

The Living Constitution

TABLE OF CONTENTS FOR THE LIVING CONSTITUTION

Preamble	154
Article 1	154
Article 2	160
Article 3	162
Article 4	164
Article 5	164
Article 6	165
Article 7	165
Bill of Rights	166
Amendments 11–27	168
Tracing Themes:	
Voting Rights	174
Assessment	176
Projects for Citizenship	178

“The Constitution was not made to fit us like a straightjacket. In its elasticity lies its chief greatness.”

President Woodrow Wilson

PURPOSES OF THE CONSTITUTION

The official charge to the delegates who met in Philadelphia in 1787 was to amend the Articles of Confederation. They soon made a fateful decision, however, to ignore the Articles and to write an entirely new constitution. These delegates—the “framers”—set themselves five purposes to fulfill in their effort to create an effective constitution.

1. ESTABLISH LEGITIMACY

First, the framers of the Constitution had to establish the new government’s legitimacy—its right to rule. The patriots’ theory of government was set out in the Declaration of Independence, which explained why British rule over the colonies was illegitimate. Now the framers had to demonstrate that their new government met the standards of legitimacy referred to in the Declaration.

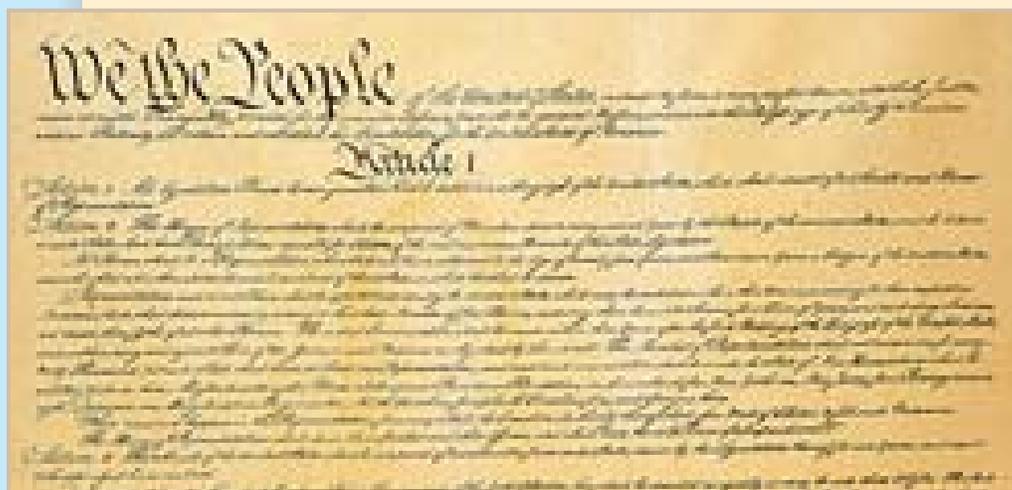
For the framers of the Constitution, legitimacy had to be based on a compact or contract among those who are to be ruled. This is why the Constitution starts with the words “We the people of the United States . . . do ordain and establish this Constitution.”

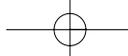
2. CREATE APPROPRIATE STRUCTURES

The framers’ second purpose was to create appropriate structures for the new government. The framers were committed to the principles of representative democracy. They also believed that any new government must include an important role for state governments and ensure that the states retained some legitimacy to rule within their borders.

To achieve their goals, the framers created the Congress, the presidency, and the judiciary to share the powers of the national government. They also created a system of division of powers between the national government and the state governments.

The original manuscript of the Constitution is now kept in the National Archives in Washington, D.C. ►





3. DESCRIBE AND DISTRIBUTE POWER

The framers had as their third purpose to describe governmental powers and to distribute them among the structures they created. The powers of the legislative branch, which are those of Congress, are listed in Article 1, Section 8, of the Constitution. Many of the executive powers belonging to the president are listed in Article 2, Sections 2 and 3. The courts are given judicial powers in Article 3. The words of Article 4 imply that the states retain authority over many public matters.

4. LIMIT GOVERNMENT POWERS

The fourth purpose of the framers was to limit the powers of the structures they created. Limits on the Congress's powers are found in Article 1, Section 9. Some of the limits on the powers of state governments are found in Article 1, Section 10. There the framers enumerate functions that are delegated to the national government and so cannot be directed by the states.

5. ALLOW FOR CHANGE

The framers' fifth purpose was to include some means for changing the Constitution. Here they faced a dilemma: they wanted to make certain that the government endured by changing with the times, but they did not want to expose the basic rules of government to so many changes that the system would be unstable. So in Article 5 they created a difficult but not impossible means for amending the Constitution.

CONSTITUTION PROJECT

RESEARCHING A CONSTITUTIONAL QUESTION

As you study the Constitution, think about a constitutional question that interests you. Here are some possible questions:

- How much, if at all, can the federal government or a state government restrict the sale of firearms?
- Under what conditions does the president have the power to order American troops into battle without congressional approval?
- Under what conditions may a police officer conduct a search of the inside of an automobile?

Once you have chosen a constitutional question, research that question in articles and books on the Constitution. Also check the indexes of well-known newspapers, such as the *New York Times*, for articles that are relevant.

HOW TO READ THE CONSTITUTION

The Constitution, which appears on pages 154–173, is printed on a beige background, while the explanatory notes next to each article, section, or clause are printed on blue. Each article is divided into sections, and the sections are subdivided into clauses. Headings have been added and the spelling and punctuation modernized for easier reading. Portions of the Constitution no longer in use have been crossed out. The Constitutional Insight questions and answers will help you understand significant issues related to the Constitution.



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The Constitution

PREAMBLE

Constitutional Insight Preamble

Why does the Preamble say “We the people of the United States . . . ordain and establish” the new government? The Articles of Confederation was an agreement among the states. But the framers of the Constitution wanted to be sure its legitimacy came from the American people, not from the states, which might decide to withdraw their support at any time. This is a basic principle of the Constitution.

ARTICLE 1

Constitutional Insight Section 1

Why does the first article of the Constitution focus on Congress rather than on the presidency or the courts? The framers were intent on stressing the central role of the legislative branch in the new government because it is the branch that most directly represents the people and is most responsive to them.

A CRITICAL THINKING

Do you think Congress is still the branch of the federal government that is most directly responsible to the people? Why or why not?

Constitutional Insight Section 2.1

Why are members of the House of Representatives elected every two years? The House of Representatives was designed to be a truly representative body, with members who reflect the concerns and sentiments of their constituents as closely as possible. The framers achieved this timely representation by establishing two years as a reasonable term for members of the House to serve.

B CRITICAL THINKING

Do you think electing members of the House of Representatives every two years is a good idea? Why or why not?

PREAMBLE. Purpose of the Constitution

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.

ARTICLE 1. The Legislature

SECTION 1. CONGRESS All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

SECTION 2. THE HOUSE OF REPRESENTATIVES

1. ELECTIONS The House of Representatives shall be composed of members chosen every second year by the people of the several states, and the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature.

