

# Colorado and U.S. Constitutions

*Lesson from the Courts in the Community curriculum*

Find out more about [this program](#) and discover [additional lesson plans about how state courts operate](#).

**Objective:** Students will be able to describe the similarities and differences between the state and federal constitutions and the major provisions of the Colorado Constitution.

## **Inquiry Questions:**

- What are the rights and responsibilities of people in the United States?
- How do the U.S. and Colorado constitutions limit the power of government and distribute power among the three branches of government?
- How does the U.S. and Colorado Constitution reflect the ideals and people of the time?
- How does the structure of the Colorado Constitution explain how power is divided between the branches and the people in Colorado?
- What are the significant differences between the US Constitution and the Colorado Constitution?
- Where in the Colorado Constitution can the concept of federalism be found?

## **Colorado Academic Standards**

- **SS.HS.4.2.EOb.** Identify the structure, function, and roles of current members of local, state, and national governments. Including but not limited to: understanding the three branches of government at each level of government.
- **SS.HS.4.2.EOc.** Analyze the processes for amending the Constitutions of Colorado and the United States and the significant changes that have occurred to those documents including both the Colorado and the United States' Bills of Rights.
- **SS.HS.4.2.EOe.** Describe the role and development of the founding documents of Colorado and the United States from their inception to modern day. Including but not limited to: the Great Law of Peace, the Declaration of Independence, the Constitutions of the United States and Colorado, the Federalist Papers, and the Bill of Rights.
- **SS.HS.4.2.EOf.** Evaluate the role of the judicial system in protecting life, liberty, and property for all persons in the United States

**Activities:** Teacher lecture (background material and lecture outline provided); video, class participation activity

**Grade Level:** High School

**Anticipated classroom time:** 45 to 60 minutes

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## **Teacher background information**

### **Introduction**

*by former Colorado Chief Justice Mary Mullarkey*

The U.S. Constitution was the world's first written constitution to create a nation's government based on the *separation of powers* and the system of *checks and balances*. These principles of separation of powers and checks and balances are so vital to our democracy that we celebrate Constitution Day on September 17 each year as a reminder of the historic documents that embody them.



Separation of powers gives each branch of government independent powers that act to check and balance the powers of the other two branches. The framers of the Constitution deliberately created this tension among the branches of government to ensure that no single branch would become so powerful that it would entirely dominate our government or infringe upon the rights and freedoms of citizens.

Our system of separation of powers and checks and balances means that, instead of the president of the United States or the governor of a state simply choosing judges, the appointments of judges require the “advice and consent” of the U.S. Senate at the national level or, in Colorado, must be made from a list of nominees selected by a committee of citizens. Separation of powers means that judges can declare laws enacted by the legislative branch or actions of the chief executive to be unconstitutional and therefore, illegal. Separation of powers means that the legislative branch can impeach the president or the governor of a state, or members of the judiciary.

Although the framers of the U.S. Constitution were the first to base a written constitution on the limitation and separation of government powers, those ideas had been proposed by great thinkers as long ago as the 4<sup>th</sup> Century B.C., when the Greek philosopher Aristotle wrote that “rule of a master is not a constitutional rule.”

The American colonists who founded our nation were experienced with the unlimited power of the British king and were determined to create a government that did not permit one person, or one group, to have such unlimited power. The framers of the U.S. Constitution were familiar with Aristotle’s writings, as well as the writings of an 18<sup>th</sup> Century French philosopher, the Baron de Montesquieu. He wrote in 1752 that, to protect individual liberties, government should be separated into the legislative, executive and judicial branches.

The government of the United States, based on the separation of powers and the system of checks and balances, has endured for more than 220 years, since the U.S. Constitution was signed in 1787. Colorado’s constitution, signed in 1876, incorporates the same principles of the separation of powers and the system of checks and balances to protect the liberties of Colorado citizens.

### **History of three branches of government in U.S. and Colorado**

The Declaration of Independence contains many complaints about the British king and shows that the American colonists in 1776 were very concerned about the king’s unfettered power. That concern was a major reason that the Articles of Confederation created a weak national government for the newly independent United States.

The Articles of Confederation also gave state legislatures greater power in response to those same fears of a too-powerful centralized government. The actions of state legislatures as a result increased fears that the legislative branch of government also could be too strong.

As James Madison wrote in one of the Federalist Papers, written to argue in newspapers for the adoption of the new constitution, “(T)he legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex.”

Madison wrote that the new nation’s leaders “seem never for a moment to have turned their eyes from the danger to liberty from the overgrown and all-grasping prerogative of an hereditary magistrate” – meaning the British king, or the executive branch of government – and had failed to provide against



“the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.”

