Federalism: Should management of elections be left to the states?

Lesson Creator: New Jersey Center for Civic Education, Rutgers University, Piscataway, NJ

Objective: Students will be able to respectfully voice positions regarding the efficacy of federalism regarding elections and recognize the possibility of changing positions in response to better arguments and evidence.

New Jersey Student Learning Standards for Social Studies:

• 6.1.8.CivicsPL.3.b and 6.3.8.CivicsPR.2: Evaluate the effectiveness of the fundamental principles of the Constitution (i.e., ...federalism) in establishing a federal government that allows for growth and change over time.
• 6.1.8.HistoryUP.5.a: Analyze the effectiveness of the 13th, 14th, and 15th Amendments to the United States Constitution from multiple perspectives.
• 6.3.8.CivicsPD.1: Deliberate on a public issue affecting an upcoming election, consider opposing arguments, and develop a reasoned conclusion.
• 6.3.8.CivicsPD.2: Propose and defend a position regarding a public policy issue at the appropriate local, state, or national level.

Inquiry Question: Should management of elections be left to the states?

This lesson assumes that students have already been introduced to the concept of federalism and the concepts of enumerated, residual, and shared powers. They will now evaluate whether this fundamental constitutional principle for limiting government power is functioning effectively regarding the management of elections. They will also practice civil discourse and recognize the value of changing one’s position in light of better evidence.
Background

Begin by very briefly reviewing the basic idea of federalism and that certain powers are given to the federal government, some are reserved for the states, and some are shared. Remind the students that over the course of American history the power of the federal government has tended to expand into areas that were formerly the exclusive domain of the states.

Introduce the inquiry question. Then provide some background (below) regarding the issue. Several short handouts are included below which can also be distributed to the students.

- The Constitution is clear that voting and elections are primarily a state concern:

  “The Times, Places, and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but Congress may at any time by Law make or alter such Regulations”

  Share Handout #1 with your students and discuss.

- Some of the Founders expressed concerns about state control of elections

  Share Handout #2 with your students and discuss.

- The federal government, in the interest of fairness and equal access to voting rights, has exercised some control over voting through the 14th, 15th, 19th, 24th, and 26th Amendments and the Voting Rights Act of 1965. However, recent Supreme Court decisions have effectively gutted the Voting Rights Act in Shelby County v. Holder (570 U.S. 529, 2013) by eliminating the need for states that have discriminated in the past to obtain preclearance from the federal government before making changes in their voting procedures, such as places and times of voting, which might adversely affect minority groups.

  Share Handout #3 with your students and discuss.

- The Pew Research Center found that Americans remain divided on whether voting is a right or a regulated privilege.

- Since the debunked claims of a “stolen election” in 2020, there has been an upsurge in bills before state legislatures regulating voting and allowing increased partisan control over the tabulation and certification of votes. Some states seek to more tightly regulate or restrict voting procedures and voter registration, while others have pending legislation to expand voter registration and access to the ballot.

- For more complete details and statistics, see the Brennan Center for Justice, Voting Laws Roundup, May 2022. Since this is a link and not a handout, direct students to the site if it is appropriate for the level of students. Otherwise, the teacher should summarize the information.
After providing a quick segment of teacher input regarding the above background information, allow the students to briefly examine the handouts. For more advanced classes, the teacher may choose to form the students into groups and allow them an extra day or two to further research the issue in more detail. Then introduce the continuum activity.

**Take a Stand - Continuum**

- Forces your students to think about their own views, express them, and, most importantly, listen to others without responding.
- Can use with any controversial topic—e.g., immigration, gun control, fracking, Electoral College, hate speech on social media, reparations, carbon taxes. Almost anything with two sides.
- Phrase a question as either/or (yes or no, agree or disagree). E.g., Should we enact more stringent gun control laws? Should we ban hate speech on social media? Should we abolish the Electoral College). In this lesson: Should management of elections be left to the states? (Yes or No)
- Ask students to stand to one side of you if they agree and to the other side if they disagree. You can ask those who are unsure to stand in the middle.
- Now the students have taken a stand and formed a continuum of views. Turn and face the line.
- Ask those at either ends of the line to explain WHY they take their position. Remind the students to listen carefully, as they will have to later briefly repeat many of the statements. The teacher may take notes on a whiteboard/blackboard behind the students if this is helpful for the students.
- There are no rebuttals, students explain their views (why) and listen to others
- If you hear a viewpoint that does not fit with where the student stands, have the student move to an appropriate spot.
- Ask those in the middle who were unsure if what they heard helped them decide and ask them to move to the appropriate spot.
- Ask others if they changed their views based on what they heard and ask them to move to the appropriate spot.
- If the class has not conducted additional research regarding the question, the teacher may decide, after the students have voiced their opinions and perhaps moved along the continuum to provide the additional information in handout #4 to see if it causes students to change their opinions. Emphasize that it is the mark of a thoughtful citizen to change their opinion if there is compelling evidence.