2. QUALIFICATIONS No person shall be a Representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state in which he shall be chosen.

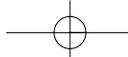
3. NUMBER OF REPRESENTATIVES Representatives and direct taxes shall be apportioned among the several states which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each state shall have at least one Representative; and until such enumeration shall be made, the state of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Providence Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

4. VACANCIES When vacancies happen in the representation from any state, the executive authority thereof shall issue writs of election to fill such vacancies.

5. OFFICERS AND IMPEACHMENT The House of Representatives shall choose their Speaker and other officers; and shall have the sole power of impeachment.

Requirements for Holding Federal Office

POSITION	MINIMUM AGE	RESIDENCY	CITIZENSHIP
Representative	25	state in which elected	7 years
Senator	30	state in which elected	9 years
President	35	14 years in the United States	natural-born
Supreme Court Justice	none	none	none



SECTION 3. THE SENATE

- 1. NUMBERS** The Senate of the United States shall be composed of two Senators from each state, ~~chosen by the legislature thereof,~~ for six years; and each Senator shall have one vote.
- 2. CLASSIFYING TERMS** Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one third may be chosen every second year; ~~and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any state, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.~~
- 3. QUALIFICATIONS** No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that state for which he shall be chosen.
- 4. ROLE OF VICE-PRESIDENT** The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.
- 5. OFFICERS** The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice-President, or when he shall exercise the office of President of the United States.
- 6. IMPEACHMENT TRIALS** The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside: and no person shall be convicted without the concurrence of two thirds of the members present.
- 7. PUNISHMENT FOR IMPEACHMENT** Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States; but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.

SECTION 4. CONGRESSIONAL ELECTIONS

- 1. REGULATIONS** The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing Senators.
- 2. SESSIONS** The Congress shall assemble at least once in every year, ~~and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.~~

Constitutional Insight Section 3.1

Why are members of the Senate elected every six years? The framers feared the possibility of instability in the government. So they decided that senators should have six-year terms and be elected by the state legislatures rather than directly by the people. The Seventeenth Amendment, as you will see later, changed this. The framers also staggered the terms of the senators so that only one-third of them are replaced at any one time. This stabilizes the Senate still further.

C CRITICAL THINKING

Do you think it is important today for the Senate to have more stability than the House of Representatives? If so, why?

Constitutional Insight Sections 3.6 and 3.7

Must an impeached president step down from office?

Not necessarily. An impeachment is a formal accusation of criminal behavior or serious misbehavior. By impeaching the president, the U.S. House of Representatives is officially accusing the nation's chief executive of one or more wrongdoings that warrant possible removal from office. It is then the responsibility of the Senate to conduct a trial to determine whether the president is guilty or not guilty of the charges—and thus whether or not the president must step down. Conviction requires a two-thirds vote of the Senate.

D CRITICAL THINKING

Do you think a president should be put on trial for a crime while he or she is still in office? Explain.



Constitutional Insight Section 5.2

What kinds of rules does Congress make for itself? The Constitution gives each house control over most of its rules of procedure and membership. Rules are important, for they help shape the kinds of laws and policies that pass each body. Senate rules allow a filibuster, whereby a senator holds the floor as long as he or she likes in order to block consideration of a bill he or she dislikes. In recent years, a “cloture” rule has been used to end debate if 60 or more members vote to do so.

In contrast, the House of Representatives has rules to limit debate. A rules committee has the primary task of determining how long a bill on the floor of the House may be discussed and whether any amendments can be offered to the bill. In recent years, the power of the Rules Committee has been limited, but being able to shape the rules remains a powerful tool of members of Congress.

E CRITICAL THINKING

Why do you think the chair of the Rules Committee is in a powerful position?

Constitutional Insight Section 7.1

Why must all bills to raise revenue originate in the House? Because its members all stand for election every two years, the House was expected to be more directly responsive to the people. The tradition of restricting the powers of taxation to the people’s representatives dates prior to the English Bill of Rights (1689), which granted to Parliament and withheld from the king the right to raise taxes. When colonists protesting the Stamp Act and the Intolerable Acts protested “no taxation without representation,” they were appealing to a longstanding right codified in the English Bill of Rights.

Constitutional Insight Section 7.2

How often do presidents use the veto, and how often is that action overridden? The use of the veto, which is the refusal to approve a bill, depends on many factors, especially the political conditions of the time. Until 1865, only nine presidents exercised the veto for 36 pieces of legislation, including Andrew Jackson who used it 12 times. Since 1865, every president has used the veto power, some on relatively few occasions, others as frequently as over a hundred times. Usually, Congress is unable to produce the votes (those of two-thirds of the members present in each house) needed to override presidential vetoes.

F CRITICAL THINKING

Do you think it should be easier for Congress to override a president’s veto? Why or why not?

SECTION 5. RULES AND PROCEDURES

- 1. QUORUM** Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner, and under such penalties, as each house may provide.
- 2. RULES AND CONDUCT** Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two thirds, expel a member.
- 3. CONGRESSIONAL RECORDS** Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either house on any question shall, at the desire of one fifth of those present, be entered on the journal.
- 4. ADJOURNMENT** Neither house, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two houses shall be sitting.

SECTION 6. PAYMENT AND PRIVILEGES

- 1. SALARY** The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to and returning from the same; and for any speech or debate in either house, they shall not be questioned in any other place.
- 2. RESTRICTIONS** No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased, during such time; and no person holding any office under the United States shall be a member of either house during his continuance in office.

SECTION 7. HOW A BILL BECOMES A LAW

- 1. TAX BILLS** All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments as on other bills.
- 2. LAWMAKING PROCESS** Every bill which shall have passed the House of Representatives and the Senate shall, before it become a law, be presented to the President of the United States; if he approves he shall sign it, but if not he shall return it with his objections to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If after such reconsideration two thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two thirds of that house, it shall become a law. But in all such



cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

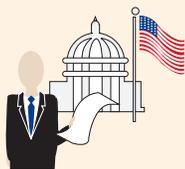
- 3. ROLE OF THE PRESIDENT** Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment) shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Skillbuilder

Answer

Both the House and the Senate must pass a common version of a bill which the president may accept or reject (veto). If the president rejects a bill, it still becomes a law with a two-thirds vote in each house. So, the House and Senate can check each other and the president, while the president can check the Congress.

How a Bill in Congress Becomes a Law



- 1** A bill is introduced in the House or the Senate and referred to a standing committee for consideration.



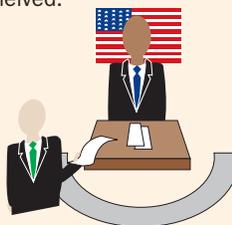
- 2** A bill may be reported out of committee with or without changes—or it may be shelved.



- 3** Either house of Congress debates the bill and may make revisions. If passed, the bill is sent to the other house.



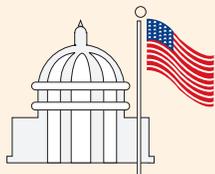
- 4** If the House and the Senate pass different versions of a bill, both versions go to a conference committee to work out the differences.



