Within Article I, section 8, the "elastic" clause is spelled out, given the national government to do whatever ever means it deems "necessary and proper" to carry out the law. Best known for its implication with the case of *McCulloch v. Maryland*, this clause is the basis from which many provisions have arisen. In *McCulloch v. Maryland*, ~~national~~ the power of the national government was reinforced when the Supreme Court stated that state institutions such as banks could not tax federal institutions. This decision was reached through the interpretation of the "elastic" clause, restricting the rights of states and increasing national leverage. Another constitutional clause, the commerce clause, within article IV, has been strengthened through the Supreme Court case of *Gibbons v. Ogden*. In this case, the Supreme Court ruled that the national government had the right to regulate interstate commerce, as in the before-mentioned dispute involving boats and use of a body of water. Thus, in addition to the "elastic" clause, the commerce clause reinforces the power of the national government, giving increased ability to handle situations involving interstate matters and state v. federal conflicts.

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(b) When a matter of concern is brought to the attention of the national government, measures are taken to investigate possible solutions. Often times, these solutions, in order for them to be implemented national, require the extension of more federal powers over that of state powers. This is the case with the Clean Air Act, an unfunded mandate in which the issue was resolved to take measures to protect the environmental safety of our air and health through various steps. This Act, though established by the national government was a mandate in which all states must comply, unless the state's want punishment or fines to be levied. In addition to potential fines, the federal government does not provide funding for states to implement these kinds of programs or to take these measures. Therefore, the national government is exerting more influence over state governments, making a solution to a problem requiring the attention of not just one, but all the states.

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3.

Beginning in the twentieth century, the Supreme Court has interpreted the Constitution so as to protect the rights of all citizens from the actions of states. This sort of selective incorporation can be seen in the areas of the Rights of criminal defendants and ~~the right to a fair trial~~ the privacy rights of citizens.

Selective incorporation is the process by which the ~~the~~ Supreme Court is able to protect citizens from state governments. This arises when federal laws and court decisions are applied ~~to~~ to the states, thus guaranteeing people's Constitutional rights. This is largely a result of the "due-process" clause of the Fourteenth Amendment. This clause makes all Federally guaranteed rights applicable to the states, thus forcing them to adhere to the Bill of Rights. Thus, federal interpretations of law must be adhered to by the states.

One such area where federal law and court decisions have been incorporated has been a person's privacy rights. This is illustrated by the Supreme Court Case of *Roe v. Wade*. In this case the Supreme Court decided that it was fundamental to a woman's right to privacy to allow her to have an abortion. This decision, for all intents and purposes, made abortion legal. The "due-process" clause then

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forced for states to follow this ruling despite any prior state laws on the subject. Thus, the ~~Supreme~~ Supreme Court's interpretation of the Constitution was incorporated into state law. This illustrated the incorporation of privacy rights. The Rights of Criminal Defendants have also been incorporated by the Supreme Court. This is illustrated by the ~~case~~ ~~Thompson v Oklahoma~~ ~~case~~ ~~Thompson v Oklahoma~~ ~~case~~ Miranda case. A citizen Miranda was arrested and questioned without having been informed of a criminal defendant's rights. This case appeared before the Supreme Court, and the decision was in favor of Miranda. Now, all police forces in all states are required to read an ~~arrested~~ arrested individual his or her "Miranda Rights" ~~and~~ promptly. The incorporation of this Constitutional interpretation is certainly very evident. ~~The~~ The "due-process" clause has allowed for many federal statutes to be imposed on the states, thus asserting the supremacy of the federal government. However, this does guarantee every citizen his or her federal rights outlined in the Bill of Rights ~~and~~ It is certain that future federal decisions will be incorporated to the states.

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Selective incorporation is the process of applying the bill of rights to the states by a case by case basis. The supreme court can select to incorporate certain provisions of the bill of rights to be applied to the state while not protecting or enforcing the states to abide by other provisions.

~~IN~~ In the Bill of rights, the federal government is prohibited from denying rights of criminal defendants. ~~THIS AND THIS ARE~~
~~NOT~~ IN Gideon v. Wainwright a man named Gideon was not able to afford a lawyer. He was forced to defend himself. Gideon filed a case complaining that his rights to a fair trial were denied. The case went to the Supreme court. The court ruled in Gideon's favor. This case required state to provide representation for defendants who can otherwise not do so themselves. This case applied the rights of criminal defendants to the states.

In Griswold v. Connecticut the bill of rights was further incorporated to the states. The supreme court determined that the states could not violate the rights to privacy as stated in the Bill of Rights. The court went further in Roe v. Wade, by protecting a women's right to abortion (within first trimester). The states ~~are~~ not allowed to deny a women an abortion.

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Selective incorporation is when ~~to~~ a group of people is given rights that should be given to all people. These rights are then seen as a protection that the Federal government gives to people that protects them from the actions of the state government. The first amendment was tested in the *New York Times v. The United States*. In this case the New York Times had published "pentagon papers" in which they talked about the Vietnam conflict. The court ruled that the Times could not run these kinds of things because it is a matter of national security and that merits the stop of free press. A Privacy case is *Roe v. Wade*. In this case the Privacy of a woman's right to choose was given the right to have an abortion in the first trimester.

