

Beyond

The BILL of RIGHTS

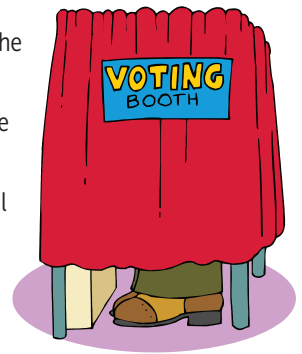
Explaining Constitutional Amendments 11 Through 27



United States Hasn't Always Had a "Right to Vote"

Today, every U.S. citizen over the age of 18 has the right to vote—that wasn't always so. In fact, for the most part, when the country was first founded only white, male property owners had access to the franchise; in other words were eligible to vote. The discretion of who would be able to enjoy the *franchise* was left up to the individual states to decide, as there were no rules laid out in the U.S. Constitution. Some states allowed freed slaves to vote, while others let women vote.

Here's a fun fact. New Jersey women actually had the right to vote when the country was first founded. The original New Jersey Constitution (1776) stated: "all inhabitants on this Colony, of full age, who are worth fifty pounds...shall be entitled to vote." Because the requirement didn't mention gender or race, women and freed slaves were allowed



continued on page 17

Amendments That Define the Presidency



The President of the United States has a big job, which is outlined in Article II of the U.S. Constitution. It makes sense that a few amendments would be needed over the years to clear up a few things. Here are four amendments that clarify the presidency.

Election Gridlock Gives Way to 12th Amendment

After the Founding Fathers wrote the U.S. Constitution in 1787, outlining the rules of the Electoral College to elect a president, the first two presidential elections went great—probably because George Washington was elected unanimously. It was the election of 1796 that showed cracks in the system. Then the 1800 election, which ended in a tie, sealed the deal—a constitutional amendment was clearly needed.

continued on page 18

Taking a State to Court...Not So Fast

The Bill of Rights hadn't been in place that long when another amendment to the U.S. Constitution was added. The 11th Amendment, *ratified* on February 7, 1795, states: "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 of any Foreign State."



continued on page 21

Thirteenth Amendment Ends Slavery But Makes Way for a Different Kind

Frederick Douglass, a former slave who became the most well known African American leader of the 1800s, called slavery "the great sin and shame of America." The United States still grapples with that shame today.

The Transatlantic Slave Trade dates back to the 15th Century. In the United States (or what would eventually become the U.S.) it began in 1619 with the first British colony in Jamestown, Virginia. Ship records show that the colonists arrived with "20 and odd enslaved Africans." The institution would last 246 years on American soil.

During those years, many laws were passed with the goal of keeping slaves in bondage. For instance, in 1662 Virginia passed a law that made any child of a slave a slave as well. In 1664, Maryland declared that all black people in the colony were slaves for life. Historians estimate that six to seven million slaves were imported to the New World via the slave trade during the 1700s.

The United States banned the slave trade (but not slavery) in 1807. The ban went into effect in 1808; however, the slave trade still continued until 1860. The institution thrived, especially in the South where it was vital to the economy. By 1860 at the start of the Civil War, the number of slaves in the U.S. had reached four million.

Initially, slavery was legal in all 13 colonies. After the American Revolution, however, the Northern colonies saw the similarities between Great Britain's oppression of the colonists and the oppression of slaves. As a result, Northern states started abolishing

slavery beginning in 1774, setting up the divisions in the country that would give way to the Civil War. One exception in the North was Connecticut, which passed an act of Gradual Abolition in 1794. The act stated that children born into slavery would be freed when they turn 25. As a result, slavery was legal in Connecticut until approximately 1848.

Lincoln's Proclamation

During the Civil War, President Abraham Lincoln issued the Emancipation Proclamation on January 1, 1863, which said, "slaves within

any State, or designated part of a State...in rebellion...shall be then, thenceforward and forever free." The Proclamation was important for a number of reasons, including changing the focus of the war and putting the issue of slavery front and center. Prior to the

Proclamation, President Lincoln's main goal was to preserve the Union. With the Emancipation Proclamation, freedom from slavery became the goal as well. According to the American Battlefield Trust, issuing the Proclamation was also a tactical maneuver on Lincoln's part, as it prevented the involvement of foreign nations (Great Britain and France) that might have helped the Confederacy. Since most Europeans were against slavery and had abolished the institution in their homelands, they would not want to aid the side fighting to preserve it. In addition, the Proclamation was a way to diminish the South's labor force, paving the way for African Americans to fight for their own freedom. The U.S. military took

in more than 200,000 former slaves, forming the United States Colored Troops.

