

Amendment Process



- ✓ Our Constitution is also known as the Supreme Law of Land
 - ✓ Supremacy Clause of the Constitution
- ✓ It is also seen as a flexible or “living document”
 - ✓ WHAT DOES THAT MEAN?

What are Amendments



- ✓ Amendments are written changes to the Constitution
- ✓ They keep the Constitution “updated”
- ✓ There are currently 27 Amendments

The Amendment Process



✓ Step 1: PROPOSAL

- ✓ 2/3 vote in both houses of CONGRESS

 - ✓ 320 of 535 members of Congress

- ✓ 2/3 of the states can ask Congress to call a national convention to propose an amendment

 - ✓ 34 of 50 States

 - ✓ This “option” has never been used

The Amendment Process



✓ Step 2: RATIFICATION

- ✓ After the amendment is proposed, it must be ratified
- ✓ Ratified = APPROVED
- ✓ 3/4 of the states must RATIFY the amendment
 - ✓ 38 of the 50 States

The Amendment Process



✓ RATIFICATION CONTINUED-

✓ There are two ways to ratify an amendment:

1. State legislatures can ratify

✓ 26 of the 27 amendments have been approved in this way

2. State conventions can ratify

✓ Only used once (21st)

The Amendment Process



✓ Step 3: REPEALED

- ✓ An amendment can be repealed
- ✓ Repealed = cancelled
- ✓ Amendments are repealed if citizens do not like the effects of the amendment
- ✓ ONLY ONE AMENDMENT HAS BEEN REPEALED TO DATE

Which amendment has been repealed? Why?

The Amendment Process



- ✓ Step 1: Proposal
- ✓ Step 2: Ratify
- ✓ Step 3: Repeal (if necessary)

Interesting Facts



- ✓ Congress placed a time limit of 7 years for a bill to be approved as an amendment
- ✓ Presidents play NO ROLE in the Amendment Process
 - ✓ He cannot veto an amendment either
- ✓ Amendments are ratified on average every 15 years

Examples of Proposed Amendments



2003-04

- ✓ To guarantee the right to use the word "God" in the **Pledge of Allegiance** and the national motto;
- ✓ to restrict marriage in all states to be between a man and a woman;

2001-2002

- ✓ To repeal the **8th Amendment**
- ✓ a right to "equal high quality" health care;
- ✓ to limit Presidential pardons
- ✓ to allow for any person of age, regardless of birth, who has been a citizen of the United States for 20 years or more to be eligible for the presidency.

Proposed Amendments (yet failed state ratification)

- ✓ 1926: Congress can limit, regulate and prohibit child labor of persons under 18 years of age.
- ✓ 1972: Women and men should be seen as equals under the law.
- ✓ 1978: Would grant citizens of Washington, D.C., the same full representation in Congress as any state.

Amendments to the US Constitution



1-27

Bill of Rights



- ✓ *Amendment I*

- ✓ *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.*

- ✓ *Amendment II*

- ✓ *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.*

- ✓ *Amendment III*

- ✓ *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.*

Bill of Rights



- ✓ *Amendment IV*


- ✓ *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.*

- ✓ *Amendment V*

- ✓ *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 offense 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.*

Bill of Rights

- ✓ Amendment VI

- ✓  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.

- ✓ Amendment VII

- ✓ 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 the common law.

Bill of Rights



- ✓ Amendment VIII

- ✓ Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

- ✓ Amendment IX

- ✓ The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

- ✓ Amendment X

- ✓ 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.

Amendments 1-5

Amendment I – Freedom of Religion, Speech and the Press;
Rights of Assembly and Petition.

Amendment II -Right to Bear Arms

Prohibits only the national government from limiting the right to carry weapons. The amendment was adopted so that Congress could not disarm a state militia.

Amendment III – Housing of Soldiers

Grew directly out of an old complaint against the British, who had forced people to take soldiers into their homes.

Amendment IV – Search and Seizure

Does NOT forbid authorities to search, to seize goods, or arrest people. Most cases require a search warrant from a judge. Supreme Court held that evidence obtained in violation of the 4th Amendment may not be admitted in a criminal trial.

Amendment V - Rights in Criminal Cases (Self-incrimination, Double Jeopardy, Due Process, Just Compensation) *grants due process in federal cases

Nebraska Laws



- ✓ 4th 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.
- ✓ 5th 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 offense 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.
 - ✓ Miranda Warning: Law enforcement must give Miranda warnings if want to interrogate someone, not to arrest them.

Amendments 6-10

Amendment VI- Rights to a Fair Trial (Speedy and Public Trial by Jury*, Tried in state where crime was committed, Informed of charges against accused, Witnesses, Right to a lawyer)

*Criminal cases

Amendment VII- Rights in Civil Cases (Trial by jury in civil cases over \$20)

7th Amendment only applies to FEDERAL courts, but most state constitutions also call for jury trials in civil cases.