- 5** The conference committee submits a single version of the bill to the House and the Senate.



- 6** If both houses accept the compromise version, the bill is sent to the president to be signed.



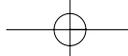
- 7** If the president signs the bill, it becomes law.



- 8** If the president vetoes the bill, the House and the Senate may override the veto by a vote of two thirds of the members present in each house, and then the bill becomes law.

SKILLBUILDER Interpreting Charts

How is the constitutional principle of checks and balances reflected in the process of a bill's becoming a law?



Constitutional Insight Section 8 The powers given to Congress are in Section 8 of Article 1. The first 17 clauses of Section 8 are often called the enumerated powers because they name individually Congress's specific powers. These powers deal with issues ranging from taxation and the national debt to calling out the armed forces of the various states to governing the nation's capital district (Washington, D.C.).

The 18th and final clause is different. It gives Congress the power to do what is "necessary and proper" to carry out the enumerated powers. Thus, the enumerated powers of Congress "to lay and collect taxes," "to borrow money," "to regulate commerce," and "to coin money" imply the power to create a bank in order to execute these powers. Early in the country's history, this Elastic Clause, as it has been called, was used by Congress to establish the controversial Bank of the United States in 1791 and the Second Bank of the United States in 1816.

G CRITICAL THINKING

Why do you think the Elastic Clause is still important today?

NOW & THEN

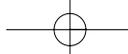
MODERN MONEY

Because of frequent counterfeiting of U.S. currency, a new design was released for the \$100 and \$50 bills in 1996. To make these bills more difficult to counterfeit, the new design included enlarged, off-center portraits of Benjamin Franklin and Ulysses S. Grant, a security thread, fine-line printing patterns, color-shifting ink, and a watermark to the right of each portrait. Since then, a \$20 bill was introduced in 1998, and a \$10 and \$5 bill were introduced in 2000.



SECTION 8. POWERS GRANTED TO CONGRESS

- 1. TAXATION** The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States;
- 2. CREDIT** To borrow money on the credit of the United States;
- 3. COMMERCE** To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;
- 4. NATURALIZATION, BANKRUPTCY** To establish a uniform rule of naturalization, and uniform laws on the subject of bankruptcies throughout the United States;
- 5. MONEY** To coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures;
- 6. COUNTERFEITING** To provide for the punishment of counterfeiting the securities and current coin of the United States;
- 7. POST OFFICE** To establish post offices and post roads;
- 8. PATENTS, COPYRIGHTS** To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries;
- 9. FEDERAL COURTS** To constitute tribunals inferior to the Supreme Court;
- 10. INTERNATIONAL LAW** To define and punish piracies and felonies committed on the high seas, and offenses against the law of nations;
- 11. WAR** To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water;
- 12. ARMY** To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;
- 13. NAVY** To provide and maintain a navy;
- 14. REGULATION OF ARMED FORCES** To make rules for the government and regulation of the land and naval forces;
- 15. MILITIA** To provide for calling forth the militia to execute the laws of the Union, suppress insurrections and repel invasions;
- 16. REGULATIONS FOR MILITIA** To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States, reserving to the states respectively the appointment of the officers, and the authority of training the militia according to the discipline prescribed by Congress;
- 17. DISTRICT OF COLUMBIA** To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular states, and the acceptance of Congress, become the seat of the government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings;—and
- 18. ELASTIC CLAUSE** To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officer thereof.



SECTION 9. POWERS DENIED CONGRESS

- 1. ~~Slave Trade~~** ~~The migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight, but a tax or duty may be imposed on such importation, not exceeding ten dollars for each person.~~
- 2. HABEAS CORPUS** The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.
- 3. ILLEGAL PUNISHMENT** No bill of attainder or ex post facto law shall be passed.
- 4. DIRECT TAXES** No capitation, ~~or other direct, tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.~~
- 5. EXPORT TAXES** No tax or duty shall be laid on articles exported from any state.
- 6. NO FAVORITES** No preference shall be given by any regulation of commerce or revenue to the ports of one state over those of another: nor shall vessels bound to, or from, one state be obliged to enter, clear, or pay duties in another.
- 7. PUBLIC MONEY** No money shall be drawn from the treasury, but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.
- 8. TITLES OF NOBILITY** No title of nobility shall be granted by the United States: and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title, of any kind whatever, from any king, prince, or foreign state.

SECTION 10. POWERS DENIED THE STATES

- 1. RESTRICTIONS** No state shall enter into any treaty, alliance, or confederation; grant letters of marque and reprisal; coin money; emit bills of credit; make anything but gold and silver coin a tender in payment of debts; pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.
- 2. IMPORT AND EXPORT TAXES** No state shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts, laid by any state on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

Constitutional Insight Section 9

Why didn't the framers include a bill of rights in the original Constitution? Actually, they did. Article 1, Section 9, defines limits on the powers of Congress, just as the first ten amendments (which we call the Bill of Rights) do. While some of the provisions focus on such issues as slavery and taxation, there are three explicit prohibitions dealing with citizens' rights:

- *Writ of habeas corpus.* Section 9, Clause 2 says that, except in time of rebellion or invasion, Congress cannot suspend people's right to a writ of habeas corpus. This means that people cannot be held in prison or jail without being formally charged with a crime.
- *Bill of attainder.* Clause 3 prohibits the passage of any law that convicts or punishes a person directly and without a trial. Any legislative action that would punish someone without recourse to a court of law is called a bill of attainder.
- *Ex post facto law.* The same clause prohibits ex post facto laws. Such a law would punish a person for an act that was legal when it was performed.

The fact that these particular rights were protected by the original document issued by the framers reflects both the framers' experiences during the Revolution and their fear of excessive government power.

H CRITICAL THINKING

Why are American citizens today so intent on having protections against government violations of their rights?



ARTICLE 2

Constitutional Insight Section 1.1

What exactly is “executive power”? We know the president has it, but nowhere is it explicitly defined. It is most often defined as the power to carry out the laws of the land, but of course no one person can handle such a chore alone. A more appropriate definition is found in Section 3 of this article, which empowers the president to “take care that the laws be faithfully executed.” In this sense, the president is the chief administrator.

CRITICAL THINKING

Why is it important to have an executive who is the chief administrator?

3. PEACETIME AND WAR RESTRAINTS No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

ARTICLE 2. *The Executive*

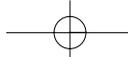
SECTION 1. THE PRESIDENCY

1. TERMS OF OFFICE The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years and, together with the Vice-President, chosen for the same term, be elected as follows:

2. ELECTORAL COLLEGE Each state shall appoint, in such manner as the legislature thereof may direct, a number of electors, equal to the whole number of Senators and Representatives to which the state may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

3. Former Method of Electing President ~~The electors shall meet in their respective states, and vote by ballot for two persons, of whom one at least shall not be an inhabitant of the same state with themselves. And they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said house shall in like manner choose the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice-President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice-President.~~

4. ELECTION DAY The Congress may determine the time of choosing the electors, and the day on which they shall give their votes; which day shall be the same throughout the United States.



