

THE CONSTITUTION

5. What is the Constitution?

The Constitution is the basic and supreme law of the United States. It prescribes the structure of the U.S. Government, provides the legal foundation on which all its actions must rest, and enumerates and guarantees the rights due all its citizens.

The Constitution is a document prepared by a convention of delegates from 12 of the 13 States that met at Philadelphia in 1787. The original charter, which replaced the Articles of Confederation and which became operative in 1789, established the United States as a federal union of States, a representative democracy within a republic. The framers provided a Government of three independent branches. The first is the legislature, which comprises a two-house or bicameral Congress consisting of a Senate, whose Members are apportioned equally among the States, and a House of Representatives, whose Members are apportioned among the States according to population. The second, the executive branch, includes the President and Vice President and all subordinate officials of the executive departments and executive agencies. The third branch, the judiciary, consists of the Supreme Court and various subordinate Federal courts created by public law.

The 27 amendments approved since 1791 are also considered an integral part of the Constitution. These include amendments 1 through 10, known collectively as the Bill of Rights, and amendments 11 through 27, which address a wide range of subjects. At the present time, four amendments without ratification deadlines are pending before the States. These deal with congressional apportionment, child labor, titles of nobility from foreign powers, and certain States rights (in a pre-Civil War proposal). The ratification deadlines expired on two recently proposed amendments, which had been approved by Congress; i.e., equal rights for women and men and voting representation for the District of Columbia in the Senate and House.

6. What were the basic principles on which the Constitution was framed?

The framers of the Constitution debated and agreed to the following six basic principles:

1. That all States would be equal. The National Government cannot give special privileges to one State.

2. That there should be three branches of Government—one to make the laws, another to execute them, and a third to interpret them.

3. That the Government is a government of laws, not of men. No one is above the law. No officer of the Government can use authority unless and except as the Constitution or public law permits.

4. That all men are equal before the law and that anyone, rich or poor, can demand the protection of the law.

5. That the people can change the authority of the Government by changing (amending) the Constitution. (One such change provided for the election of Senators by direct popular vote instead of by State legislatures).

6. That the Constitution, the Acts of Congress, and the treaties of the United States are the highest law in the land.

7. What is the Bill of Rights?

The Bill of Rights is a series of prohibitions on the enactment by Congress of laws infringing certain rights.

The first 10 amendments to the Constitution, ratified by the required number of States on December 15, 1791, are commonly referred to as the Bill of Rights. The first eight amendments set out or enumerate the substantive and procedural individual rights associated with that description. The 9th and 10th amendments are general rules of interpretation of the relationships among the people, the State governments, and the Federal Government. The ninth amendment provides that the "enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." The 10th amendment reads: "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."

8. What are the rights enumerated in the Bill of Rights?

Right to freedom of religion, speech, and press (amendment 1);

Right to assemble peaceably, and to petition the Government for a redress of grievances (amendment 1);

Right to keep and bear arms in common defense (amendment 2);

Right not to have soldiers quartered in one's home in peacetime without the consent of the owner, nor in time of war except as prescribed by law (amendment 3);

Right to be secure against "unreasonable searches and seizures" (amendment 4);

Right in general not to be held to answer criminal charges except upon indictment by a grand jury (amendment 5);

Right not to be put twice in jeopardy for the same offense (amendment 5);

Right not to be compelled to be a witness against oneself in a criminal case (amendment 5);

Right not to be deprived of life, liberty, or property without due process of law (amendment 5);

Right to just compensation for private property taken for public use (amendment 5);

Right in criminal prosecution to a speedy and public trial by an impartial jury, to be informed of the charges, to be confronted with witnesses, to have a compulsory process for calling witnesses in defense of the accused, and to have legal counsel (amendment 6);

Right to a jury trial in suits at common law involving over \$20 (amendment 7);

Right not to have excessive bail required, nor excessive fines imposed, nor cruel and unusual punishments inflicted (amendment 8).