Amendment VIII – Bails, Fines and Punishments

Bails, fines and punishments must be humane. (In 1972 in *Furman v. Georgia*, Supreme Court held that the death penalty was cruel and unusual punishment because it was not applied fairly and uniformly. Many states adopted new capital punishment laws...Court ruled certain standards are applied)

Amendment IX – Rights Retained by the People

Some feared that the listing of some rights in the Bill of Rights would be interpreted to mean that other rights not listed were not protected. 9th was adopted to prevent such an interpretation.

Amendment X – Powers Retained by the States and the People

Confirms that the states or people have all powers not given to national government. (ie: marriage)

Amendments 11-15

Amendment XI – Lawsuits Against States

It is impossible for the citizen of one state to sue another state. (So, you can't sue Hawaii) But, a person still has the right to sue state authorities in federal court for depriving them of const. rights.

Amendment XII – Election of President and Vice President

(1804) Provides that members of the electoral college (called electors), vote for one person as president and one person as vice president. (1800 election was a tie –T. Jefferson, A. Burr-used to be that the top vote-getter was pres. and 2nd place was the v.p.)

Amendment XIII – Abolition of Slavery

(December 6, 1865) “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist in the U.S., or any place subject to their jurisdiction.” (section 1)

Amendment XIV- Civil Rights

(1868) “All persons born or naturalized in the U.S. and subject to the jurisdiction thereof, are citizens of the U.S. 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 U.S.; 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 1)

*Refers to STATE governments, right to state due process (5th amendment: federal due process)

Amendment XV – African American Suffrage

(1870) “The rights of citizens of the U.S. to vote shall not be denied or abridged by the U.S, or by any state on account of race, color, or previous condition of servitude.” (does not specifically say African Americans must be allowed to vote, but a voter cannot be denied because of race)

*note that there is no mention of gender...

Amendments 16-20

Amendment XVI – Income Taxes

Congress has the power to lay and collect taxes on incomes

Amendment XVII- Direct Election of Senators

The states have the power to directly elect senators to represent them. (before this, the state legislature decided who the senators were)

Amendment XVIII- Prohibition of Liquor

(1919) Forbade people to make, sell, or transport liquor. (think of bootleggers and the MOB...)

*This was obviously repealed (taken back)

Amendment XIX- Women's Suffrage

(1920 “The right of citizens of the U.S. to vote shall not be denied or abridged by the U.S. or by any state on account of sex.” (Amendments giving women the right to vote were introduced in Congress for more than 40 years before this one was passed)

Amendment XX- Terms of President and Congress

Moves the date that newly elected presidents and members of Congress take office close to election time. President: January 20th, Congress: January 3rd

(called the *lame duck amendment*-a lame duck is a government official who continues to serve in office though not reelected to another term. Before this, officials remained in office for 4 months)

Amendment XXI-Repeal of Prohibition
(1933) Repeals the 18th amendment.

Amendments 21-25

Amendment XXII- Limitation of Presidents to Two Terms

No person can be elected president more than twice. No one who has served as president for more than two years of someone else's term can be elected more than once.

Amendment XXIII- Suffrage in the District of Columbia

Allows citizens of Washington D.C. to vote in the presidential elections. However, they cannot vote for members of Congress.

Amendment XXIV-Poll Taxes

(1964) Forbids making voters pay a *poll tax* before they can vote in a national election. (Forbidden by the 14th amendment. Comes from the old English word *poll*, meaning head) Some states once used these to keep poor people and African Americans from voting.

Amendment XXV- Presidential Disability and Succession

(1967) If president is removed, dies, or is resigns, the vice president becomes president. The president fulfills a vice president vacancy, by a majority vote of both Houses of Congress.

(Gerald Ford-1973- became 1st v.p. appointed this way. Ford nominated by Nixon, when v.p. Agnew resigned. Nixon resigned in 1974 and Ford became president. Then, Nelson Rockefeller became v.p. and this was the 1st time neither official had been elected.)

Amendments 26 & 27



Amendment XXVI- Suffrage for 18-Year-Olds!

(1971) “The right of citizens of the U.S., who are eighteen year of age or older, to vote shall not be denied or abridged by the U.S. or by any state on account of age.”

Amendment XXVII- Congressional Pay Raises

Any increase in congressional pay does not go into effect until after the next regular election of the House of Representatives.