One shortcoming of the Proclamation was that it only applied to the Confederate states that were rebelling, not in the border states (Missouri, Kentucky, Delaware and Maryland), which allowed slavery but had not joined the Confederacy. President Lincoln intentionally exempted those states so that they were not tempted to fight with the Confederacy.

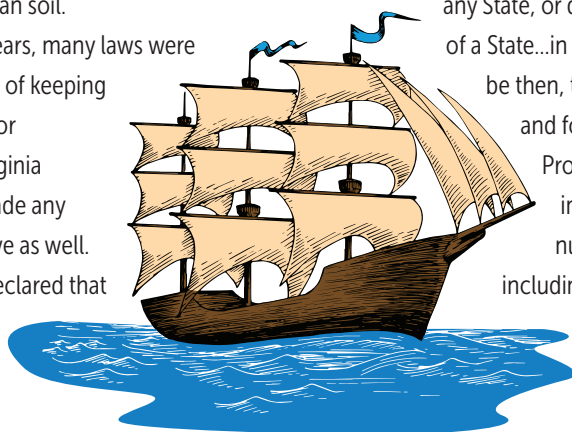
So, when the war was over and the North prevailed, why didn't the President just re-issue the proclamation, making it apply to the entire United States? Because future presidents can rescind proclamations or executive orders. In addition, nothing would prevent Southern state legislatures from reintroducing slavery into their state constitutions. In order to secure the freedom of all the formerly enslaved, a constitutional amendment was needed.

Calling it Slavery

The 13th Amendment to the U.S. Constitution is the first of three amendments, along with Amendments 14 and 15, known as the Reconstruction Amendments. Any Southern state that wanted to re-enter the Union after the war was required to **ratify** the 13th Amendment.

Passed by Congress on February 1, 1865 and ratified by the states on December 18, 1865, the 13th Amendment stated: "Neither slavery nor involuntary servitude, except as punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction."

Notably, the 13th Amendment contains the first time the word "slavery" is mentioned in the U.S. Constitution. The Constitution alludes to slavery several times before the



A Different Kind *continued from page 2*

addition of this amendment but never uses the actual word. For example, Article I, Section 2, Clause 3 of the Constitution stated that congressional representation would be based on “the whole number of free persons...and three fifths of all other persons [referring to slaves].” Article I, Section 9, Clause 1 allowed Congress to outlaw the slave trade in 1808 but referred to it as “the importation of persons” and Article IV, Section 2, Clause 3, which dealt with fugitive slaves, referred to them as a “person held to service or labour.”

Taja-Nia Henderson, a professor at Rutgers Law School, who researches and writes on the topic of slavery, says, “The language of the 13th Amendment, as is true for every other amendment to the U.S. Constitution, is a product of political compromise.”

Senator Charles Sumner of Massachusetts, Professor Henderson notes, proposed a resolution for the **abolition** of slavery that included an extension of “equality before the law” to the freedmen; however, a competing resolution by Senator John Henderson of Missouri included abolition only.

“With an eye toward achieving passage of the bill, Senator Henderson’s resolution mirrored the Northwest Ordinance of 1787, which had prohibited slavery in the territories with the language: ‘There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in punishment for crimes whereof the party shall have been duly convicted,’” Professor Henderson says. She also notes that Thomas Jefferson was the original author of the “no slavery” language that was later incorporated into the Northwest Ordinance.

Is there a difference between slavery and involuntary servitude? According to Professor Henderson, both are forms of coerced labor and involve violence and terror.

“The primary difference, as I see it,”



Professor Henderson says, “is that **chattel** slavery in the U.S. was a condition of birth.” Involuntary servitude was not a condition of birth and commonly had a time limit, she says, while “slavery in the U.S. was a status held for life.”

In 1873, the U.S. Supreme Court ruled “the word servitude is of larger meaning than slavery...and the obvious purpose was to forbid all shades and conditions of African slavery.” The Court also held that the 13th Amendment applied to other races as well and “forbids any other kind of slavery, now or hereafter. If Mexican **peonage** or the Chinese coolie labor system shall develop slavery of the Mexican or Chinese race within our territory, this amendment may safely be trusted to make it void.” The coolie trade refers to the importation of Asian contract laborers during the 19th Century.

The 13th Amendment has been cited in lawsuits attempting to define mandatory community service, taxation and the draft as involuntary servitude. The U.S. Supreme Court has consistently rejected those claims.

