

# **We Can Change It, Right?: Amending the Constitution**

## **A Lesson to Accompany *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today***

### **Rationale:**

The Constitution is very difficult to amend.

Some states [agreed to] ratify the Constitution as long as the new Congress made adding amendments that guaranteed fundamental rights the first order of business. Congress did so, and ten amendments—later called the Bill of Rights—were quickly ratified in 1791.

Since then, only seventeen amendments have been added—and none since 1992.

To change the Constitution, you have to play offense, and the rules are complicated. So far, all amendments have been proposed by Congress, which involves getting support from two-thirds of the members of both the House and the Senate.

This is no small task. To adopt a proposed amendment by this method, you need 67 out of 100 senators plus 288 of the 435 members of the House of Representatives (assuming everyone is present and voting).

*Or*, if that seems too difficult, you could try to get two-thirds of the states to sign petitions and force Congress to call a new Constitutional Convention. No one knows where thirty-four of the fifty states or the Nebraska Unicameral have to agree on a particular issue. Congress has never called for a convention in this way, although what turned into the Seventeenth Amendment came close....

Let's say that, by one route or the other, your amendment is officially under consideration. Now it must be ratified. There are two ways to do that. Most likely you'll need the approval of both houses of the legislature in three quarters of the states. That amounts to at least seventy-five chambers in at least thirty-eight states.... Or Congress can designate state ratifying conventions as the method by which the amendment is voted on. Again, three-quarters of the states must approve<sup>1</sup>.

*These resources examine this complex and often difficult process, and challenge students to think about the impact of the Framers' decisions on the Constitution, the government, and life in the United States.*

### **Essential Questions:**

- To what extent does the amendment process slow or prevent the process of change in the United States government?
- Should it be easier to ratify constitutional amendments?
- To what extent is the amendment process a “fault line” in the Constitution?

### **Objectives: Students will be able to...**

- Describe Article V of the Constitution and the amendment process.
- Discuss the Bill of Rights, Reconstruction Amendments, and Progressive Era amendments and the reasons they were ratified.
- Explain the debate over the Equal Rights Amendment.
- Analyze the benefits and detriments of the amendment process.
- Evaluate the potential impact of the amendment process on the government and the nation.

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<sup>1</sup> Cynthia Levinson and Sanford Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd Edition (Atlanta: Peachtree Publishing Company, 2025), 257-259.

## **Common Core Standards:**

### **Middle School:**

#### *Key Ideas and Details:*

CCSS.ELA-LITERACY.RH.6-8.1

Cite specific textual evidence to support analysis of primary and secondary sources.

CCSS.ELA-LITERACY.RH.6-8.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary of the source distinct from prior knowledge or opinions.

#### *Integration of Knowledge and Ideas:*

CCSS.ELA-LITERACY.RH.6-8.7

Integrate visual information (e.g., in charts, graphs, photographs, videos, or maps) with other information in print and digital texts.

CCSS.ELA-LITERACY.RH.6-8.8

Distinguish among fact, opinion, and reasoned judgment in a text.

### **High School:**

#### *Key Ideas and Details:*

CCSS.ELA-LITERACY.RH.11-12.1

Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

CCSS.ELA-LITERACY.RH.11-12.2

Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.

CCSS.ELA-LITERACY.RH.11-12.3

Evaluate various explanations for actions or events and determine which explanation best accords with textual evidence, acknowledging where the text leaves matters uncertain.

#### *Integration of Knowledge and Ideas:*

CCSS.ELA-LITERACY.RH.11-12.7

Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.

CCSS.ELA-LITERACY.RH.11-12.8

Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.

CCSS.ELA-LITERACY.RH.11-12.9

Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

## RESOURCES

### I) The Amendment Process: A History

One of the fatal flaws of the Articles of Confederation was that it was practically impossible to amend: every state legislature had to agree to any change. Any state, whatever its size or population, could blackball a revision by vetoing it. It was partly because of that predicament that the Framers had started all over with a new Constitution in Philadelphia.

The first proposal for an amendment process relied on state legislatures to call for another convention. On the other hand, Alexander Hamilton of New York wanted the federal government to be in charge; he proposed giving only Congress the right to summon a convention.

James Madison of Virginia feared that conventioners might get carried away and undo all of the hard work the Framers had done during the previous four months. After all, the Framers had completely overturned the Articles, and it could happen again. After some debate, the Framers managed to concoct a more or less happy medium. Proposals for amendments could come up in two ways:

- ★ Congress could propose an amendment when two thirds of both houses saw the need.
- ★ Or two-thirds of the states could petition for a special convention.

