

# U.S. Constitutional Amendments

## THE 27 AMENDMENTS

### Amendments expanding rights and liberties:

- 1 Freedom of religion; speech; assembly; petition (1791)
- 2 Bearing arms (1791)
- 3 Quartering of soldiers (1791)
- 4 Searches and seizures; warrants (1791)
- 5 Grand jury; double jeopardy; self-incrimination; due process; eminent domain (1791)
- 6 Criminal trial rights (1791)
- 7 Jury trial (civil cases) (1791)
- 8 Excessive bail and fines; cruel and unusual punishment (1791)
- 9 Unenumerated rights (1791)
- 13 Slavery ban (1865)
- 14 State rights; equality guarantee (1868)\*
- 15 Right to vote (black males) (1870)
- 19 Right to vote (women) (1920)
- 23 Right to vote (D.C.) (1961)
- 24 Poll tax ban (1964)
- 26 Right to vote (18-year olds) (1971)\*

### Amendments affecting the structure of government:

- 10 Reserved powers of states (1791)
- 11 Suits against states (1795)\*
- 12 Election of president (1804)
- 16 Income tax (1913)\*
- 17 Direct election of senators (1913)
- 20 Commencement of terms (1933)
- 22 Presidential term limits (1951)
- 25 Presidential succession; disability (1967)
- 27 Congressional salaries (1992)

### Public Policy Amendments:

- 18 Prohibition of alcohol (1919)
- 21 Repeal of prohibition (1933)

\* Adopted to reverse a Supreme Court decision.

**How the Constitution is amended**—The Founders hoped that the Constitution would be an enduring document. At the same time, they knew they were fallible and could not anticipate all the needs of the future. Accordingly, they provided for a way to amend or change the Constitution. Article 6 sets forth two ways to officially propose amendments, and two ways to ratify amendments. These can be mixed and matched, meaning that there are four methods—although historically only three have actually been used. Amendments can be proposed by: (1) a 2/3 vote of each chamber of Congress; or (2) a new constitutional convention when 2/3 of the state governments call for one. (This latter method has never been used.) Once the amendment is officially proposed, there are two methods of ratification: (1) by the approval of 3/4 of the state *legislatures* (38 states); or (2) by the approval of *conventions* held in 3/4 of the states. (A “convention” can be any body that the state designates, including a vote of all the citizens.) Only one constitutional amendment was ever ratified through the convention method—the 21st Amendment repealing prohibition. The remaining 26 amendments were proposed by Congress and ratified by state legislatures. Thomas Jefferson believed that the drafters made the amendment process too difficult, that every generation ought to be able to easily transform its government. Madison, however, did not want the nation’s fundamental charter to be vulnerable to momentary prejudices and passions. Finally, it should be noted that the president plays no role in the amending process, and that ordinarily both levels of government—state and federal—must approve.

**Amendment overview**—There are 27 amendments to the Constitution. The first ten, known as the Bill of Rights, were added on the same day in December, 1791. The next 17 were ratified over the course of 200 years. The last amendment—which has a bizarre history (see sidebar on reverse: Madison’s Lost Amendment)—became effective in 1992. The amendments can be loosely classified into three subject categories: (1) amendments expanding the peoples’ rights and liberties; (2) amendments altering the structure of government; (3) amendments making social policy (see sidebar).

**Amendments expanding rights and liberties**—The main body of the Constitution contains a few important rights, such as the right to trial by jury in criminal cases. However, the delegates voted against including a “bill of rights” or comprehensive listing of rights. This is somewhat surprising since most of the Founders were strong rights advocates. There are several possible explanations. First, some Founders believed that a bill of rights was simply unnecessary because state constitutions already had them, and the national government was being given only limited domestic powers. Second, the delegates would have had difficulty drafting a national bill of rights. For example, slavery was a divisive issue then, just as it was 70 years later. Finally, the Founders considered the issue at the end of the Convention when the delegates were exhausted and anxious to wrap up.<sup>1</sup> Whatever the explanation, the omission of a bill of rights was a major blunder. The anti-Federalists seized upon it and made it the major rallying cry of their battle to defeat the Constitution. Ultimately, the Constitution was ratified only after its supporters promised to add a Bill of Rights as an amendment.

**(1) The Bill of Rights:** James Madison had a change of heart about the need for a bill of rights in early 1788. Perhaps Jefferson’s scolding got to him. Jefferson wrote on December 20, 1787, that “a bill of rights is what the people are entitled to against every government on earth, general or particular, & what no just government should refuse, or rest on inferences.”<sup>2</sup> When Madison was elected to the First Congress he worked tirelessly on a bill of rights. He eventually got the House of Representatives to pass 17 rights provisions, but the Senate whittled the list down to 12. In late 1789, these 12 were sent to the state legislatures for ratification. It took two years, and the states rejected the first two, but on December 15,

1791, the remaining proposals became the first ten amendments to the Constitution. These are collectively known as the Bill of Rights, although technically, only the first eight actually protect specific rights and liberties.

