

3.2

Amending the Constitution



As a Young Political Scientist, I will be able to...

- Describe the constitutionally prescribed procedures by which the Constitution may be formally changed.
- Explain how the formal amendment process illustrates the principles of federalism and popular sovereignty.
- Understand the 27 amendments that have been added to the Constitution, and that several amendments have been proposed but not ratified.
- Identify how basic legislation has added to our understanding of the Constitution over time.
- Analyze how interpretation of the Constitution has changed over the years through the actions of the executive and judicial branches, and by party practices and customs.

How has the Constitution Endured?

The Constitution has had words changed, eliminated, added, & meanings have been modified.

One of these ways we change the Constitution is by creating an **amendment**- changes in its written words

The background of the slide is a close-up, artistic rendering of the American flag. The stars in the upper left are prominent, and the stripes flow across the bottom. The colors are slightly muted and painterly.

Methods of Formal Amendment

There are 2 methods for the proposal, & 2 for the **ratification**, agreement & implementation.

So we have 4 methods of **formal amendment**-
changes or additions that become part of the
Constitution itself.

What Are Those 4 Methods?

First- Proposed by $\frac{2}{3}$ vote in both houses of Congress & ratified by $\frac{3}{4}$ of the State legislatures

Second- Proposed by Congress & ratified by conventions in $\frac{3}{4}$ of the States.

Third- A National Convention called by Congress at the request of $\frac{2}{3}$ of the State Legislatures, then ratified by those states.

Fourth- Proposed by a national convention & then ratified by conventions in $\frac{3}{4}$ ths of the States

The background of the entire slide is a close-up, slightly blurred image of the American flag, showing the stars and stripes in warm, golden tones.

Federalism & Popular Sovereignty

The amended Constitution is the will of the people!

Hawke V. Smith- The 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.

Kimble V Swackhamer- State legislature can call for an advisory vote by people

Proposing an Amendment

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

A proposition for an amendment does not need to go to the President because it is not making a law.

Of 12,000 joint resolutions for an amendment, only 33 have been sent to the States & only 27 have been ratified.

Congress proposes an amendment & it must be ratified within a “reasonable time-limit”

Unratified Proposed Amendments

| DATE | PURPOSE | STATUS |
|------|---|--|
| 1789 | To set mandates for the distribution of seats in the House of Representatives | Unratified |
| 1810 | To void the citizenship of anyone accepting any foreign title or other honor | Approved by 12 states in 1812; unratified |
| 1861 | To prohibit forever any amendment relating to slavery | Approved by 2 States; unratified (the 13th Amendment abolished slavery) |
| 1924 | To give Congress the power to regulate child labor | Approved by 28 States; unratified |
| 1972 | To give equal rights to women (ERA) | Approved by 35 States; deadline extended beyond the seven-year limit to 1982; unratified |
| 1978 | To grant the District of Columbia representation in Congress | Approved by 16 States; unratified |

SOURCE: Authenticated U.S. Government Information, Proposed Amendments Not Ratified by the States; Library of Congress, Ratification of Amendments to the U.S. Constitution, David C. Huckabee

Many proposed amendments fall short of the 38 State approval requirement for ratification. Analyze Charts How might the number of States approving each amendment reflect society at that time?

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Change By Other Means

Our Constitution is created almost as an outline that is purposely left vague to create debate & interpretation

There are 5 key ways through which the constitution is changed by other means other than amendments!

1. Basic Legislation

There are two ways that Congress can do this!

First, passages of a number of laws to clarify several of the Constitution's brief provisions

Second, by way Congress uses its powers to define words in the Constitution

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2. Executive Action

The President exercises his power to make changes, such as being Commander in Chief.

Executive Agreement- Pact made by the President directly with the head of a foreign state.

Treaty- Formal agreement between two or more sovereign states.

3. Court Decisions

Marbury V. Madison- States & Federal courts can strike down laws that are “unconstitutional”

The Supreme Court holds judicial review & can declare what is and is not constitutional!

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4. Party Practices

Political parties can shape the Constitution, even though the Framers were opposed to them.

Parties choose candidates, something not expressed in the Constitution.

The Electoral College- the body that makes the formal selection of the nation's President.

5. Custom & Usage

Changes developed by custom rather than written law.

Such as the **Cabinet- an advisory body to the President.**

****Senatorial Courtesy**- An unwritten rule followed closely by the Senate.**

***Such as the order of who takes the Presidency in emergency before we had an amendment.**