But proposing amendments is only half the job. The other half is ratifying them.

Madison raised the ante with requirements for ratification, though not so high as requiring unanimity, as in the Articles. Amendment would be officially added to the Constitution (or clauses deleted from it) only after three-quarters of the states approved. This approval could come from either the states' legislatures or special state conventions, whichever Congress decided to require.

This compromise satisfied almost all the Framers. But a contentious issue remained. Worried that free states would quickly alter the Constitution to hinder slavery, John Rutledge of South Carolina added a provision: no amendment could allow Congress to ban the international slave trade before 1808. In addition, the Senate would always be composed of two senators per state unless every state in the union agreed to a change.

Madison viewed the decision for every state to have the same number of votes in the Senate as an "evil." But, as with protecting the slave trade for twenty years, he argued it was the price that had to be paid to get a constitution. Article V sealed the deal by making these concessions unamendable.

#### Source:

Levinson and Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd Edition, 254-256.

#### Questions:

- How did the Framers' experience under the Articles of Confederation influence their ideas about the amendment process in the Constitution?
- To what extent did the Framers' decisions about the amendment process perpetuate slavery to 1808 and beyond?

### II) The Constitution and the Amendment Process

## Article V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

### **III) The Framers' Thoughts on the Amendment Process**

#### ***The Federalist Papers No. 85 (Alexander Hamilton, 1788)***

But every amendment to the Constitution, if once established, would be a single proposition, and might be brought forward singly.... And consequently, whenever nine, or rather ten States, were united in the desire of a particular amendment, that amendment must infallibly take place. There can, therefore, be no comparison between the facility of affecting an amendment, and that of establishing in the first instance a complete Constitution.

...The intrinsic difficulty of governing thirteen States at any rate, independent of calculations upon an ordinary degree of public spirit and integrity, will, in my opinion constantly impose on the national rulers the necessity of a spirit of accommodation to the reasonable expectations of their constituents.... By the fifth article of the plan, the Congress will be obliged "on the application of the legislatures of two thirds of the States which at present amount to nine, to call a convention for proposing amendments, which shall be valid, to all intents and purposes, as part of the Constitution, when ratified by the legislatures of three fourths of the States, or by conventions in three fourths thereof." The words of this article are peremptory. The Congress "shall call a convention." Nothing in this particular is left to the discretion of that body. And of consequence, all the declamation about the disinclination to a change vanishes in air. Nor however difficult it may be supposed to unite two thirds or three fourths of the State legislatures, in amendments which may affect local interests, can there be any room to apprehend any such difficulty in a union on points which are merely relative to the general liberty or security of the people. We may safely rely on the disposition of the State legislatures to erect barriers against the encroachments of the national authority.

Source: [Avalon Project, Yale Law School](#)

#### **Questions:**

- **Based on Article V, how might an amendment be added to the Constitution?**
- **In your opinion, does this process seem too easy, fair, or too difficult? Why?**
- **According to Alexander Hamilton, how is the amendment process a check on national power?**

### **III) The Amendment Process in Context**

***Michael B. Rappaport & David A. Strauss, “Common Interpretation: Article V”***

...Article V spells out a few different ways in which the Constitution can be amended. One method—the one used for every amendment so far—is that Congress proposes an amendment to the states; the states must then decide whether to ratify the amendment. But in order for Congress to propose an amendment, two-thirds of each House of Congress must vote for it. And then three-quarters of the states must ratify the amendment before it is added to the Constitution. So if slightly more than one-third of the House of Representatives, *or* slightly more than one-third of the Senate, *or* thirteen out of the fifty states object to a proposal, it will not become an amendment by this route. In that way, a small minority of the country has the ability to prevent an amendment from being added to the Constitution.

The amendments to the Constitution have come in waves. The first twelve Amendments, including the Bill of Rights, were added by 1804. Then there were no amendments for more than half a century. In the wake of the Civil War, three important Amendments were added: the [Thirteenth](#) (outlawing slavery) in 1865, the [Fourteenth](#) (mainly protecting equal civil rights) in 1868, and the [Fifteenth](#) (forbidding racial discrimination in voting) in 1870. At the time, there were questions about whether those Amendments had been properly ratified by the states, because it was unclear whether the Confederate states—which had seceded from the Union—were part of the United States again. Today, though, no one doubts that those Amendments are part of the Constitution. After the Civil War Amendments, another forty-three years passed until the Constitution was amended again; then four more Amendments ([Sixteen](#) through [Nineteen](#)) were added between 1913 and 1920. Seven more amendments were adopted at pretty regular intervals between 1920 and 1971, but except for one very unusual amendment, there have been no amendments to the Constitution since 1971.