Thompson Scenario

- ✓ Thompson is suspected of running a counterfeiting operation out of his garage. The garage is attached to the dwelling. Without a warrant, three officers step onto his curtilage, shine a flashlight into the garage, and take a quick look. They observe a number of what appear to be \$100 bills hanging from a clothesline. With this observation, they attempt to secure a warrant. Their request for a search warrant should be...
- 1. Denied, because the officers intruded on a location where Thompson had a reasonable expectation of privacy without either a warrant or an exception to the 4th Amendment
- 2. Denied, because the use of a flashlight violated Thompson's reasonable expectation of privacy.
- 3. Granted, because the garage does not have curtilage, in that it is not a dwelling
- 4. Granted, because the garage itself was not within the curtilage of Thompson's dwelling

Wooster Scenario

- ✓ Agents develop reasonable suspicion that Wooster is operating a stolen credit card ring. Upon seeing Wooster driving in his car one afternoon, the agents follow him. When he arrives at a shopping mall, the agents approach him, identify themselves, and tell him to put his hands on his automobile. One of the agents frisks him and, in the upper left hand pocket, feels what is immediately apparent to him as a stack of credit cards bound by a rubber band. The agent removes the credit cards and, ultimately, determines that they are stolen. Wooster's motion to suppress the credit cards will be...
- 1. Denied, b/c agents had reasonable suspicion of criminal activity.
- 2. Denied, b/c the agents had probable cause to remove the cards from his pocket under the "plain touch" doctrine.
- 3. Granted, b/c the agents performed an illegal "frisk" of Wooster
- 4. Granted, b/c a "frisk" may result only in the discovery of weapons on a suspect.

Johnson Scenario

- ✓ Johnson is arrested for drunk driving and failing to pay child support. He agrees to share information with the police to avoid prosecution. Having been personally involved in every aspect of an ongoing stolen paycheck operation, Johnson explained the intimate details to the police of what he saw and did with Fred, a co-criminal. Based on his statements alone, the officers seek a search warrant for the co-criminal's premises where Johnson stated he saw many of the stolen checks the day before. The application for a search warrant will be...
 1. Granted, b/c Johnson's statements amount to probable cause and the officers can meet the Aguilar standard.
 2. Granted, b/c Johnson has never provided false information to the officers in the past.
 3. Denied, b/c the officers did not corroborate Johnson's statements.
 4. Denied, b/c there is no probable cause.

Sweeney Scenario

- ✓ An officer is walking down a public sidewalk in the early evening hours, just after dark. Glancing in the direction of Sweeney's home, the officer notices that, while Sweeney has drawn the curtains in the front window, there is a gap through which the officer sees what he knows to be a large marijuana plant. The following morning, based solely upon this information, the officer seeks a search warrant for Sweeney's home. The request for a search warrant will be...
- 1. Granted, b/c the officer could have entered the home the previous evening under the "exigent circumstances" exception to the warrant requirement, and seeking a warrant is nothing more than a court order of the "exigent circumstances" exception.
- 2. Granted, b/c the officer did not violate Sweeney's reasonable expectation of privacy in making the observation on which the search warrant will be based
- 3. Denied, b/c the officer's view into Sweeney's home amounted to an intrusion into a location where Sweeney had a reasonable expectation of privacy without either a warrant or an exception to the warrant requirement.
- 4. Denied, b/c the officer had no reason to look into Sweeney's home; the observation alone did not amount to probable cause; and the officer did not enter the home at the moment she made the observation.

Marsh Scenario

- ✓ Marsh checked a suitcase at the airline counter and got onto an airplane. Before the suitcase was placed on the airplane, it was sniffed by a drug detection dog. The dog indicated that drugs were located inside which established probable cause to search the suitcase. With this knowledge, two DEA agents entered the airplane, approached Marsh, identified themselves, and asked him if they could look in the suitcase he had checked at the counter. Marsh stated, “Im not traveling with a suitcase.” Because the plane wasn’t scheduled to take off for an hour (and Marsh didn’t think he would miss the plane), Marsh voluntarily agreed to accompany the agents to the suitcase, was shown the suitcase, and was asked if they could open it. Again, Marsh denied ever seeing the suitcase. The agents opened the suitcase and discovered contraband inside. At trial, the contraband should the suitcase. The agents opened the suitcase and discovered contraband inside. At trail, the contraband should be...
- 1. Admitted, b/c the officers had probable cause to search the suitcase
- 2. Admitted, b/c Marsh abandoned the suitcase
- 3. Suppressed, b/c the officers violated Marsh’s reasonable expectation of privacy.
- 4. Suppressed, b/c the officers did not get a valid consent.

Perry Scenario

- ✓ Perry is a paid police informant and has provided reliable information to officers on seven out of seven occasions. On January 7, 2000, Perry personally witnessed four personal-use drug transactions take place in Joe Clark's apartment. On November 28, 2000, Perry tells the officer