

SECTION 2

Formal Amendment



Guiding Question

How has the Constitution been amended through the formal amendment process? Use an outline like the one below to take notes on how the Constitution can be amended.

I. Formal Amendment Process

A. First Method

1. _____
2. _____

B. Second Method

1. _____
2. _____

Political Dictionary

- amendment
- Bill of Rights
- ratification
- formal amendment

Objectives

1. Identify the four different ways by which the Constitution may be formally changed.
2. Explain how the formal amendment process illustrates the principles of federalism and popular sovereignty.
3. Understand that several amendments have been proposed, but not ratified.
4. Outline the 27 amendments that have been added to the Constitution.

Image Above: Inez Milholland fought to amend the Constitution to allow women's suffrage.

The Constitution of the United States has now been in force for more than 200 years—longer than the written constitution of any other nation in the world.²

When the Constitution became effective in 1789, the United States was a small agricultural nation of fewer than four million people. That population was scattered for some 1,300 miles along the eastern edge of the continent. The 13 States, joined together mostly by travel on horseback and sailing ships, struggled to stay alive in a generally hostile world.

Today, well over 300 million people live in the United States. The now 50 States stretch across the continent and beyond, and the country has many far-flung commitments. The United States is the most powerful nation on Earth, and its modern, highly industrialized and technological society has produced a standard of living that has long been the envy of many other countries.

How has the Constitution, written in 1787, endured and kept pace with that astounding change and growth? The answer lies in this highly important fact: The Constitution of today is, and at the same time is not, the document of 1787. Many of its words are the same, and much of their meaning remains the same. But some of its words have been changed, some have been eliminated, and some have been added. And, very importantly, the meanings of many of its provisions have been modified, as well.

This process of constitutional change, of modification and growth, has come about in two basic ways: (1) by formal amendment and (2) by other, informal means. In this section, you will look at the first of them: the addition of formal amendments to the Constitution.

Formal Amendment Process

The Framers knew that even the wisest of constitution makers cannot build for all time. Thus, the Constitution provides for its own **amendment**—that is, for changes in its written words.

² The British constitution dates from well before the Norman Conquest of 1066, but it is not a single, written document. Rather, it is an “unwritten constitution,” a collection of principles, customs, traditions, and significant parliamentary acts that guide British government and practice. Israel, which has existed only since 1948, is the only other state in the world without a written constitution.

Article V sets out two methods for the proposal and two methods for the **ratification** of amendments. So, there are four possible methods of **formal amendment**—changes or additions that become part of the written language of the Constitution itself. The diagram below sets out these two methods of proposal and two methods of ratification.

First, an amendment may be proposed by a two-thirds vote in each house of Congress and ratified by three fourths of the State legislatures. Today, at least 38 State legislatures must approve an amendment to make it a part of the Constitution. Of the Constitution's 27 amendments, 26 were adopted in this manner.

Second, an amendment may be proposed by Congress and ratified by **conventions**, called for that purpose, in three fourths of the States. Only the 21st Amendment (1933) was adopted in this way.

When Congress proposes an amendment, it chooses the method of ratification.

State conventions were used to ratify the 21st Amendment, largely because the lawmakers felt that the conventions' popularly elected delegates would be more likely to reflect public opinion on the question of the repeal of nationwide prohibition than would State legislators.

Third, an amendment may be proposed by a national convention, called by Congress at the request of two thirds of the State legislatures—today, 34. As you can see in the diagram, it must then be ratified by three fourths of the State legislatures. To this point, Congress has not called such a convention.³

³ The calling of a convention was a near thing twice over the past 40 years or so. Between 1963 and 1969, 33 State legislatures, one short of the necessary two thirds, sought an amendment to erase the Supreme Court's "one-person, one-vote" decisions; see Chapter 24. Also, between 1975 and 1983, 32 States asked for a convention to propose an amendment that would require that the federal budget be balanced each year, except in time of war or other national emergency.

convention
n. a meeting to discuss matters of common concern

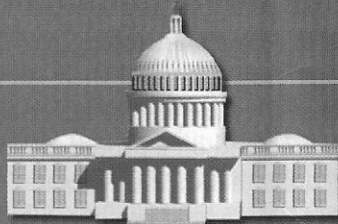
How Government Works

GOVERNMENT ONLINE

Audio Tour

Listen to a guided audio tour of the amendment process at PearsonSuccessNet.com

Amending the Constitution



Proposed by Congress by a 2/3 vote in both houses



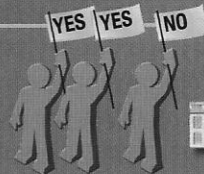
Ratified by 3/4 of the State legislatures