The unusual amendment is the [Twenty-Seventh Amendment](#). It was proposed with the original Bill of Rights, in 1789, and was ratified by a half-dozen states within a few years—and then mostly ignored. But Article V says nothing about the time period within which three-quarters of the states have to ratify a proposed amendment. From time to time, another state would add its ratification. Finally, in 1992, more than two hundred years after the Amendment was first proposed, the ratifications finally reached the three-quarters line, and the Twenty-Seventh Amendment has been considered part of the Constitution since then. For recent proposed amendments, though, Congress has specified that the amendment must be ratified within seven years or it would lapse, so this situation is unlikely to happen again.

But other issues might arise. For example, Article V says that an amendment that has been proposed to the states will become part of the Constitution if three-quarters of the states ratify it. What if a state ratifies quickly, but then, before many other states ratify, changes its mind and tries to rescind (that is, take back) its ratification—can a state do that? ...This kind of uncertainty might be very troubling—we might not know for sure whether a proposed amendment was part of the Constitution or not....

Source: [The National Constitution Center](#)

**Questions:**

- **To what extent does the amendment process give the minority power over the majority?**
- **Why do you think amendments tend to come in waves? How are amendments tied to historical events and eras?**

**V) The Amendments**

***A) The Bill of Rights (ratified December 15, 1791)***

*James Madison drafted the Bill of Rights to fulfill a promise to the states that rights and freedoms would be added to the Constitution upon ratification. Though hundreds of amendments were proposed, Congress ultimately approved twelve and sent them to the states for ratification in September 1789. The original [Joint Resolution of Congress proposing the Bill of Rights](#), in its original form, hangs in the rotunda of the National Archives Museum. Ten of the original twelve were ratified by the states.*

**First Amendment:** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

**Second Amendment:** A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

**Third Amendment:** No Soldier shall, in time of peace be quartered in any house, without the consent of the Owner; nor in time of war, but in a manner to be prescribed by law.

**Fourth Amendment:** The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

**Fifth Amendment:** No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

**Sixth Amendment:** In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed; which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defense.

**Seventh Amendment:** In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of common law.

**Eighth Amendment:** Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

**Ninth Amendment:** The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

**Tenth Amendment:** The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Source: [FindLaw](#)

### Questions:

- Why do you think these ten amendments were the first to make it through the ratification process?
- To what extent did the ratification of the Bill of Rights demonstrate the effectiveness of the amendment process?

### ***B) The Reconstruction Amendments***

### **Amendment XIII**

*Passed by Congress January 31, 1865. Ratified December 6, 1865. The 13th Amendment changed a portion of Article IV, Section 2.*

**SECTION. 1.** Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

**SECTION. 2.** Congress shall have power to enforce this article by appropriate legislation.

### **Amendment XIV**

*Passed by Congress June 13, 1866. Ratified July 9, 1868. The 14th Amendment changed a portion of Article I, Section 2. A portion of the 14th Amendment was changed by the 26th Amendment.*

**SECTION. 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**SECTION. 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election...is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced....

**SECTION. 3.** No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath...to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability....

### **Amendment XV**

*Passed by Congress February 26, 1869. Ratified February 3, 1870.*

**SECTION. 1.** The right of citizens of the United States 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.

**SECTION. 2.** The Congress shall have the power to enforce this article by appropriate legislation.

**Source:** [National Constitution Center](#)

### **Questions:**

- **To what extent did these amendments create change in the United States?**
- **In your opinion, would these amendments have been ratified if former Confederate states had been included in the required three-fourths of states?**

### C) Progressive Era Amendments

Activists and social reformers during the [Progressive Era](#) fought for the people to have a more significant say in the government and advocated for greater recognition of the issues that working class Americans faced. These Constitutional amendments are the product of their work and advocacy.

#### Amendment XVI

Passed by Congress July 2, 1909. Ratified February 3, 1913.