Recognizing that any branch of government is capable of abusing power, the framers of the U.S. Constitution made sure that each branch has enough power to act as a check on the power of the others. They signed the United States Constitution by which our nation is governed today on September 17, 1787. Today, we celebrate September 17 as Constitution Day.

State constitutions, including Colorado’s, have followed the example set by the U.S. Constitution in dividing power among three branches of government. Although the three branches operate independently of each other, each has power to restrict the activities of the other branches to prevent the concentration of too much power in any single branch and to protect the rights and freedoms of citizens.

For example, the head of the executive branch – the president of the United States or the governor of Colorado – can veto any bill approved by the legislative branch. The president of the United States nominates federal judges but requires the approval of the U.S. Senate. The governor of Colorado appoints state judges, but must choose from nominees selected by citizen committees, some of whose members are chosen by leaders of each branch of government.

The courts can declare laws enacted by the legislative branch or acts of the chief executive unconstitutional, and the legislative branch can impeach the chief executive and members of the judiciary.

This is called the system of checks and balances. It gives each branch of the government enough power to act as a check on the others.

Colorado’s Constitution was adopted by voters on July 1, 1876, one century after the American colonists declared their independence from Great Britain. One month after Coloradoans adopted their new constitution, Colorado became the nation’s 38<sup>th</sup> state, on August 1, 1876.

The U.S. Constitution structures a national government with legislative, executive and judicial branches, but does not specifically state that it is dividing power among three separate, independent branches. Colorado’s Constitution does, however:

## **The Colorado Constitution**

### **Article III**

#### **Distribution of Powers**

The powers of the government of this state are divided into three distinct departments, the legislative, executive and judicial; and no person or collection of persons charged with the exercise of powers properly belonging to one of these departments shall exercise any power properly belonging to either of the others, except as in this constitution expressly directed or permitted.



## Important terms in the U.S. and Colorado Constitutions

- **Distribution of powers: legislative, executive, judicial**

Both the United States Constitution and the Colorado Constitution divide the powers of government among three branches instead of letting them all belong to one person, such as a king, or putting one branch of government in charge of everything. The three branches of government are:

- The legislative branch, which enacts laws.
- The executive branch, which carries out the laws and takes care of government services such as collecting taxes, filling potholes and building schools.
- The judicial branch, which decides what the laws mean when people don't agree about them, decides whether someone has disobeyed a law and what should happen to them if they have, and resolves other disagreements.

- **Supreme Court**

The United States Supreme Court is the highest court in our nation. Its decisions are final for the whole country. The Colorado Supreme Court is the highest court in our state. Its decisions are final for the whole state.

- **Judge**

A judge is a person who presides over trials and other activities in courts, deciding disagreements between people based on facts and laws.

- **Justices**

Some judges are called justices. Their jobs are mostly the same as the jobs of judges: to decide disagreements between people based on facts and laws.

- **Good behavior, willful misconduct**

- The U.S. Constitution says that our nation's federal judges may keep their jobs as long as they show good behavior. As long as they comply, they may keep their jobs all their lives.
- The Colorado Constitution says that our state judges may lose their jobs if they behave badly, and also for several other reasons. Here is a list of all the reasons:
  - They become 72 years old.
  - They are convicted of a crime.
  - Voters, who decide every few years whether or not each state judge should keep his or her job, decide to fire them.
  - The state Judicial Discipline Commission decides that a judge has committed willful misconduct in office, willful or persistent failure to perform duties, intemperance, or violation of the code of judicial conduct, or has a disability that will permanently keep him or her from doing a good job.

- **Compensation**

Both the United States Constitution and the Colorado Constitution say that judges' compensation, or pay for their work as judges, cannot be reduced while they are serving as judges. This is so that, if people in another branch of government don't like a decision that a judge makes, they can't reduce the judge's pay to punish the judge for not ruling their way.