**(2) Other rights amendments:** The Civil War put an end to slavery, but it did not significantly improve the condition of former slaves. The 13th, 14th, and 15th amendments were added in the immediate aftermath of the War to rectify the situation. (Southern states were forced to ratify these amendments as a condition for ending Reconstruction and regaining control over their governments.) The 13th Amendment legally ended slavery. The 14th Amendment guaranteed full citizenship to state residents and required the states to treat all persons within its borders fairly and equitably. Although it was enacted to protect African-Americans, the broad language of the 14th Amendment has made it the Constitution's most important equality guarantee for *all* persons today. Finally, the 15th Amendment gave African-American males the right to vote. In fact, altogether there are five amendments in the Constitution dealing with the right to vote. When the country was first founded in 1789, only a small fraction of the population was eligible: Voting was largely restricted to white males over 21 who owned property. However, constitutional amendments have significantly expanded the franchise, making the United States a far more democratic nation. In addition to the 15th Amendment (1871), the 19th Amendment gave women the right to vote (1920); the 23rd gave residents of D.C. the right to vote in presidential elections (1961); the 24th prohibited taxes on voting—a ploy designed to exclude minorities and the poor (1964); and the 26th Amendment extended the right to vote in federal elections to 18-year olds (1971).

**Amendments altering government structure**—As the sidebar on the reverse indicates, nine amendments relate to the structure of government. Some, like the 12th and 25th amendments, were “fix-ups.” (The presidential election of 1800 exposed a serious flaw in the presidential election system that was corrected by the 12th, and the 25th amendment clarified presidential succession in the event of death or incapacity. President Reagan, who was shot, was the first to briefly invoke it on his way into the operating room.) Two amendments further “democratized” the country: The 17th Amendment, which was a project of the Progressive Movement, provided for the election of U.S. senators by the people. Prior to the adoption of the amendment 1913, senators were appointed by state governments. And the 22nd Amendment limited presidents to two full terms. This was adopted in 1951, shortly after Franklin Roosevelt won a record four times.

**Amendments affecting social policy**—In 1919, the country adopted the 18th Amendment which banned the manufacture, sale, and transportation of alcoholic beverages in the U.S. The country's experiment with Prohibition was a failure, and the amendment was repealed in 1933, leaving the issue of drinking up to the individual states. This is the only amendment that was ever repealed.

**Modern proposals**—Over 10,000 constitutional amendments have been introduced in Congress, but only 33 have ever passed the 2/3 vote requirement (see sidebar: Failed Amendments). It is obviously a difficult hurdle. It is not uncommon for more than 100 amendments to be introduced in single session. Many of these proposed amendments, such as bans on abortion and flag desecration, are introduced year-after-year. Others include amendments to: permit school prayer; protect the mention of “God” in the pledge of allegiance; allow naturalized citizens to become president (think Schwarzenegger); abolish the electoral college in favor of the direct election of president; restrict eminent domain; lower the minimum age for Congress to 21; bar same-sex marriage; restrict the president's pardon power in election years; require a balanced federal budget; limit the terms of federal judges; repeal income tax; impose term limits for members of Congress; require a super majority vote for bills that raise taxes; provide for presidential run-off elections if no candidate receives more than 50% of the vote; eliminate the death penalty, and more.

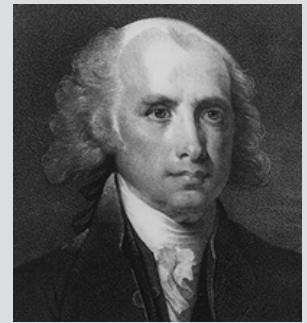
1. *Farrand's Records of the Federal Convention of 1787* (12 September, 1787).  
2. *Letter to James Madison*, 20 December 1787.

## FAILED AMENDMENTS

Six amendments were formally proposed by Congress, sent to the states, but never ratified:

- Congressional apportionment (1791)
- Revokes citizenship of those who accept foreign titles (1810)
- Prohibits a ban on slavery (1861)
- Allows Congress to ban child labor (1924)
- Bars discrimination based upon gender (1972)
- Gives D.C. voting representation in Congress (1978)

## MADISON'S LOST AMENDMENT



In the 1980s, Texas college student Gregory Watson learned of Madison's proposed amendment regarding congressional pay increases. (It was one of the original 12 amendments sent to the states in 1789, but not ratified.) Watson wrote a term paper arguing that the amendment could still be ratified. He got a “C.” But Watson began a letter-writing campaign to select state legislatures. (Congressional pay increases were a hot issue.) Slowly, the states began to approve the amendment as a protest. (Arizona became the 13th state to ratify in 1985—and it wasn't even a state when the amendment was proposed!) With Michigan's ratification in 1992, the requisite 38 states (3/4) had approved. Although some experts grumbled that it wasn't kosher—203 years was too long—the First Congress had not imposed any time limits. Thus, Madison's amendment is now the 27th Amendment to the Constitution. It provides that no congressional pay raise can take effect until after the next election—to prevent an obvious conflict of interest.

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