9. How may the Constitution be amended?

Amending the Constitution involves two separate processes.

First, amendments may be proposed on the initiative of Congress (by two-thirds affirmative vote in each House) or by convention (on application of two-thirds of the State legislatures). So far, there has never been a convention called under such authority.

The second step, ratification of a proposed amendment, at the discretion of Congress may be either by the State legislatures or by conventions, and requires approval by three-fourths of the States. Out of the 26 amendments, only one (the 21st, ending Prohibition) has been ratified by State conventions.

The first 10 amendments (ratified in 1791) were practically a part of the original instrument. The 11th amendment was ratified in 1795, and the 12th amendment in 1804. Thereafter, no amendment was made to the Constitution for 60 years. Shortly after the Civil War, three amendments were ratified (1865-70), followed by another long interval before the 16th amendment became effective in 1913. The most recent amendment, the 27th, was ratified on May 7, 1992. At the present time, there are four amendments pending before the States that were proposed without ratification deadlines.

10. How long may a proposed amendment to the Constitution remain outstanding and open to ratification?

The Supreme Court has stated that ratification must be within "some reasonable time after the proposal." Beginning with the 18th amendment, it has been customary for Congress to set a definite period for ratification. In the case of the 18th, 20th, 21st, and 22d amendments, the period set was 7 years, but there has been no determination as to just how long a "reasonable time" might extend.

In the case of the proposed equal rights amendment, the Congress extended the ratification period from 7 to approximately 10 years; but the proposed amendment was never ratified.

The "reasonable time" doctrine recently arose, as well, in connection with an amendment pertaining to congressional pay, proposed in 1789 without a ratification deadline. The 38th State,

Michigan, ratified this amendment on May 7, 1992—203 years after its proposal. The amendment was certified by the Archivist of the United States, since it did not carry a term limitation, as the 27th amendment to the Constitution.

11. What is the “lame duck” amendment?

The “lame duck” amendment is the popular name for the 20th amendment to the Constitution, ratified on February 6, 1933. It is designed to limit the time that elected officials can serve after the general election in November. This amendment provides, among other things, that the terms of the President and Vice President shall end at noon on January 20, the terms of Senators and Representatives shall end at noon on January 3, and the terms of their successors shall then begin.

Prior to this amendment, the annual session of Congress began on the first Monday in December (Article I, Section 4). Since the terms of new Members formerly did not begin until March 4, Members who had been defeated or did not stand for reelection in November continued to serve during the lame duck session from December until March 4. Adoption of the 20th amendment has reduced but not eliminated legislation by a Congress that does not represent the latest choice of the people. For instance, 10 of the 30 Congresses from 1933 to 1992 (73d through the 102d Congress) have continued to meet after the November general elections.

12. Have any amendments to the Constitution been repealed?

Only one, the 18th amendment (prohibition), ratified in early 1919, was repealed by the 21st amendment in late 1933.

13. What is meant by the “separation of powers” and “checks and balances” in the Federal Government?

The separation of powers and checks and balances are two fundamental principles underlying the Constitution. They work together to prevent a tyrannous concentration of power in any one branch, to check and restrain Government, and, ultimately, to protect the rights and liberties of citizens.

The Constitution contains provisions in separate articles for three branches of Government—legislative, executive, and judicial. There is a significant difference in the grants of power to these branches, each of which is also given an independent base of political power. The first article, dealing with legislative power, vests in Congress “All legislative Powers herein granted”; the second article vests “The executive Power” in the President; and the third article states that “The judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” In addition to this separation and independence among the three branches, the Constitution sets up “auxiliary precautions,” as James Madison called them in the *Federalist Papers*, that allow each branch to check and balance the others. For instance, the President can veto bills approved by Congress and nominates individuals to the Federal judiciary; the Supreme Court can declare a law enacted by Congress or an action by the President unconstitutional; and Congress

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can impeach and remove the President and Federal court justices and judges.