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a) Bills such as the Bipartisan Campaign Reform Act of 2002 have sought to limit ~~or~~ significantly ~~the~~ or even eliminate the use of "soft money." Soft money is campaign donation and expenditure aimed technically at "party building" and "get-out-the-vote" campaigns. In the past, soft money donations have faced no Federal Elections Committee scrutiny or limitations. However, because much of that money has been historically used underhandedly to evade regulation in supporting candidates, many propose to stop national parties from soliciting or spending soft money, and to severely limit such usage on state and local levels.

Proponents claim that soft money is a sinister ~~misuse~~ misuse of the system that limits the FEC's ability to regulate elections.

Without limitations, candidates and parties could spend huge amounts of money on campaigns, pushing publicity and advertisement to extremes.

With unlimited donations, businesses and individuals are also able to give large, unrecorded sums to candidates via the party in order ~~to~~ influence future ~~policy~~ policies and regulations in favor of that business. Thus, allowing big ~~soft~~ soft money is the next worst thing to allowing kickbacks and bribes.

Opponents believe that soft money is in fact usually harmless and is, in good faith, meant for "party building" and not candidates. They also believe that restricting the donation

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and expenditure of soft money impedes the rights of supporters of candidates, parties, and the candidates themselves to express free political speech via money in an election.

Supporting a candidate financially, in their eyes, is similar to supporting a candidate by any other means of expression or speech, which is protected by the Constitution.

b) The Bipartisan ~~Reform Act~~ Campaign Reform Act of 2002 also increases individual ~~contributions~~ contributions to a candidate from \$1000 to \$2000. The basic proposal is to allow all individuals—as opposed to committees—to give a higher total amount of money to a ~~candidate~~ candidate or party in a given calendar year.

Proponents believe that individuals, as much if not more so than groups, deserve the ability to express political speech through their donations. By limiting individuals to a small sum—the long standing one was \$1000—the government restricts the right the person has to support a candidate, party, or specific cause.

Opponents would disagree, believing that strict limits are needed to hedge the effects of big, powerful individuals who might diminish the importance of smaller contributors or even seek to corrupt the system. Also, limiting individual donations encourage unique political idealism in individuals and in the minor parties

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they choose to support. Smaller parties and causes may not be able to garner the large corporate ~~and~~ donations ~~that~~ that major parties can. Thus, limits on individual donations allow smaller parties to ~~and~~ solicit contributions from smaller ~~and~~ ideological groups that may not be otherwise able to compete in ~~a~~ quantity with large, rich individual persons. ~~and~~ If no individual can give too much, then each individual in effect has more say.

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4.

(a) ~~Eliminating soft money means to abolish campaign contributions from PACs~~

(a) • Limiting independent expenditures means to control and regulate the amount of money a candidate that is independently wealthy may spend on his or her own election.

- Proponents argue that limiting independent expenditures levels the playing field in elections and removes any unfair advantage an independently wealthy person might enjoy in an election.

- Opponents say that limiting independent expenditures is undemocratic. Our democracy was founded based on the ideals of independent achievement and the American Dream. If a person becomes independently wealthy then that person should be allowed to spend his or her money to participate in the democratic process.

(b) • Raising limits on ~~soft~~ individual contributions means to increase the level of ^{direct} monetary giving. ~~directly~~ This limit went unchecked for years until campaign finance reform initiatives began appearing and limited individual contributions to a campaign to four thousand dollars.

- Proponents argue that raising the amount of direct contribution will help by giving candidates more money directly instead of through PACs which are ~~untracked~~ have no current spending limit. The money will be documented unlike PAC contributions which remain anonymous as to who has given them money. Most importantly, this measure will decrease the power of PACs.

- Opponents argue that raising the limit on individual contribution just makes elections more unfair and driven by "interested" money.

Opponents say that an individual that is allowed to contribute large sums of money directly to a campaign will most likely

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try to buy influence with this money. The goal is to get money out of elections instead of allowing money to primarily decide who wins and what interests will be represented by the candidate once he or she enters office.

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The U.S. Congress is constantly striving to better our nation and the people. A variety of campaign finance reforms are ~~and~~ have been laid on the table. These have been proposed in attempts to improve the campaigning process. From the types of money given and exchanged to the amount of money, the debates have been well thought out and ~~and~~ the sides well considered.

One such proposal is eliminating soft money. This proposal seeks to remove all paper money ~~and~~ from the funding and finance aspect of political campaigning. Proponents feel that the use of soft money allows for easier corruption and deception throughout the process. Cash donations, for example, would be easy to launder or conceal the source and for use. Electronic transactions would provide all the legitimate information and would put an enormous decrease on the number of unethical exchanges. They would also be easier. With no paper to deal with, there is no filing ~~and~~ stamping, ~~and~~ entering, etc. Opponents feel this reform is unnecessary. They see no need to make such an ~~elimination~~ elimination. Soft money would be easier to place in more specific accounts for

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More specific purposes.

Another proposal on the table is raising the limits on individual contributions. This would simply allow individuals to give a greater amount of money to a campaign. Those in favor feel this change would be very beneficial to campaigning. An increase in money means a better overall campaign. The opponents however, feel that larger contributions would become indirect bribes and that a candidate's views would be shaped by them. This would also make campaigning difficult for any third party involved. These parties generally have a great less budget as it is. Increasing the limit would also increase the gap.

These two main debates could greatly affect campaigning. Each change would have a last effect. Therefore, they are being carefully analyzed and each argument weighed heavily.