**Answer Key**

The following sections will be useful to the students and their argument. Below each section or clause is a possible reason that students may be able to use it to argue their case. These are not the only interpretations, and it is possible that the students may come up with additional points.

# Article I, Section 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

*Students may point out that these are only* ​legislative ​*powers that are “herein granted,” whereas the President has* ​executive​ *powers granted (Article II, Section 1, Clause 1).*

# Article I, Section 7

1: All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

*It can be argued that, because Congress has the sole power to raise revenue and set the budget, ultimate power rests with Congress and not the president. The president may want to initiate combat or deploy forces, but if Congress does not fund it, it will probably not happen, or will not be sustained for an extended period of time.*

# Article I, Section 8

1: 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; but all Duties, Imposts and Excises shall be uniform throughout the United States;

2: To borrow Money on the credit of the United States;

3: To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

10: To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

11: To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

*This specific clause is of particular interest as it directly gives Congress the right to* declare ​*war -- not the President.*

*Note the choice of the word* ​declare​*. This may suggest that it is not retaliation to attack but initiation.*

12: To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer

Term than two Years;

13: To provide and maintain a Navy;

14: To make Rules for the Government and Regulation of the land and naval Forces;

15: To provide for calling forth the Militia to execute the Laws of the Union, suppress

Insurrections and repel Invasions;

16: To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

18: To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

*Congress explicitly receives authority to declare war, within a list of powers that are not duplicated within the executive branch. As* Federalist 69 *notes, this is a specific difference from the British monarch. The clauses above all support the argument that Congress has not only significant fiscal power when it comes to the military, but also the authority to set the rules for the armed services. If Congress holds the purse strings and set the rules for the military, then it can wield significant control over the Commander in Chief via the budget and legislation.*

# Article I, Section 10

3: No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

*This clause appears to grant military authority to Congress, not the president, since without congressional approval the states are severely limited in their military activities. Unless they have approval from Congress, defending themselves in case of emergency is the only kind of military or foreign activity states can engage in. By implication states are categorically banned from initiating combat without Congress’s consent.*

*The phrase “engage in war” is a case where word choice may be important. It also suggests that if the states can engage in defensive combat without permission of Congress, so too could the president.*

# Article II, Section 1

1: The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years, and, together with the Vice President, chosen for the same Term, be elected, as follows

*This statement argues that all executive power is in the hands of the president, as it is “vested” rather than, as in the case of the Congress, the only legislative powers given are those “herein granted”. On the other hand, if vesting is synonymous with granting, both Congress and the President both have an equivalent installation of power within their respective powers [legislative and executive].*

*We might remember that the Founders feared concentrated monarchy, which, as* Federalist 69 *warned*, *included the initiation of conflict by one individual. We thus might understand the war powers within the rest of the Constitution’s separation of powers framework. Just as we want deliberation in deciding what the policy is but decisiveness in executing it—with Congress making laws but the president taking care that they be executed—we would want Congress responsible for deciding when we are at war, and the president decisive in executing it as commander-in-chief.*

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# Article II, Section 2

1: The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

*This clause supports the central authority of the president in military affairs, placing him/her at the head of the military. Some have argued this clause gives the president power to both respond to and initiate combat: if the president cannot use the military to protect the country as necessary, this view holds, then commander-in-chief would be a weak title with powers insufficient to safeguard the country.*

*On the other hand, most of the powers described here relate to traditional executive branch obligations, perhaps suggesting that the powers of the commander-in-chief should be similarly limited. In other words, just as the president’s power is limited to carrying out the policies Congress enacts, he or she is also limited to carrying out a war Congress has declared.*

*The Supreme Court has held that the president may respond to attack with force but not declare offensive war (see, for example,* The Prize Cases*). However federal courts have tried to avoid ruling on what counts as a “war”.*

2: He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the

Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and

Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

*On the one hand, the president is the chief negotiator and the one responsible for drawing up the treaties. But on the other, it can be argued that because the Senate must ultimately approve any treaties before they are binding, the president’s role is clearly secondary and advisory.*