OR



Ratified by conventions in 3/4 of the States

Method 1



Proposed at a national convention called by Congress when requested by 2/3 of the State legislatures



Ratified by 3/4 of the State legislatures

OR



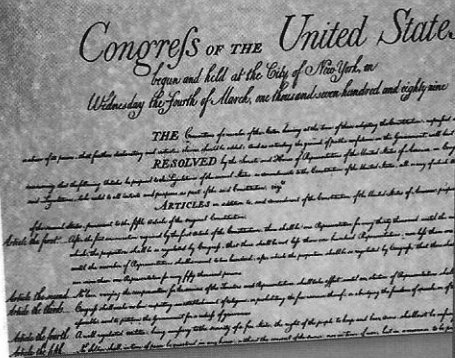
Ratified by conventions in 3/4 of the States

Method 2

Interpreting Diagrams There are two ways to propose an amendment, each with two means of ratification. **Which method has been used to ratify the most amendments?**

The 27 Amendments

1700s



The first ten amendments are known as the Bill of Rights.

1791 Amendments 1–10
Bill of Rights

1795 Amendment 11 States immune from certain lawsuits

1800s

1804 Amendment 12 Changes in electoral college procedures

1865 Amendment 13 Abolition of slavery

1868 Amendment 14 Citizenship, equal protection, and due process

1870 Amendment 15 No denial of vote because of race, color, or previous enslavement



A symbol of the anti-slavery movement

1900s

1913 Amendment 16 Congress given the power to tax incomes

Amendment 17 Popular election of U.S. Senators

1919 Amendment 18 Prohibition of alcohol

1920 Amendment 19 Women's suffrage



The first women to vote in Brooklyn, New York

► **The Amendments** Only 27 amendments have been added to the Constitution thus far. *Why do you think the Constitution has been amended so infrequently since 1789?*

And fourth, an amendment may be proposed by a national convention and then ratified by conventions in three fourths of the States. Remember, the Constitution itself was adopted in much this same way.

Federalism and Popular Sovereignty

Note that the formal amendment process emphasizes the federal character of the governmental system. Proposal takes place at the national level and ratification is a State-by-State matter. Also note that when the Constitution is amended, that action represents the expression of the people's sovereign will.

Some criticize the practice of sending proposed amendments to the State legislatures rather than to ratifying conventions, especially because it permits a constitutional change without a clear-cut expression by the people.

The critics point out that State legislators, who do the ratifying, are elected to office for a mix of reasons, including party membership, name familiarity, and their stands on certain issues. They are almost never chosen because of their stand on a proposed amendment. On the other hand, the delegates to a ratifying convention would be chosen by the people on the basis of only one factor: a yes-or-no stand on the proposed amendment.

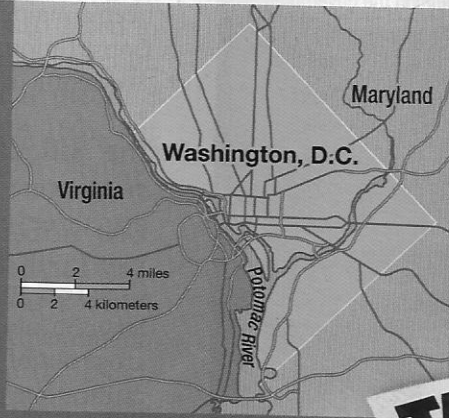
The Supreme Court has held that a State cannot require an amendment proposed by Congress to be approved by a vote of the people of the State before it can be ratified by that State's legislature. It made that ruling in *Hawke v. Smith*, in 1920. However, a State legislature can call for an advisory vote by the people before it acts, as the Court held in *Kimble v. Swackhamer*, in 1978.

Proposed Amendments

The Constitution places only one restriction on the subjects with which a proposed amendment may deal. Article V declares

Audio Tour

Listen to a guided audio tour of The 27 Amendments at PearsonSuccessNet.com



Left: Franklin Roosevelt was elected to four terms as President.

Right: Washington, D.C., could not vote for the President before 1964.

1971 Amendment 26 Voting age changed to 18

1992 Amendment 27 Congressional pay

Below: A young woman rallies for the ratification of the 26th amendment.

1933 Amendment 20 Change of dates for presidential and congressional terms
Amendment 21 Repeal of Prohibition (18th Amendment)
1951 Amendment 22 Limit on presidential terms

1961 Amendment 23 District of Columbia allowed to vote in presidential elections
1964 Amendment 24 Ban of tax payment as voter qualification
1967 Amendment 25 Presidential succession, vice presidential vacancy, and presidential disability



that “no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.”