The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

#### Amendment XVII

Passed by Congress May 13, 1912. Ratified April 8, 1913.

Note: Article I, section 3, of the Constitution was modified by the 17th amendment.

The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures....



#### Amendment XVIII

Passed by Congress December 18, 1917. Ratified January 16, 1919. Repealed by amendment 21.

**Section 1.** After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited....

Image Source: [Ohio State University](#)

#### Amendment XIX

Passed by Congress June 4, 1919. Ratified August 18, 1920.

The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex....

Text Source: [National Archives](#)



Image Source: [National Park Service](#)

#### Questions:

- How do these amendments reflect the Progressive Era's goals?
- Why might the Progressive Era's spirit of reform have led to the introduction and ratification of four Constitutional amendments?
- In your opinion, does the passage of these amendments indicate that the amendment process works?

#### VI) The Equal Rights Amendment

***“Equality of rights under the law shall not be abridged by the United States or by any State on account of sex.”***

Phyllis Schlafly—mother, lawyer, political activist—had long felt not only incensed but also deeply concerned about this proposed Equal Right Amendment (ERA). It was worrisome enough that the ERA had passed both houses of Congress within a year—first in the House of Representatives in 1971 and then in the Senate in 1972....

Worst of all, by 1979, thirty-five states had approved the ERA. Thirty had done so in the first year—Hawaii only minutes after Congress adopted it! With support from only three more states, Schlafly feared that radical feminists, both women and their male supporters, would add their amendment to the Constitution.

Giving women all the same rights as men was a dangerous proposition, Schlafly believed, and the language in the ERA was vague about how far people might go. If equality was forced on women, they’d have to march into battle, share bathrooms with men, and allow their ex-husbands to get custody of their children and stop paying alimony. Government-funded childcare would encourage women to go to work and pay less attention to their families. Single sex organizations such as fraternities and sororities, Boy and Girl Scouts, and private schools and colleges would have to merge. Gay rights would be legalized....

[Schlafly’s] political opponents, especially the National Organization for Women (NOW), argued that the ERA was necessary to combat sex discrimination in the workplace, where women typically earned less and were awarded fewer promotions than men. It would also support women who were victims of sexual assault. Above all, they claimed, it would give women the same equal protection under the laws of the land that were granted to formerly enslaved people by the Fourteenth Amendment in 1868. So NOW revived the ERA, which had first been introduced in Congress in 1923 but had subsequently fallen into oblivion.

Schlafly predicted that, as a result of the ERA, women would actually end up less protected by the men in their lives than they had been before. To counteract these perils, she went on the defensive. She formed an organization in 1972, called STOP ERA. The first word stood for Stop Taking Our Privileges.

Schlafly had reason to believe her tactics were working. Initially even a majority of men had approved of the amendment. But support in the states had slowed considerably, and five states had even rescinded their ratification.

Beginning in 1918, Congress had usually placed seven-year time limits on the ratification of constitutional amendments, including the ERA. The legislation proposing the ERA was filed in 1971 and quickly passed in 1972. Proponents had until March 22, 1979 to round up the thirty-eight states necessary to ratify it. The problem was that NOW was demanding that Congress extend the deadline by three years to give them time to persuade another three states to sign on.

Schlafly was incensed and concerned: her opponents were relentless and might succeed. But she also knew she had the easier job. It’s harder to get an amendment adopted than stop one in its tracks....

Congress granted the ERA an extension until June 30, 1982; however, no additional states ratified the amendment.

**Source:** Levinson and Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd Edition, 252-254; 263.

#### **Questions:**

- **To what extent does the story of the ERA demonstrate how difficult it is to ratify an amendment?**
- **How do you think Schlafly and other ERA opponents used that difficulty to their advantage?**

*Sheryl Gay Stolberg, “[House Votes to Extend Deadline to Ratify Equal Rights Amendment](#),” The New York Times, February 13, 2020*

WASHINGTON — House Democrats on Thursday moved to enshrine the decades-old Equal Rights Amendment into the Constitution, reviving a long-simmering cultural debate over whether the nation’s founding charter should guarantee equal rights to all citizens regardless of sex.

But the vote, to extend a deadline for ratification that expired in 1982, was largely symbolic. Senator Mitch McConnell, the majority leader, has said he is “not a supporter” of the measure — [known as the E.R.A.](#) — and is highly unlikely to take it up in the Senate....