A Loophole

The clause in the 13th Amendment that states that slavery is abolished “except as punishment for a crime whereof the party shall have been duly convicted” left open a

loophole, allowing the practice of convict leasing to flourish, particularly in the South. Convict leasing was a practice where prisons or jails provided convicts to private parties, like plantations, or corporations, such as U.S. Steel, for “lease.” The lessee (the entity “purchasing” the convicts) would pay the prison and be responsible for feeding, clothing and housing the prisoners. The prisoners were paid nothing. In fact, in 1871, the Virginia Supreme Court issued a ruling that declared a convicted person was “a slave of the state.”

Professor Henderson points out that the “leasing out” of convicted and detained persons from the nation’s prisons and jails had a long history, dating back to as early as 1844.

“Not surprisingly, that history is bound up in the nation’s history of slavery and racial **subjugation**,” she says. Professor Henderson has done extensive research on this subject and found that “prisoners’ labor was exploited differently, according to race, long before the 13th Amendment was ratified.” The exception for persons convicted of crimes written into the Amendment was exploited by all the states, she says.

“The reliance upon Southern jurisdictions for convict labor deriving from **specious** claims of criminality is the more well known story,” Professor Henderson says, “primarily because prisoners and their families refused to stay silent about the atrocities happening inside and outside the walls of Southern prisons.”

The “specious claims of criminality” that Professor Henderson refers to are so called black codes, which were restrictive laws that targeted African Americans and became prevalent in the South after the Civil War. For instance, Mississippi, which enacted the first black code, required African American men to have written evidence of employment for the entire year beginning every January. They would be subject to arrest if they attempted

A Different Kind continued from page 3

to leave before the contract was up and any wages would be forfeited. Convictions of minor crimes, such as **vagrancy**, **loitering** and malicious mischief, created a pipeline for convict leasing, sending the newly freed slaves into a new type of slavery.

In 1893, Ida B. Wells, an African American investigative journalist and leader in the civil rights movement, wrote about the convict lease system, pointing out that judges “extend **clemency** to white criminals and mete severe punishment to black criminals for the same or lesser crimes.” *The People’s Advocate*, a Negro journal based in Atlanta, Wells notes in her article, revealed that in 1892 “90 percent of Georgia’s convicts are colored.”

Douglas A. Blackmon, author of *Slavery By Another Name: The Re-Enslavement of Black Americans from the Civil War to World War II*, said in an interview with *Newsweek*, “There were tens of millions of African Americans that over this 80-year period either one way or another were forced to live on a farm or in a lumber camp or were forced into convict leasing by the perverted justice system.”

While the practice of convict leasing ended in the 1930s, Professor Henderson notes that even today, jurisdictions across the

U.S. extract labor from incarcerated persons without paying them a minimum wage. ★

1. Why do you think the word slavery was not used in the U.S. Constitution until the 13th Amendment, with the framers going out of their way not to use the word?
2. Why do you think that slavery flourished more in the South than the North (with the exception of Connecticut)?
3. In what ways was the oppression of the American colonists by the British similar to the oppression of African American slaves? In what ways were they different?
4. Some claim that the 13th Amendment makes mandatory community service, including the draft, unconstitutional. The courts have rejected those claims. Do you agree or disagree with the courts? Explain your answer.
5. Do you think it is fair that prisoners today are not paid a minimum wage for their work? Why or why not?

Fourteenth Amendment Slow to Grant Equality

After the Civil War, the United States was faced with the problem of how to incorporate four million newly freed people into a society that saw them as less than.

For its part, Congress passed three amendments designed to protect the rights of former slaves. Known as the Reconstruction Amendments, these included the 13th Amendment (1865), which abolished slavery; the 14th Amendment (1868), which granted the newly freed slaves citizenship, due process and equality; and the 15th Amendment (1870), which granted African American men the right to vote.

Breaking it Down

The 14th Amendment has five sections to it. Sections 2 through 4 are rarely debated and

Section 5 simply gives Congress the authority to implement the amendment through legislation. Section 1, however, has been the basis for many landmark court rulings. It contains four clauses: “All persons born or **naturalized** in the United States and subject to the **jurisdiction** thereof, are citizens of the United States and the State wherein they reside [Citizenship Clause]. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States [Privileges & Immunities Clause]; nor shall any State deprive any person of life, liberty, or property, without **due process** of law [Due Process Clause]; nor deny to any person within its jurisdiction the equal protection of the laws [Equal Protection Clause].”