- 5. QUALIFICATIONS** No person except a natural-born citizen, ~~or a citizen of the United States at the time of the adoption of this Constitution,~~ shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.
- 6. SUCCESSION** In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice-President, and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.
- 7. SALARY** The President shall, at stated times, receive for his services a compensation, which shall neither be increased nor diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.
- 8. OATH OF OFFICE** Before he enter on the execution of his office, he shall take the following oath or affirmation:—"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will to the best of my ability, preserve, protect and defend the Constitution of the United States."

SECTION 2. POWERS OF THE PRESIDENT

- 1. MILITARY POWERS** The President shall be commander in chief of the army and navy of the United States, and of the militia of the several states, when called into the actual service of the United States; he may require the opinion, in writing, of the principal officer in each of the executive departments, upon any subject relating to the duties of their respective offices, and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.
- 2. TREATIES, APPOINTMENTS** He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers, as they think proper, in the President alone, in the courts of law, or in the heads of departments.
- 3. VACANCIES** The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session.

Constitutional Insight Section 1.6

What happens when the vice-president succeeds a dead or incapacitated president?

Section 1.6 provides that the vice-president shall assume the powers and duties of the presidential office. But until the Twenty-fifth Amendment was added to the Constitution in 1967, there was no explicit statement in the document that the vice-president is to become president. That procedure owes its origin to John Tyler, the tenth president of the United States, who in 1841 succeeded William Henry Harrison—the first president to die in office. Tyler decided to take the oath of office and assume the title of president of the United States. Congress voted to go along with his decision, and the practice was repeated after Lincoln was assassinated. It would take another century for the written provisions of the Constitution to catch up with the practice.

J CRITICAL THINKING

Why is it important to know the order of succession if a president dies in office?

Constitutional Insight Section 2.1

Just how much authority does the president have as "commander in chief" of the armed forces? The president has the power to give orders to American military forces. There have been several instances in U.S. history when presidents have used that authority in spite of congressional wishes.

President Harry Truman involved the armed forces of the United States in the Korean War from 1950 to 1953 without a congressional declaration of war.

Reacting to criticism of the Vietnam War, Congress in 1973 enacted the War Powers Resolution, making the president more accountable to Congress for any military actions he or she might take. Every president since Richard Nixon has called the resolution unconstitutional. Nevertheless, every president has reported to Congress within 48 hours of sending troops into an international crisis, as is required by the War Powers Resolution.

K CRITICAL THINKING

Why is it important that the commander in chief of the armed forces of the United States be a civilian (the president) rather than a military general?



Constitutional Insight Section 3

Is it necessary for the president to deliver a State of the Union address before a joint session of Congress at the start of each legislative year? The Constitution requires only that the president report to Congress on the state of the Union from time to time, and nowhere does it call for an annual address. In 1913, President Woodrow Wilson wanted to influence Congress to take action without delay on some legislation that he thought was important. Wilson revived the tradition—which had been discontinued by Jefferson—of delivering the State of the Union address in person.

L CRITICAL THINKING

How does the president use the State of the Union address today?

Constitutional Insight Section 4

Have high-level public officials ever been impeached? In all of American history, the House has impeached two presidents, and neither had to leave office. In 1868, the Senate found President Andrew Johnson not guilty by one vote after the House impeached him, charging him with violating a Congressional Act. In 1999, Senators acquitted President Bill Clinton after the House impeached him with charges of lying under oath and obstructing justice in the attempted cover-up of a White House scandal.

The only other president to come close to impeachment was Richard Nixon. In 1974, the House Judiciary Committee, in what is the first step of the impeachment process, recommended three articles of impeachment against Nixon for his role in the infamous Watergate scandal. Before the full House could vote for or against the articles of impeachment, however, Nixon resigned from office.

M CRITICAL THINKING

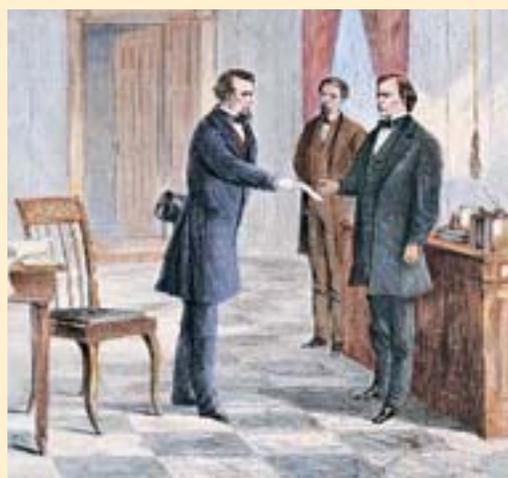
Why do you think the framers of the Constitution created such an elaborate and seemingly difficult procedure for removing a sitting president?

SECTION 3. PRESIDENTIAL DUTIES He shall from time to time give to the Congress information of the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper; he shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

SECTION 4. IMPEACHMENT The President, Vice-President and all civil officers of the United States shall be removed from office on impeachment for, and conviction of, treason, bribery, or other high crimes and misdemeanors.

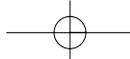


(above) Rep. Henry Hyde, chairman of the House Judiciary Committee, swears in Independent Counsel Kenneth Starr during the Committee's hearings on impeachment charges against President Bill Clinton in 1998; (right) President Andrew Johnson is handed the articles of impeachment before his trial in 1868.



ARTICLE 3. The Judiciary

SECTION 1. FEDERAL COURTS AND JUDGES 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. The judges, both of the Supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.



SECTION 2. THE COURTS' AUTHORITY

1. **GENERAL AUTHORITY** The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all cases of admiralty and maritime jurisdiction;—to controversies to which the United States shall be a party;—to controversies between two or more states;—~~between a state and citizens of another state;~~—between citizens of different states;—between citizens of the same state claiming lands under grants of different states, ~~and between a state, or the citizens thereof, and foreign states, citizens or subjects.~~
2. **SUPREME COURT** In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make.
3. **TRIAL BY JURY** The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed; but when not committed within any state, the trial shall be at such place or places as the Congress may by law have directed.

SECTION 3. TREASON

1. **DEFINITION** Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.
2. **PUNISHMENT** The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

ARTICLE 3

Constitutional Insight Section 2.1

What is judicial review? Is it the same as judicial power? Actually, they are not the same. Judicial power is the authority to hear cases involving disputes over the law or the behavior of people. Judicial review, in contrast, is a court's passing judgment on the constitutionality of a law or government action that is being disputed. Interestingly, nowhere does the Constitution mention judicial review. There are places where it is implied (for example, in Section 2 of Article 6), but the only explicit description of the responsibility of the courts is the reference to judicial power in Section 1 of Article 3. The Supreme Court's power to review laws passed by Congress was explicitly affirmed by the Court itself in *Marbury v. Madison*. (See page 206.)

N CRITICAL THINKING

Why is judicial review, although not mentioned in the Constitution, an important activity of the Supreme Court?