The amendment is also mired in lawsuits. The attorneys general of Alabama, Louisiana and South Dakota [filed suit in December](#) opposing ratification. But the attorneys general of Virginia, Nevada and Illinois filed [suit last month to force](#) the amendment to be added to the Constitution.

Thursday’s House vote came 100 years after women won the right to vote, and 48 years after Congress first approved the E.R.A. in 1972, setting a deadline of 1979 for ratification. When only 35 states had ratified it by 1979, Congress extended the deadline to 1982. But that deadline, too, passed with just 35 states — three short of the required 38 — having voted to ratify the amendment, amid an intense campaign led by [Phyllis Schlafly](#), a proudly anti-feminist Republican to block it.

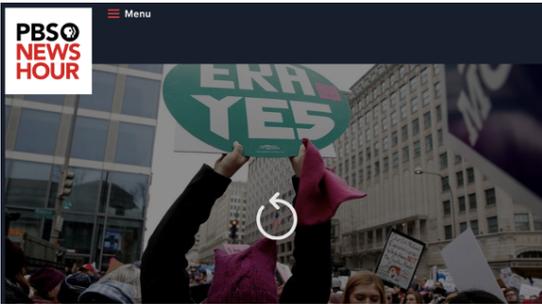
But in recent years, the movement gained steam again. Nevada voted to ratify the amendment in 2017, followed by Illinois in 2018. Last month, Virginia became the 38th state, which prompted Thursday’s move to approve the deadline extension. It passed by a vote of 232-183, almost entirely along party lines....

“Millions of American women still face inequality under the law and injustice in their careers and lives,” Speaker Nancy Pelosi said in a speech before the vote. “It’s not just about women, it’s about America. The E.R.A. will strengthen America, unleashing the full power of women in our economy and upholding the value of equality in our democracy.”

The bill does have bipartisan backing in the Senate, where it is sponsored by Senators Lisa Murkowski, Republican of Alaska, and Ben Cardin, Democrat of Maryland.

Republican opponents argued the amendment is unnecessary, because the 14th Amendment already guarantees equal treatment for all citizens under the law. They noted that five states — Nebraska, Tennessee, Idaho, Kentucky and South Dakota — had tried to rescind their ratification votes in the 1970s....

*“With Virginia Ratification, Where Does the Equal Rights Amendment Go From Here?” PBS NewsHour, January 16, 2020*



[Video and transcript available here](#)

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### [Statement from President Joe Biden on the Equal Rights Amendment, January 17, 2025](#)

I have supported the Equal Rights Amendment for more than 50 years, and I have long been clear that no one should be discriminated against based on their sex. We, as a nation, must affirm and protect women’s full equality once and for all.

On January 27, 2020, the Commonwealth of Virginia became the 38th state to ratify the Equal Rights Amendment. The American Bar Association (ABA) has recognized that the Equal Rights Amendment has cleared all necessary hurdles to be formally added to the Constitution as the 28th Amendment. I agree with the ABA and with leading legal constitutional scholars that the Equal Rights Amendment has become part of our Constitution.

It is long past time to recognize the will of the American people. In keeping with my oath and duty to Constitution and country, I affirm what I believe and what three-fourths of the states have ratified: the 28th Amendment is the law of the land, guaranteeing all Americans equal rights and protections under the law regardless of their sex.

*\*Biden’s pronouncement did not lead to a change in the Constitution.*

### Questions:

- **What is the current status of the Equal Rights Amendment?**
- **What conclusions can you draw about the amendment process based on your knowledge of the ERA?**

## VII) The 27<sup>th</sup> Amendment

### Amendment XXVII

*Originally proposed Sept. 25, 1789. Ratified May 7, 1992.*

No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

#### *The Term Paper Amendment*

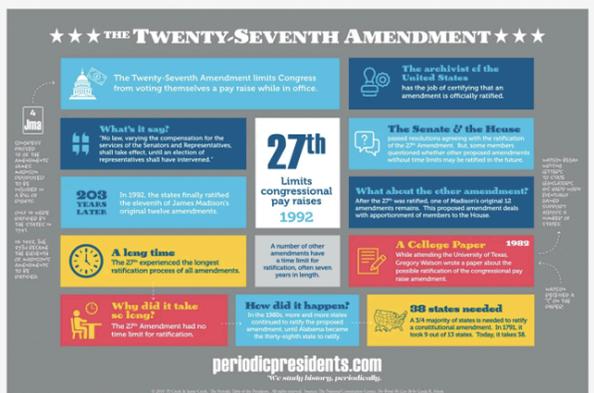
The Twenty-Seventh Amendment says that when Congress votes to give its members a raise, they will not receive it until the following term. The point is to discourage congresspeople from raising their own salaries as soon as they're elected. This was originally the second of twelve proposed amendments, ten of which became the Bill of Rights. James Madison introduced it in 1789, but it was not approved.