- **Jury**  
A jury is a group of people whose job is to decide facts that are disputed in a trial. Both the U.S. Constitution and the Colorado Constitution say that a person who is accused of a crime has the right to have a jury decide whether or not he or she is guilty. Juries also decide many kinds of disagreements among people in other types of trials that don't involve crimes.
- **Searches**  
Both the U.S. Constitution and the Colorado Constitution say that government officers cannot search people's homes or belongings unless they have a really good reason.
- **Witness against himself, testify against himself**  
Both the U.S. Constitution and the Colorado Constitution say that a person accused of a crime cannot be compelled to testify against himself and may instead remain silent. Because the U.S. Constitution includes this right in its Fifth Amendment, choosing to remain silent and refuse to answer questions often is called "Taking the Fifth."
- **Speedy and public trial**  
Both the U.S. Constitution and the Colorado Constitution guarantee a person who is accused of a crime the right to a speedy and public trial. This means that the trial must be held without undue delay, so that the accused person is not jailed for an unfairly long time before the trial is held, and that the trial must not be held in secret but in public, so that everyone can observe whether or not it is fair.
- **Assistance of counsel, defend in person and by counsel**  
Both the U.S. Constitution and the Colorado Constitution guarantee that a person who is accused of a crime has the right to be represented by a lawyer. If an accused person cannot afford to pay a lawyer, the government pays a lawyer to represent him or her.
- **Cruel and unusual punishments**  
Both the U.S. Constitution and the Colorado Constitution prohibit cruel and unusual punishments of persons who have been convicted of crimes.
- **Due process of law**  
This is another right guaranteed to all parties in court cases in both the U.S. Constitution and the Colorado Constitution. It means that everyone must be treated according to the same rules. In the United States and in Colorado, the government cannot deprive anyone of life, liberty or property without due process of law.
- **Advice and consent, vacancy in any judicial office**  
These terms help explain the differences between the way the national government selects judges and the way Colorado judges are selected.
  - Under the U.S. Constitution, the president nominates a person to be a federal judge, but the president must have the "advice and consent" – that is, the approval – of the U.S. Senate, part of the legislative branch, in order for the person the president has nominated to become a judge.
  - In Colorado, the governor appoints state judges to fill vacancies in any judicial office, but the governor must choose the new judge from two or three nominees selected by a special committee of citizens who live in the area where the new judge will work. The governor does not need approval from the legislative branch of government of the judge the governor chooses. After the new judge has served for a few years, the voters



in the area then decide in an election whether or not to keep that judge in office. If they decide not to keep the judge, the governor fills the vacancy in that judicial office by appointing a new judge from a new list of nominees selected by a citizens committee.

## **How members of each branch of government are selected**

### **Colorado's Legislative Branch**

Colorado is divided into districts for the purposes of electing members of the state House of Representatives and the state Senate. Voters in each district choose who will represent them in the Colorado General Assembly, as our state's legislative branch is known.

### **Colorado's Executive Branch**

Every voter in Colorado casts a ballot for governor, as well as for secretary of state, state treasurer and state attorney general.

### **Colorado's Judicial Branch**

Judges and justices in Colorado are not chosen in partisan elections, as legislators and the governor are and as judges are in some other states. Colorado judges were chosen that way until 1966, when voters amended the state's constitution to create the merit selection and retention system.

Under this system, judges are chosen based on their abilities rather than on their political connections. They do not campaign for election and do not raise campaign funds, leaving them free of obligation to any wealthy or powerful interest group that might contribute campaign funds. That lets Colorado's judges make decisions based on the law and facts and not on politically popular views. It means that, if you get a speeding ticket, the judge who hears your case hasn't received a campaign contribution from the prosecutor!

Instead, many people help decide who Colorado's judges and justices will be and whether each one is doing a good job and should keep working as a judge or leave the job.

Groups of citizens choose two or three people they think would make good judges and suggest them to the governor. These groups of citizens are called Judicial Nominating Commissions.

The governor decides which one will be the new judge. A new judge works for two years, and then voters decide in the next general election whether or not to retain that judge.

To help voters know more about Colorado's judges, other groups of citizens, called Judicial Performance Commission, evaluate a judge's performance and make recommendations on whether or not to retain them. The commissions also give judges advice on how they can improve. The commissions' recommendations are made public on the website of the Colorado Judicial Branch and are published in the "blue book" guide for voters before each general election.

If a judge is doing a very bad job or behaving badly, another group of citizens, the Judicial Discipline Commission, can decide without waiting for the voters that the judge should be fired immediately. That rarely happens, because people do a good job of choosing Colorado's judges in the first place.

Colorado has 378 judges in the state Judicial Branch.



## Additional Resources

- *Ben's Guide to U.S. Government for Kids*, a website provided by the Superintendent of Documents, U.S. Government Printing Office. Offers information and activities for students in grades K-2, 3-5, 6-8 and 9-12: <https://bensguide.gpo.gov/>
- *Social Studies for Kids*, a portal website operated by educator David White that leads to many other useful resources: <http://www.socialstudiesforkids.com/subjects/government.htm>
- Colorado's Judicial Branch: <https://www.coloradojudicial.gov/>
- Colorado's Legislative Branch: <https://leg.colorado.gov/>
- Colorado's Executive Branch: <https://www.colorado.gov/>
- The U.S. Constitution: <https://constitution.congress.gov/constitution/>
- The Colorado Constitution: <https://leg.colorado.gov/colorado-constitution>

## Class lecture outline

### Government Under the Constitution: Three Branches

I. The U.S. Constitution and the Colorado Constitution are based on the separation of powers and the system of checks and balances.