The Supreme Court of the United States in 1994. In the front row (left to right) are Associate Justices Antonin Scalia and John Paul Stevens, Chief Justice William H. Rehnquist, and Associate Justices Sandra Day O'Connor and Anthony Kennedy. In the back row are Associate Justices Ruth Bader Ginsburg, David Souter, Clarence Thomas, and Stephen Breyer. ▼





ARTICLE 4

Constitutional Insight Section 2.1

Why do college students attending public universities outside their state of residence have to pay higher tuition fees?

The Supreme Court has interpreted the “privileges and immunities” clause to allow higher tuition fees (and fees for hunting permits, etc.) for nonresidents when a state can give a “substantial reason” for the difference. Since state colleges and universities receive some financial support from the states’ taxpayers, the difference is regarded as justified in most states. If a student establishes residency in the state, he or she can pay in-state tuition after one year.

CRITICAL THINKING

Do you think it is fair that a nonresident must pay higher tuition fees at a state college than a resident of the state must pay? Explain.

Constitutional Insight Section 3.1

Should there be a West Virginia? The Constitution states that “no new state shall be formed or erected within the jurisdiction of any other state” without the permission of the legislature of the state involved and of the Congress. Vermont, Kentucky, Tennessee, and Maine were created from territory taken from existing states, with the approval of the sitting legislatures.

West Virginia, however, is a different story.

During the Civil War, the residents of the westernmost counties of Virginia were angry with their state’s decision to secede from the Union. They petitioned Congress to have their counties declared a distinct state. Congress agreed, and so the state of West Virginia was created. After the Civil War, the legislature of Virginia gave its formal approval, perhaps because it was in no position to dispute the matter.

CRITICAL THINKING

Suppose a section of Texas should decide to become a new state today. Could it do this? Why or why not?

ARTICLE 4. *Relations Among States*

SECTION 1. STATE ACTS AND RECORDS Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records, and proceedings shall be proved, and the effect thereof.

SECTION 2. RIGHTS OF CITIZENS

- 1. CITIZENSHIP** The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.
- 2. EXTRADITION** A person charged in any state with treason, felony, or other crime, who shall flee from justice, and be found in another state, shall on demand of the executive authority of the state from which he fled, be delivered up, to be removed to the state having jurisdiction of the crime.
- 3. FUGITIVE SLAVES** ~~No person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.~~

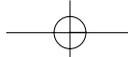
SECTION 3. NEW STATES

- 1. ADMISSION** New states may be admitted by the Congress into this Union; but no new state shall be formed or erected within the jurisdiction of any other state; nor any state be formed by the junction of two or more states, or parts of states, without the consent of the legislatures of the states concerned as well as of the Congress.
- 2. CONGRESSIONAL AUTHORITY** The Congress shall have power to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States, or of any particular state.

SECTION 4. GUARANTEES TO THE STATES The United States shall guarantee to every state in this Union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened), against domestic violence.

ARTICLE 5. *Amending the Constitution*

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.



ARTICLE 6. *Supremacy of the National Government*

SECTION 1. VALID DEBTS All debts contracted and engagements entered into, before the adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

SECTION 2. SUPREME LAW This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.

SECTION 3. LOYALTY TO CONSTITUTION The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

ARTICLE 7. *Ratification*

The ratification of the conventions of nine states shall be sufficient for the establishment of this Constitution between the states so ratifying the same. Done in convention by the unanimous consent of the states present, the seventeenth day of September in the year of our Lord one thousand seven hundred and eighty-seven and of the independence of the United States of America the twelfth. In witness whereof we have hereunto subscribed our names.

George Washington—President and deputy from Virginia

Delaware: *George Read, Gunning Bedford, Jr., John Dickinson, Richard Bassett, Jacob Broom*

Maryland: *James McHenry, Dan of St. Thomas Jenifer, Daniel Carroll*

Virginia: *John Blair, James Madison, Jr.*

North Carolina: *William Blount, Richard Dobbs Spaight, Hugh Williamson*

South Carolina: *John Rutledge, Charles Cotesworth Pinckney, Charles Pinckney, Pierce Butler*

Georgia: *William Few, Abraham Baldwin*

New Hampshire: *John Langdon, Nicholas Gilman*

Massachusetts: *Nathaniel Gorham, Rufus King*

Connecticut: *William Samuel Johnson, Roger Sherman*

New York: *Alexander Hamilton*

New Jersey: *William Livingston, David Brearley, William Paterson, Jonathan Dayton*

Pennsylvania: *Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas FitzSimons, Jared Ingersoll, James Wilson, Gouverneur Morris*

ARTICLE 6

Constitutional Insight **Section 2** *Just how “supreme” is the “law of the land”?*

The Constitution and all federal laws and treaties are the highest law of the land. All state constitutions and laws and all local laws rank below national law and cannot be enforced if they contradict national law. For example, if the United States enters into a treaty protecting migratory Canadian birds, the states must change their laws to fit the provisions of that agreement. That was the decision of the Supreme Court in the case of *Missouri v. Holland* (1920). The state of Missouri argued that the national government could not interfere with its power to regulate hunting within its borders, but the Supreme Court concluded that the treaty was a valid exercise of national power and therefore took priority over state and local laws. The states had to adjust their rules and regulations accordingly.

Q CRITICAL THINKING

What would happen if the national law were not supreme?

ARTICLE 7

Constitutional Insight *Why was ratification by only 9 states sufficient to put the Constitution into effect?*

In taking such a momentous step as replacing one constitution (the Articles of Confederation) with another, the framers might have been expected to require the agreement of all 13 states. But the framers were political realists. They knew that they would have a difficult time winning approval from all 13 states. But they also knew that they had a good chance of getting 9 or 10 of the states “on board” and that once that happened, the rest would follow. Their strategy worked, but just barely. Although they had the approval of 9 states by the end of June 1788, 2 of the most important states—Virginia and New York—had not yet decided to ratify. Without the approval of these influential states, the new government would have had a difficult time surviving. Finally, by the end of July, both had given their blessing to the new constitution, but not without intense debate.

And then there was the last holdout—Rhode Island. Not only had Rhode Island refused to send delegates to the Constitutional Convention in 1787, but it turned down ratification several times before finally giving its approval in 1790 under a cloud of economic and even military threats from neighboring states.

R CRITICAL THINKING

Do you think all 50 states would ratify the Constitution today? Why or why not?



The Bill of Rights and Amendments 11–27

BILL OF RIGHTS

Constitutional Insight Amendment 1

Do Americans have an absolute right to free speech? The right to free speech is not without limits. In the case of *Schenck v. United States* (1919), Justice Oliver Wendell Holmes wrote that this right does “not protect a man in falsely shouting fire in a theatre and causing a panic.” Thus, there are some forms of speech that are not protected by the First Amendment, and Congress is allowed to make laws regarding certain types of expression. (See *Schenck v. United States* on page 602.)

A CRITICAL THINKING

Why is there controversy over freedom of speech today?