Hadn't the proposal died? Nope. In 1982, Gregory Watson, a student at the University of Texas at Austin who was researching a term paper, found a reference to this nearly forgotten proposal in a dusty library book. He abandoned his original topic—the Equal Rights Amendment—and wrote about congressional salaries instead. But he didn't stop there.

Watson started a letter writing campaign—typewritten letters, since personal computers and the internet didn't exist yet—to drum up support around the country to pass this amendment. For the next ten years, he said, he “would eat, drink, sleep and breath [*sic*] the ratification of the amendment.” He succeeded, and Michigan became the thirty-eighth state to ratify it in May 1992.

Watson had received a grade of C on his paper for his fanciful suggestion that Madison's idea could still be ratified 193 years later. But you could say that he got an A for Amendment in real life. In fact, in 2017, his professor, Sharon Waite, changed his grade to A+.

**Sources:** *Text:* Levinson and Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd Edition, 257; *Graphic:* [Periodic Presidents](http://periodicpresidents.com)



Watch this [video from the Washington Post](#)

#### Questions:

- How is the 27<sup>th</sup> amendment's path from proposal to ratification different from other amendments?
- What questions might this raise about the amendment process?

## VIII) Proposed, Not Ratified: Amendments You Won't See in the Constitution (Yet)

Close to twelve thousand amendments to the Constitution have been proposed. A few would: prohibit anyone involved in a duel from holding federal office; choose the president by lot; prevent bankers from serving in Congress; expel members of Congress who miss more than 40 percent of roll call votes on bills; and make Christianity the official religion of the United States.

**Source:** Levinson and Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd Edition, 255.

### Proposals approved by Congress include...

#### [Apportionment Amendment \(1789\)](#)

After the first enumeration required by the first article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred; after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

#### [Citizenship and Foreign Titles Amendment \(1810\)](#)

If any citizen of the United States shall accept, claim, receive or retain any title of nobility or honour, or shall, without the consent of Congress, accept and retain any present, pension, office or emolument of any kind whatever, from any emperor, king, prince or foreign power, such person shall cease to be a citizen of the United States, and shall be incapable of holding any office of trust or profit under them, or either of them.

#### [Article Thirteen \(Corwin Amendment\) \(1861\)](#)

No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State.

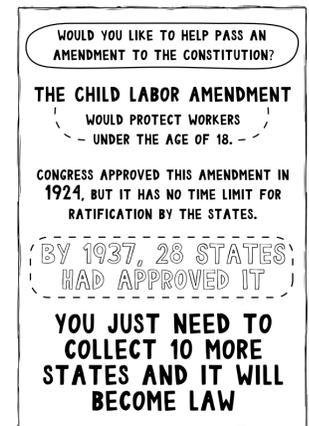
#### [Child Labor Amendment \(1924\)](#)

**Article--Section 1.** The Congress shall have power to limit, regulate, and prohibit the labor of persons under eighteen years of age.

**Section 2.** The power of the several States is unimpaired by this article except that the operation of State laws shall be suspended to the extent necessary to give effect to legislation enacted by the Congress.

#### [Representation for Washington, D.C. \(1978\)](#)

**Article--Section 1.** For purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State....



**Sources:** *Text:* "Pieces of History: Unratified Amendments" (National Archives); *Graphic:* Levinson and Levinson, *Fault Lines in the Constitution: The Framers, Their Fights, and the Flaws That Affect Us Today*, 3rd Edition, 258.

### Questions:

- Why might Congress have passed these amendments, and not thousands of others?
- Which, if any, of these amendments do you think states SHOULD have ratified?