When both houses of Congress pass a resolution proposing an amendment, Congress does not send it to the President to be signed or vetoed, though the Constitution would seem to require it⁴—because when Congress proposes an amendment, it is not making law (not legislating). Although the chief executive has no formal role in the amendment process, his or her political influence can affect the success or failure of any attempt to amend the Constitution, of course.

If a State rejects a proposed amendment, it is not forever bound by that action. It may later reconsider and ratify the proposal. Most constitutional scholars agree that the reverse is not true, however. Once a State has approved an amendment, that action cannot be undone; and no governor’s veto power

extends to the ratification of a proposed amendment.

Some 15,000 joint resolutions calling for amendments to the Constitution have been proposed in Congress since 1789. Only 33 of them have been sent on to the States. Of those, only 27 have been finally ratified. One of the unratified amendments had been offered by Congress in 1789—along with 10 other proposals that became the Bill of Rights in 1791, and another that became the 27th Amendment in 1992.

The unratified amendment of 1789 dealt with the distribution of seats in the House of Representatives. A second, proposed in 1810, would have voided the citizenship of anyone accepting any foreign title or other honor. Another, in 1861, would have prohibited forever any amendment relating to slavery. A fourth, in 1924, was intended to give Congress the power to regulate child labor. A fifth one, proclaiming the equal rights of women (ERA), was proposed in 1972; it fell three States short of ratification and died in 1982. An amendment to give the District of

✓ Checkpoint
 How does the formal amendment process reflect the concept of federalism?

⁴ See Article I, Section 7, Clause 3. This practice of not submitting proposed amendments to the President is an example of the many changes in the Constitution that have been made by means other than formal amendment, a matter addressed in the next section.

The First Ten Amendments

Amendment 1	<ul style="list-style-type: none">• Freedom of religion, speech, and the press• Freedom to peaceably assemble and to petition the government
Amendment 2	<ul style="list-style-type: none">• The right to maintain a militia• The right to bear arms
Amendment 3	<ul style="list-style-type: none">• Protection from having to quarter (house) soldiers in time of peace without the consent of the owner, nor in time of war except as provided by law
Amendment 4	<ul style="list-style-type: none">• Protection against arbitrary searches and seizures without proper warrant or probable cause
Amendment 5	<ul style="list-style-type: none">• Protection from prosecution without an indictment• Protection from being tried for the same crime twice• Protection from having to testify against oneself• Protection from the loss of life, liberty, or property without due process of law• Protection from loss of property without just compensation
Amendment 6	<ul style="list-style-type: none">• The right to a speedy trial by an impartial jury• The right to be informed of the charges, to cross-examine witnesses, and to present favorable witnesses• The right to an attorney
Amendment 7	<ul style="list-style-type: none">• The right to a trial by jury in any civil case where the amount of money involved is \$20 or more
Amendment 8	<ul style="list-style-type: none">• Protection from excessive bail or fines• Protection from cruel and unusual punishment
Amendment 9	<ul style="list-style-type: none">• The fact that the Constitution spells out a number of civil rights does not mean that there are not other, unwritten, rights held by the people.
Amendment 10	<ul style="list-style-type: none">• The powers not delegated to the Federal Government may be exercised by the States, as long as they are not prohibited by the Constitution.

►► The first ten amendments protect many fundamental rights held by the people. **Why is it important to spell out these rights?**

✓ Checkpoint
What is the purpose of the Bill of Rights?

Columbia seats in Congress was proposed in 1778; it died in 1785.

When Congress proposed the 18th Amendment in 1917, it set a seven-year deadline for its ratification. The Supreme Court held that Congress can place “a reasonable time limit” on the ratification process, in a case from California, *Dillon v. Gloss*, in 1921. Congress has set a similar limit on the ratification period for each of the amendments (except the 19th) that it has proposed since then. It also granted a three-year extension of the deadline for the Equal Rights Amendment in 1979.

The 27 Amendments

The Constitution’s 27 amendments are summarized on pages 80 and 81, and in the table above. As you review them, note

this important fact: As significant as they are, those 27 amendments have not been responsible for the extraordinary vitality of the Constitution. That is to say, they have not been a major part of the process by which the Constitution has kept pace with more than two centuries of change.

The Bill of Rights The first ten amendments were added to the Constitution less than three years after it became effective. They were proposed by the first session of the First Congress in 1789 and were ratified by the States in late 1791. Each of these amendments arose out of the controversy surrounding the ratification of the Constitution itself. Many people, including Thomas Jefferson, had agreed to support the Constitution only if a listing of the basic rights held by the people were added to it, immediately.