Constitutional Insight Amendment 4

Can the police search your car without a court-issued search warrant when they stop you for speeding? The answer, according to Supreme Court decisions, depends on whether they have good reasons—called “probable cause”—for doing so. If a state trooper notices bloody clothing on the back seat of a vehicle she stops for a traffic violation, there might be probable cause for her to insist on searching the vehicle. There is probably not sufficient reason for a search if the trooper is merely suspicious of the driver because of the way he is acting. In such cases, the trooper may make a casual request, such as “Do you mind if I look inside your vehicle?” If the answer is no, then according to the Court, the driver has waived his or her constitutional right against unreasonable searches.

B CRITICAL THINKING

Why do you think the right against unreasonable searches and seizures is highly important to most people?

Constitutional Insight Amendment 5

Can you be tried twice for the same offense? The prohibition against “double jeopardy” protects you from having the same charge twice brought against you for the same offense, but you can be tried on different charges related to that offense.

C CRITICAL THINKING

What do you think could happen if a person could be tried twice for the same offense?

Amendments 1–10

Proposed by Congress September 25, 1789. Ratified December 15, 1791.

AMENDMENT 1. RELIGIOUS AND POLITICAL FREEDOM (1791)

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 2. RIGHT TO BEAR ARMS (1791) 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 3. QUARTERING TROOPS (1791) 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.

AMENDMENT 4. SEARCH AND SEIZURE (1791) 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 5. RIGHTS OF ACCUSED PERSONS (1791) 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.

Analyzing

Political Cartoons

“THE FEDERAL EDIFICE”

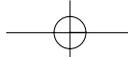
This 1778 cartoon celebrated the ratification of the Constitution by New York, the 11th state to ratify it. This left only North Carolina and Rhode Island to complete all 13 pillars of the federal structure.

SKILLBUILDER Analyzing Political Cartoons

1. What details in the cartoon convey the unity of the states who have voted for ratification?
2. How does the cartoonist contrast the states who have voted for ratification with those who have not? What message does this convey?



SEE SKILLBUILDER HANDBOOK, PAGE R24.



AMENDMENT 6. RIGHT TO A SPEEDY, PUBLIC TRIAL (1791) 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 7. TRIAL BY JURY IN CIVIL CASES (1791) 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.

AMENDMENT 8. LIMITS OF FINES AND PUNISHMENTS (1791) Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

AMENDMENT 9. RIGHTS OF PEOPLE (1791) The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

AMENDMENT 10. POWERS OF STATES AND PEOPLE (1791) 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.

Constitutional Insight Amendment 6

What are the Miranda rights? The term comes from the Supreme Court's decision in *Miranda v. Arizona* (1966), in which the justices established basic rules that the police must follow when questioning a suspect. If suspected of a crime, you must be told that you have a right to remain silent and that anything you say "can and will" be used against you. You also need to be informed that you have a right to an attorney and that the attorney may be present during questioning. (See *Miranda v. Arizona* on page 900.)

D CRITICAL THINKING

How do the Miranda rights protect you?

Constitutional Insight Amendment 7

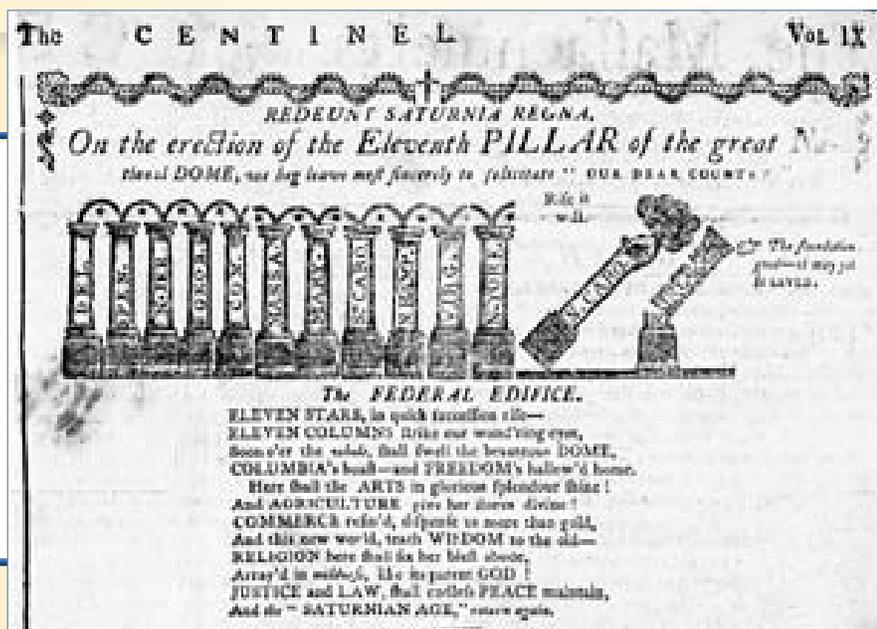
What are the "rules of the common law"? The common law is the body of legal practices and decrees developed in England and English-speaking America from A.D. 1066 through the present. It includes Magna Carta (1215), which acknowledges versions of rights affirmed in the Fifth, Sixth, and Seventh Amendments, as well as the English Bill of Rights (1689), which codified rights asserted in the First, Second, Seventh, and Eighth Amendments. The common law also includes the decisions and published opinions of state and federal appeals courts, including the U.S. Supreme Court.

Constitutional Insight Amendment 9

Do you have a right to privacy? Until 1965, no such right had ever been explicitly stated by the courts. That year, in the case of *Griswold v. Connecticut*, the Court said there is an implied right of American citizens to make certain personal choices without interference from the government; this case concerned the right to use birth control. Years later, in *Roe v. Wade* (1973), the same logic was used to declare unconstitutional a Texas law restricting a woman's right to an abortion in the first stages of pregnancy. Since that decision, both the right to privacy and abortion rights have become the focus of major political controversies.

E CRITICAL THINKING

How do you define the right to privacy?





Constitutional Insight Amendment 12

How did the election of 1800 lead to the Twelfth Amendment? The election ended in a tie vote between the Republican running mates. The election was decided in Jefferson's favor on the House's 36th ballot. Almost immediately Alexander Hamilton and others designed an amendment that established that the presidential electors would vote for both a presidential and a vice-presidential candidate. This amendment prevents a repeat of the problem experienced in the 1800 election.

F CRITICAL THINKING

Why is the Twelfth Amendment important?

NOW & THEN

ELECTION REFORM

A new wave of electoral reform efforts was triggered by the controversial presidential election of 2000, in which George W. Bush's narrow victory over Al Gore left many Americans questioning the system in which a candidate can lose the popular vote but win the election.

Eliminating or reworking the electoral college has been historically the most frequently proposed constitutional amendment. Other reform proposals have included improving access to polling places by allowing voting on weekend hours or making Election Day a national holiday. Still other proposals would modernize inaccurate polling and counting machines or replace them with computer stations or online voting.

Amendments 11–27

AMENDMENT 11. LAWSUITS AGAINST STATES (1795) Passed by Congress March 4, 1794. Ratified February 7, 1795.