**Assessment Activity:** Have students complete the T-chart to indicate they listened carefully to their classmates. They should then write a brief essay explaining why their chosen position is the best solution to the issue.
Handout #1

Excerpts from the United States Constitution Regarding Elections
(italics added)

Article One, Section 2: The House of Representatives shall be composed of Members chosen every second year by the People of the several States, and the Electors in each state shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

… When vacancies happen in the Representation from any State, the Executive Authority thereof (meaning the state) shall issue Writs of Election to fill such vacancies.

Article One, Section 4: The Times, Places, and Manner of holding Elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.

Article Two, Section 1: Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the state may be entitled in Congress, but no Senator or Representative, or Person holding an Office of Trust or Profit under the United States, shall be appointed an Elector.
Handout #2

Two opinions from the Founders:

Federalists:

Favored some national supervision over elections.

“Nothing can be more evident, than that an exclusive power of regulating elections for the National Government, in the hands of the State Legislatures, would leave the existence of the Union entirely at their mercy.”


Anti-Federalists

Favored strong state governments, a weak central government, and the direct election of government officials. They were in favor of state control of elections and opposed:

“giving congress power to make or alter the regulations prescribed by the different legislatures respecting the time, place, and manner of holding elections…”

Handout #3

Federal Control over Elections

U.S. Constitution, Amendment 14: Provided for equal protection under the law, penalties for states that restricted the voting rights of male U.S. over age 21 in federal elections (this was aimed at the former Confederate states that sought to restrict the votes of formerly enslaved persons).

U.S. Constitution, Amendment 15: Stated that the right to vote shall not be denied or abridged by the United States or by any State on account of race, color or previous condition of servitude.

U.S. Constitution, Amendment 19: Granted women the right to vote.

U.S. Constitution, Amendment 24: Stated that the right to vote shall not be denied for failure to pay a poll tax or other tax.

U.S. Constitution, Amendment 26: Stated that the right to vote shall not be denied due to age for any citizen 18 years old or older.

The Voting Rights Act of 1965: aimed to overcome legal barriers at the state and local levels that prevented African-Americans from exercising their right to vote as guaranteed under the 15th Amendment to the U.S. Constitution, by outlawing literacy tests and providing for the appointment of federal examiners (with the power to register qualified citizens to vote) in those jurisdictions that were "covered" according to a formula provided in the statute, which identified 13 primarily Southern states that had a history of preventing African-Americans from voting. Most importantly, Section 5 required covered jurisdictions to obtain "preclearance" (approval prior to implementation) from either the District Court for the District of Columbia or the U.S. Attorney General for any new voting practices and procedures. By the end of 1965, a quarter of a million new African-American voters had been registered, one-third by federal examiners. By the end of 1966, only four out of 13 southern states had fewer than 50 percent of African-Americans registered to vote. The Voting Rights Act of 1965 was readopted and strengthened in 1970, 1975, and 1982. Section 5 was reapproved every five years. In 2006 it was reapproved for 25 years.

Shelby County v. Holder: in 2013 the U.S. Supreme Court decided that there was no longer a need for states that had discriminated in the past to obtain preclearance from the federal government before making changes in their voting procedures, such as places and times of voting, which might adversely affect minority groups.
Research: Does this change your opinion?

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<thead>
<tr>
<th>In Favor of National Control</th>
<th>In Favor of State Control</th>
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<tbody>
<tr>
<td>• Voting is a right that should not depend on state of residence.</td>
<td>• Voting is a privilege that states have a legitimate interest in regulating.</td>
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<td>• Some states are engaging in tactics that result in &quot;voter suppression,&quot; such as limiting the places or times for voting, or placing the counting of votes in the hands of partisans, or diluting the impact of certain votes by gerrymandering.</td>
<td>• States have an interest in regulating their own state elections and adapting to local views and conditions.</td>
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<td>• Our democracy depends on every citizen having the same access to voting and having their vote count equally.</td>
<td>• If one party intent on rigging elections gained control of the branches of the federal government, it could end our democracy. With state control, some states would likely remain in control of the opposition party and a check on the federal government.</td>
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## Handout #5

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<tr>
<th>Arguments for states to manage elections</th>
<th>Arguments for the national government to supervise elections</th>
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