Collectively, the first ten amendments are known as the **Bill of Rights**. They set out the great constitutional guarantees of freedom of belief and expression, of freedom and security of the person, and of fair and equal treatment before the law.

The first ten amendments were added to the Constitution so quickly that, for all intents and purposes, they might just as well be regarded as a part of the original Constitution. In point of fact, they were not. We shall look at the 1st through the 9th amendments at some length in Chapters 19 and 20. The 10th Amendment does not deal with civil rights, as such. Rather, it spells out the concept of reserved powers held by the States in the federal system.

The Later Amendments Each of the other amendments that have been added to the Constitution over the past 200 years also grew out of some particular, and often interesting, set of circumstances. For example, the 11th Amendment declares that no State may be sued in the federal courts by a citizen of another State or by a citizen of any foreign state. It was proposed by Congress in 1794 and ratified in 1795, after the State of Georgia had lost a case in the United States Supreme Court. The case (*Chisholm v. Georgia*, decided by the Court in 1793) arose out of a dispute over the ownership of some land in Georgia.

It had been brought to the brand new federal court system by a man who lived in South Carolina.

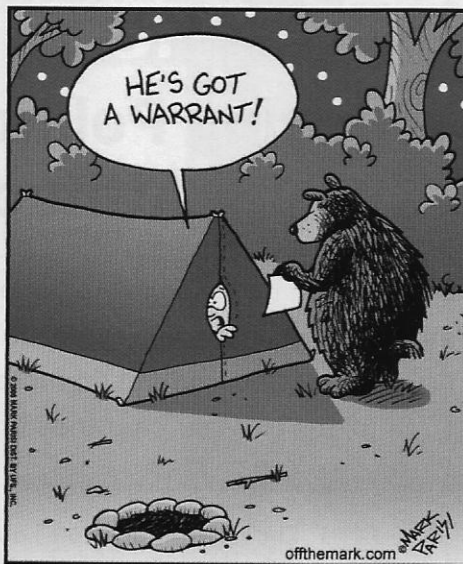
The 12th Amendment was added in 1804 after the electoral college had failed to produce a winner in the presidential election of 1800. Thomas Jefferson became the third President of the United States in 1801, but only after a long, bitter fight in the House of Representatives.

The 13th Amendment, added in 1865, provides another example. It abolished slavery in the United States and was a direct result of the Civil War. The 14th Amendment, with its definition of citizenship (in 1868), and the 15th Amendment on the right to vote (in 1870) also resulted from that conflict.

The 18th Amendment, establishing a nationwide prohibition of alcohol, was ratified in 1919. Known as “the noble experiment,” it lasted fewer than 14 years. The 18th Amendment was repealed by the 21st in 1933.

The 22nd Amendment (1951), limiting the number of terms in which a President may serve to two, was proposed in 1947, soon after the Republican Party had gained control of Congress for the first time in 16 years. Over that period, Franklin D. Roosevelt, a Democrat, had won the presidency four times.

The 26th Amendment was added in 1971. It lowered the voting age to 18 in all elections in the United States. Many who



► **Analyzing Political Cartoons** This cartoon illustrates the 4th Amendment. **What is this cartoon conveying about that amendment?**

backed the amendment began to work for its passage during World War II, creating the slogan “Old enough to fight, old enough to vote.” Its ratification was spurred by the war in Vietnam.

The most recent amendment, the 27th, was written by James Madison and was among the first to be offered by Congress, in 1789. It forbids members of Congress from raising their own pay during that term. It finally became a part of the Constitution in 1992, when the 38th State, Michigan, ratified it.

SECTION 2 ASSESSMENT

Guiding Question Use your completed outline to answer this question: How has the Constitution been amended through the formal amendment process?

Key Terms and Comprehension

- (a) Which method of **formal amendment** has been used only once?
(b) For which **amendment** was it used?
- Explain how the **ratification** process is an example of popular sovereignty.

Critical Thinking

- Predict Consequences** (a) Why was the Bill of Rights added to the Constitution? (b) What rights do these amendments protect? (c) How might news reports differ if freedom of speech and the press were not part of the Constitution?
- Identify Central Issues** Some people have criticized the ratification of amendments by State legislatures instead of by popularly elected delegates. (a) Why has this process been criticized? (b) Do you agree? Why or why not?

Essential Questions Journal

To continue to build a response to the chapter Essential Question, go to your **Essential Questions Journal**.

Quick Write

Writing for Assessment: Gather Details Reread the topic you chose in the previous section. What is this question asking for? For example, when you see the word *effect* in a question, you know you are looking for a cause-and-effect relationship. Gather details from the reading that specifically answer the question. Leave out unnecessary details.