- A. The U.S. Constitution was the first written constitution in the world to base a nation's system of government on the separation of powers and checks and balances.
- B. The framers of the U.S. Constitution deliberately created tension among the three branches of government to prevent any single branch from becoming too powerful and infringing upon the rights and freedoms of citizens.
- C. Each branch of government in the American democracy has enough power to act as a check on the powers of the other.
  1. The president of the United States or the governor of a state, including Colorado, can veto a bill passed by the legislative branch.
  2. The courts can declare a law passed by the legislative branch or an action of the branch to be unconstitutional.
  3. The chief executive appoints members of the judiciary, but at the national level requires the approval of the legislative branch and in Colorado must choose from nominees submitted by a citizen committee appointed by all three branches of government.
  4. The legislative branch of government can impeach the chief executive or members of the judiciary. In Colorado, the Judicial Discipline Commission, whose members are appointed by leaders of all three branches of government, also can remove members of the judiciary from office.

II. The Legislative Branch makes laws.

- A. Its members are elected by voters. Nationally, the legislative branch of the United States government is the U.S. Congress, which in turn is divided into two parts, the U.S. House of Representatives and the U.S. Senate. Colorado's General Assembly, as its legislative branch is called, is similarly organized: two houses of members elected by voters.
- B. In both the United States and Colorado, both houses of the legislative branch must agree in order to pass a new law.

III. The Executive Branch administers laws.



- A. Its chief leaders are elected by voters. They include the president of the States on the national level, and in Colorado the governor, the state treasurer, the secretary of state and the state attorney general.
  - B. Many other members of the executive branch of government are hired to carry out the government’s day-to-day duties, from running parks and prisons to filling potholes to policing communities to collecting taxes.
- IV. The Judicial Branch interprets laws.
- A. Federal judges are appointed by the president of the United States, with the “advice and consent” of the U.S. Senate. They serve for life unless they conduct themselves badly, in which case they can be removed from the job by Congress.
  - B. Colorado’s state judges are appointed by the governor from a list of nominees chosen by citizen committees called Judicial Nominating Commissions
    - 1. A Colorado state judge serves a provisional term of two years then stands for retention in the next general election, when voters decide to keep the judge in office or not.
    - 2. To assist voters in knowing more about their judges, another citizen committee reviews each judge’s work and makes recommendations to the voters. These committees, called Judicial Performance Commissions, also advise judges on how to improve their skills. The Judicial Performance Commissions’ recommendations are made public on the Colorado Judicial Branch website and are published in the “blue book” guide of information for voters before each general election.
    - 3. If a judge is conducting himself or herself improperly or permanently disabled so that he or she cannot perform the duties of a judge, the state Judicial Discipline Commission can remove the judge from office without waiting for the next general election.
    - 4. The citizens who serve on the Judicial Discipline Commission and the Judicial Performance Commissions are chosen by leaders of all three branches of government in Colorado. The citizens who serve on the Judicial Nominating Commissions are chosen by leaders of the Judicial Branch and the Executive Branch.
    - 5. Colorado judges were chosen in partisan elections, as are judge in some other states and the members of the legislative and executive branches, until 1966. That year, Colorado voters amended their state constitution to create the present system of appointing and retaining judges, called the merit selection system.
    - 6. The merit selection system keeps judges from having to campaign for election or collect campaign funds. Among other things, it means that, if you get a speeding ticket, the judge who hears your case hasn’t received a campaign donation from the prosecutor.

## Classroom Preparation

1. Determine class format. This could include a class lecture, document reading or discussion groups.
2. Write the Constitutional Treasure Hunt on the board or create worksheets with the treasure hunt.
3. Make copies of the U.S. and Colorado constitutions.

## Classroom activity

### A Constitutional Treasure Hunt

Find these terms in the U.S. Constitution and Colorado Constitution

U.S. Constitution

Colorado Constitution





Legislative

Executive

Judicial

Judges

Good behaviour

Willful misconduct

### A Constitutional Treasure Hunt (Answer Key)

Find these terms in the U.S. Constitution and Colorado Constitution	U.S. Constitution	Colorado Constitution
Legislative	Article I	Article V
Executive	Article II	Article IV
Judicial	Article III	Article VI
Judges	Article III	Article VI
Good behaviour	Article III	None
Willful misconduct	None	Article VI

### Discussion questions

- What is good behavior?
- Did you notice that the word *behaviour* in the U.S. Constitution is spelled differently than we spell it today in the United States, *behavior*? Why is this?
- What is willful misconduct?
- Why do you think both the U.S. and Colorado constitutions provide that a judge's compensation cannot be reduced while the judge is serving in office?
- Why is it important to limit the government's power over citizens?
- What are the differences between the way federal judges are chosen and the way Colorado judges are chosen? Which system do you think is better?
- What rights and responsibilities do citizens in Colorado have to select and retain judges?

How do the U.S. and Colorado Constitutions reflect the ideas and people of the time? How has