Note: Article 3, Section 2, of the Constitution was modified by the Eleventh Amendment.

The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.

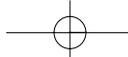
AMENDMENT 12. ELECTION OF EXECUTIVES (1804) Passed by Congress December 9, 1803. Ratified June 15, 1804.

Note: A portion of Article 2, Section 1, of the Constitution was superseded by the Twelfth Amendment.

The electors shall meet in their respective states and vote by ballot for President and Vice-President, one of whom, at least, shall not be an inhabitant of the same state with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice-President, and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice-President, and of the number of votes for each, which lists they shall sign and certify, and transmit sealed to the seat of the government of the United States, directed to the President of the Senate;—the President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates and the votes shall then be counted;—the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers not exceeding three on the list of those voted for as President, the House of Representatives shall choose immediately, by ballot, the President. But in choosing the President, the votes shall be taken by states, the representation from each state having one vote; a quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. And if the House of Representatives shall not choose a President whenever the right of choice shall devolve upon them, ~~before the fourth day of March next following,~~ then the Vice-President shall act as President, as in the case of the death or other constitutional disability of the President. The person having the greatest number of votes as Vice-President shall be the Vice-President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list, the Senate shall choose the Vice-President; a quorum for the purpose shall consist of two thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice-President of the United States.

AMENDMENT 13. SLAVERY ABOLISHED (1865) Passed by Congress January 31, 1865. Ratified December 6, 1865.

Note: A portion of Article 4, Section 2, of the Constitution was superseded by the Thirteenth Amendment.



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 14. CIVIL RIGHTS (1868) Passed by Congress June 13, 1866. Ratified July 9, 1868.

Note: Article 1, Section 2, of the Constitution was modified by Section 2 of the Fourteenth 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 for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, 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 in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

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, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, 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.

SECTION 4 The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5 The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

Constitutional Insight Amendment 14,

Section 1 Which personal status takes priority—that of U.S. citizen or that of state citizen? The Fourteenth Amendment firmly notes that Americans are citizens of both the nation and the states but that no state can “abridge the privileges or immunities” of U.S. citizens, deprive them “of life, liberty, or property, without due process of law,” or deny them “equal protection of the laws.”

What does it mean to have “equal protection of the laws”? Equal protection means that the laws are to be applied to all persons in the same way. The legal system may discriminate between persons—treat them differently, or unequally—if there are relevant reasons to do so. For example, a person’s income and number of dependants are relevant for how much income tax the person should pay; a person’s gender is not. The Supreme Court’s 1954 decision in *Brown v. Board of Education of Topeka* (see page 914), which declared segregated public schools unconstitutional, was based on an Equal Protection claim; a child’s race is not a relevant reason for the state to assign that child to a particular school.

G CRITICAL THINKING

Do you agree or disagree with the Supreme Court’s decision that separate educational facilities are unequal? Explain your position.



The lawyers who successfully challenged segregation in the *Brown v. Board of Education* case in 1954 included (left to right) George E. C. Hayes, Thurgood Marshall, and James M. Nabrit, Jr.



Constitutional Insight Amendment 15

Can you be denied the right to vote? The Fifteenth Amendment prohibits the United States or any state from keeping citizens from voting because of race or color or because they were once slaves. However, a person convicted of a crime can be denied the right to vote, as can someone found to be mentally incompetent.

H CRITICAL THINKING

Why do you think so many people do not exercise the right to vote?

Constitutional Insight Amendment 16

How has the ability of Congress to impose taxes been amended? The Sixteenth Amendment permits a federal income tax and in so doing changes Article 1, Section 9, Clause 4, by stating that Congress has the power to levy an income tax—which is a direct tax—without apportioning such a tax among the states according to their populations.

I CRITICAL THINKING

Do you think Congress should have the power to impose an income tax on the people of the nation? Explain your answer.

Constitutional Insight Amendment 17

How has the way senators are elected been changed? The Seventeenth Amendment changes Article 1, Section 3, Clause 1, by stating that senators shall be elected by the people of each state rather than by the state legislatures.

J CRITICAL THINKING

Why is the direct election of senators by the people of each state important?



Federal agents enforcing the Eighteenth Amendment prepare to smash containers of illegal whiskey.

AMENDMENT 15. RIGHT TO VOTE (1870) 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 power to enforce this article by appropriate legislation.

AMENDMENT 16. INCOME TAX (1913) Passed by Congress July 12, 1909. Ratified February 3, 1913.

Note: Article 1, Section 9, of the Constitution was modified by the Sixteenth Amendment.

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 17. DIRECT ELECTION OF SENATORS (1913) Passed by Congress May 13, 1912. Ratified April 8, 1913.

Note: Article 1, Section 3, of the Constitution was modified by the Seventeenth Amendment.

CLAUSE 1 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.

CLAUSE 2 When vacancies happen in the representation of any state in the Senate, the executive authority of such state shall issue writs of election to fill such vacancies: Provided, that the legislature of any state may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

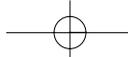
CLAUSE 3 This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.

AMENDMENT 18. PROHIBITION (1919) 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.~~

SECTION 2 ~~The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.~~

SECTION 3 ~~This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.~~



AMENDMENT 19. WOMAN SUFFRAGE (1920) Passed by Congress June 4, 1919. Ratified August 18, 1920.

CLAUSE 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 sex.

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

AMENDMENT 20. “LAME DUCK” SESSIONS (1933) Passed by Congress March 2, 1932. Ratified January 23, 1933.

Note: Article 1, Section 4, of the Constitution was modified by Section 2 of this amendment. In addition, a portion of the Twelfth Amendment was superseded by Section 3.

SECTION 1 The terms of the President and Vice-President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

SECTION 2 The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the 3rd day of January, unless they shall by law appoint a different day.

SECTION 3 If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice-President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice-President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice-President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice-President shall have qualified.

SECTION 4 The Congress may by law provide for the case of the death of any of the persons from whom the House of Representatives may choose a President whenever the right of choice shall have devolved upon them, and for the case of the death of any of the persons from whom the Senate may choose a Vice-President whenever the right of choice shall have devolved upon them.

SECTION 5 Sections 1 and 2 shall take effect on the 15th day of October following the ratification of this article.

SECTION 6 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three fourths of the several states within seven years from the date of its submission.

AMENDMENT 21. REPEAL OF PROHIBITION (1933) Passed by Congress February 20, 1933. Ratified December 5, 1933.

SECTION 1 The eighteenth article of amendment to the Constitution of the United States is hereby repealed.

SECTION 2 The transportation or importation into any state, territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

Constitutional Insight Amendment 19

When did women first get the right to vote in the United States? Women had the right to vote in the state of New Jersey between 1776 and 1807. In the late 19th century, some states and territories began to extend full or limited suffrage to women. Then, in 1920, the Nineteenth Amendment prohibited the United States or any state from denying women the right to vote.

K CRITICAL THINKING

How does the right of women to vote affect politics today?