## Note Catcher

*Directions:* Students will fill in the following chart as they read/watch/view the resources and form opinions about the amendment process.

|  |   |
|--|---|
| <p><b>Steps to ratify a constitutional amendment:</b></p> <ol style="list-style-type: none"><li>1. Congress can propose...</li><li>2. State legislatures can propose...</li><li>3. Three-fourths of state legislatures...</li><li>4. Three-fourths of state ratifying conventions...</li></ol> | <p><b>Choose three (3) amendments, and state why they were or were not ratified:</b></p> <ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li></ol>                   |
| <p><b>I think that the amendment process helps the Constitution and the country because...</b></p> <ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li></ol>  | <p><b>I think that the amendment process can be harmful to the Constitution and country because...</b></p> <ol style="list-style-type: none"><li>1.</li><li>2.</li><li>3.</li></ol> |

## Activities

### Activity #1: Create an Amendment

In this activity, students will have a chance to draft an amendment they would like to see in the Constitution and see if they can convince the “states” (aka their classmates) to ratify it!

*Students will:*

1. Write\* an amendment to the Constitution.
2. Propose their amendment to their classmates.
3. Answer their classmates’ questions about the amendment as they debate ratification.
4. For each proposed amendment, the class will deliberate. Amendments are ratified if three-fourths of the class approves.

*\*Students can present their amendments orally or visually if they prefer.*

This activity can be done as a full class activity or in smaller groups, depending on class size. Students may have the option to work individually, in pairs, or in small groups to create their amendments. Teachers can decide if the amendment applies to the federal government or something within the students’ school/community.

After all of the amendments are proposed and debated, the class should consider (in a discussion/assessment/exit ticket):

- Why do you think some amendments were ratified and others were not? Explain with specific examples.
- Was it difficult to convince three-fourths of your classmates to ratify your amendment? Why or why not?
- Why might it be difficult to get three-fourths of the states to agree to ratify an amendment to the Constitution?
- Should the Framers have made it easier/harder to ratify an amendment, or is it “just right”? Why?

## Activity #2:

Using the resources and their note catchers, students will:

- Choose an amendment in the U.S. Constitution OR a proposed amendment that was not ratified\*\*
- Investigate its path to ratification/failure to ratify, including
  - When was it first proposed?
  - Why was it first proposed?
  - Did it initially pass Congress by a lot of votes?
  - How long did it take for three-fourths of the states to ratify? (if applicable)
- *For ratified amendments*: Did this amendment create meaningful change in the United States?
- What conclusions can you draw about the amendment process based on the story behind this particular amendment?

*\*\*Teachers can decide if you want to give students this choice.*

Students can fulfill this assignment in one of the following ways\*\*\*: essay; newspaper editorial or letter to the editor; TED Talk-style (*written or oral*); speech (*in class or recorded on video*); PowerPoint presentation/ Google slides; captioned illustration; song (*performed or recorded on video*); poem; mock social media posts/exchange; or iMovie. (*Other presentation methods at the teacher's discretion.*)

All work must meet the following requirements:

- Clearly describe the (proposed) amendment's path and state conclusions about the amendment process.
- Thoughtfully respond to all questions/prompts.
- Use evidence from the resources to support claims.
- Acknowledge multiple perspectives, where appropriate.
- Reference past events and current issues.
- Evaluate information to draw an original conclusion.
- Remain focused on the topic and task assigned.

\*\*\*The recommended activities refer to work students will complete independently. Teachers may also choose to use this information to prepare students for a debate, Socratic seminar, jigsaw, or any other large group activity where circumstances allow.

**Activity #3:**

In Chapter 22 of *Fault Lines in the Constitution* Cynthia and Sanford Levinson grade the Constitution based on the way that it fulfills the goals asserted in the Preamble:

*We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.*

The authors divide their report card into the following categories--form a more perfect union; establish justice; insure domestic tranquility; provide for the common defense; promote the general welfare; secure the blessings of liberty to ourselves and our posterity—and assign composite grades based on the various aspects of the Constitution they evaluate in their book.

After studying the amendment process and its application, including the material in *Fault Lines* and outside sources, it's your turn to grade the Constitution! Based on what you learned and the ideas you formed about the amendment process, please grade the Constitution in the following categories. Don't forget to add comments!

**The Constitution's Report Card**

| Subject  | Grade | Comments |
|--|-------|----------|
| Form a More Perfect Union                                  |       |          |
| Establish Justice  |       |          |
| Insure Domestic Tranquility                                |       |          |
| Provide for the Common Defense                             |       |          |
| Promote the General Welfare                                |       |          |
| Secure Blessings of Liberty to Ourselves and Our Posterity |       |          |
| <b>AVERAGE</b>   |       |          |