Constitutional Insight Amendment 20

Why is the Twentieth Amendment usually called the “Lame Duck” amendment? A lame duck is a person who continues to hold office after his or her replacement has been elected. Such a person is called a lame duck because he or she no longer has any strong political influence. The Twentieth Amendment reduces the time between the election of a new president and vice-president in November and their assumption of the offices, which it sets at January 20 instead of March 4. It also reduces the time new members of Congress must wait to take their seats from 4 months to about 2 months. They are now seated on January 3 following the November election. As a result, the lame duck period is now quite short.

L CRITICAL THINKING

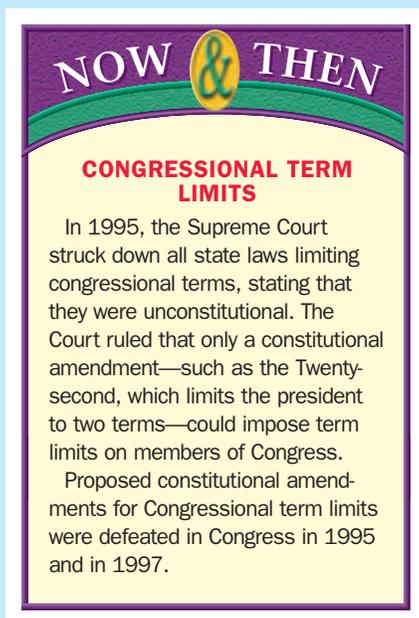
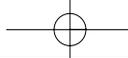
Why may the framers have specified a longer lame duck period?

Constitutional Insight Amendment 21

What is unique about the Twenty-first Amendment? Besides being the only amendment that explicitly repeals another, it was the first, and is so far the only one, to have been ratified by the state convention method outlined in Article 5. Congress, probably fearing that state legislatures would not deal swiftly with the issue of repeal, chose to have each state call a special convention to consider the amendment. The strategy worked well, for the elected delegates to the conventions represented public opinion on the issue and ratified the amendment without delay.

M CRITICAL THINKING

Why is it necessary to pass another amendment to revoke or remove an existing amendment?



Constitutional Insight Amendment 23

Why were residents of the District of Columbia without a vote in presidential elections? First, the district was merely an idea at the time the Constitution was written. Second, no one expected the district to include many residents. Third, the framers designed the electoral college on a state framework. By 1960, however, the fact that nearly 800,000 Americans living in the nation's capital could not vote in presidential elections was an embarrassment. The Twenty-third Amendment gives Washington, D.C., residents the right to vote in presidential elections by assigning them electoral votes.

N CRITICAL THINKING

Do you think the District of Columbia should be made a separate state?

Constitutional Insight Amendment 24

Why was the poll tax an issue important enough to require an amendment? The poll tax was used in some places to prevent African-American voters—at least the many who were too poor to pay the tax—from participating in elections. As the civil rights movement gained momentum, the abuse of the poll tax became a major issue, but the national government found it difficult to change the situation because the constitutional provisions in Article 1, Section 4, leave the qualifications of voters in the hands of the states. The Twenty-fourth Amendment changed this by prohibiting the United States or any state from including payment of any tax as a requirement for voting.

O CRITICAL THINKING

What impact do you think the Twenty-fourth Amendment has had on elections?

SECTION 3 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by conventions in the several states, as provided in the Constitution, within seven years from the date of the submission hereof to the states by the Congress.

AMENDMENT 22. LIMIT ON PRESIDENTIAL TERMS (1951) Passed by Congress March 21, 1947. Ratified February 27, 1951.

SECTION 1 No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. ~~But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term.~~

SECTION 2 This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three fourths of the several states within seven years from the date of its submission to the states by the Congress.

AMENDMENT 23. VOTING IN DISTRICT OF COLUMBIA (1961) Passed by Congress June 17, 1960. Ratified March 29, 1961.

SECTION 1 The district constituting the seat of government of the United States shall appoint in such manner as Congress may direct:

A number of electors of President and Vice-President equal to the whole number of Senators and Representatives in Congress to which the district would be entitled if it were a state, but in no event more than the least populous state; they shall be in addition to those appointed by the states, but they shall be considered, for the purposes of the election of President and Vice-President, to be electors appointed by a state; and they shall meet in the district and perform such duties as provided by the twelfth article of amendment.

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

AMENDMENT 24. ABOLITION OF POLL TAXES (1964) Passed by Congress August 27, 1962. Ratified January 23, 1964.

SECTION 1 The right of citizens of the United States to vote in any primary or other election for President or Vice-President, for electors for President or Vice-President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax.

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

AMENDMENT 25. PRESIDENTIAL DISABILITY, SUCCESSION (1967) Passed by Congress July 6, 1965. Ratified February 10, 1967.

Note: Article 2, Section 1, of the Constitution was affected by the Twenty-fifth Amendment.



SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice-President shall become President.

SECTION 2 Whenever there is a vacancy in the office of the Vice-President, the President shall nominate a Vice-President who shall take office upon confirmation by a majority vote of both houses of Congress.

SECTION 3 Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice-President as Acting President.

SECTION 4 Whenever the Vice-President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice-President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice-President and a majority of either the principal officers of the executive department[s] or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two thirds vote of both houses that the President is unable to discharge the powers and duties of his office, the Vice-President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

AMENDMENT 26. 18-YEAR-OLD VOTE (1971) Passed by Congress March 23, 1971. Ratified July 1, 1971.

Note: Amendment 14, Section 2, of the Constitution was modified by Section 1 of the Twenty-sixth Amendment.

SECTION 1 The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any state on account of age.

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

AMENDMENT 27. CONGRESSIONAL PAY (1992) Proposed by Congress September 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.

Constitutional Insight Amendment 26

Why was the Twenty-sixth Amendment passed? Granting 18-year-olds the right to vote became an issue in the 1960s, during the Vietnam War, when people questioned the justice of requiring 18-year-old men to submit to the military draft but refusing them the right to vote. In 1970, Congress passed a voting rights act giving 18-year-olds the right to vote in elections. When the constitutionality of this act was challenged, the Supreme Court decided that states had to honor the 18-year-old vote for congressional and presidential elections but could retain higher age requirements for state and local elections. To avoid confusion at the polls, the Twenty-sixth Amendment was passed. It guarantees 18-year-olds the right to vote in national and state elections.

P CRITICAL THINKING

Do you think 18-year-olds should have the right to vote? Why or why not?



(above) President Richard M. Nixon signs the Twenty-sixth Amendment to the Constitution, adopted in 1971.

Constitutional Insight Amendment 27

How long did it take to ratify this amendment? Although the Twenty-seventh Amendment was one of the 12 amendments proposed in 1789 as part of the Bill of Rights, it was not ratified until 1992. This amendment, which deals with congressional compensation, allows the members of Congress to increase Congressional pay, but delays the increase until after a new Congress is seated.

Q CRITICAL THINKING

Do you think members of Congress should be able to vote themselves a pay increase? Explain your answer.