The Citizenship Clause **overruled** *Dred Scott v. Sandford*. Handed down by the U.S. Supreme Court in 1857, *Dred Scott* essentially ruled that African Americans were not and could never be citizens of the United States. The Privileges & Immunities Clause protected the right to travel for all citizens. The Due Process Clause applied the same protections from the federal government to the states as well. It also declared that the government couldn’t seize your possessions without a reason. The Equal Protection Clause, which is specifically cited in numerous civil rights cases, was meant to provide the full protection of the federal government to everyone, not just citizens but all persons. That clause didn’t live up to its potential in the 19th century, but would be extremely

Slow to Grant Equality *continued from page 4*

important by the middle of the 20th century (more on that later).

Swift Progress and Reconstruction Begins

The Reconstruction Amendments were all passed within five years of the war's end. Even before the 14th Amendment, the Civil Rights Act of 1866 had given citizenship to everyone born in the United States, providing the language that would eventually become the Citizenship Clause. Members of Congress wanted to make sure that the constitutionality of the Act could not be questioned and pushed for including the clause in the 14th Amendment.

During the Reconstruction Era, which would last 12 years (1865-1877), the freedmen made great strides. Along with the Civil Rights Act of 1866, Congress passed the Civil Rights Act of 1875, which prohibited racial discrimination in public places. Because of these Acts and the passage of the Reconstruction Amendments, many African American men were elected to office. According to History Makers, a research and educational institution focused on African American history, during the Reconstruction Era, more than 1,500 African Americans were elected to various local, state and national political office in the former Confederate states, including seven who were elected as U.S. senators or congressmen in the 41st and 42nd U.S. Congress.

Reconstruction Ends, 14th Amendment Weakened

There is a quote whose attribution cannot be verified, but is relevant to any discussion of the 14th Amendment and Reconstruction. The quote says, "When you're accustomed to privilege, equality feels like oppression."

White Southerners pushed back on the advancements made by former slaves and devised ways to hold onto control in the

South. One of those ways was to force the end of Reconstruction with the Compromise of 1877. Rutherford B. Hayes needed the support of Florida, South Carolina and Louisiana to win the presidency in 1876. In exchange for that support, he agreed to withdraw all federal troops from the South. The troops had been installed in the South to keep the peace and protect the rights of the freedmen.

President Hayes made good on that promise and Reconstruction ended in 1877. With no federal oversight in the region, control of the South fell back in the hands of white men. As a result, by 1905, African American men, for the most part, had been **disenfranchised** in every Southern state. For example, Henry Louis Gates Jr., a noted historian, wrote in *Time Magazine*, "In Louisiana, 130,000 black men were registered to vote before the state instituted its new constitution in 1898, by 1904 that number had been reduced to 1,342." In addition, the last African American to be elected to the U.S. Congress was forced out in 1901.

Suppressing the African American Vote

The first venture into **voter**



suppression began in the 1890s when Southern states went to great lengths to prevent the freedmen from voting. Southern state legislatures wrote methods to disenfranchise black voters into their state constitutions. Those methods included instituting **poll taxes**, complicated literacy tests and property ownership as requirements to vote. Grandfather clauses exempted poor and often **illiterate** white residents from those requirements. The grandfather clauses stated that if you had the right to vote before 1867 or had a "lineal descendant" (in other words a grandfather) who had the right to vote, you would be exempt from "educational, property or tax requirements for voting." Obviously, the freedmen only had the right to vote since the 15th Amendment's adoption in 1870.

No Relief in the Courts

Court challenges to the 14th Amendment during the 19th Century did not go in the freedmen's favor either, including an 8-1 U.S. Supreme Court decision in 1883 that struck down the provision of the Civil Rights Act of 1875 that prohibited racial discrimination in public places. The ruling determined that the federal government only had the power "to restrain states from acts of racial discrimination and segregation." In other words, it could not pass legislation on its own, despite Section 5 of the 14th Amendment, which states: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." That decision, in what is known as the Civil Rights Cases of 1883, effectively nullified the 14th Amendment's Equal Protection Clause and weakened the amendment's impact overall.

Another crushing blow for African Americans was the 1896 U.S. Supreme Court decision in *Plessy v. Ferguson*. The case involved New Orleans resident Homer Plessy,

continued on page 6

Slow to Grant Equality continued from page 5

who was of mixed race and challenged Louisiana's Separate Car Act, arguing it was unconstitutional. The law required separate train car accommodations for white and non-white passengers.

The U.S. Supreme Court delivered a 7-1 decision against Plessy. In the **majority opinion** of the Court, Justice Henry Billings Brown, wrote, "The object of the [14th] Amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things, it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either."

Attorneys representing Plessy argued that **segregation** laws are unconstitutional because they imply that African Americans are inferior and therefore stigmatize them as second-class citizens, violating the Equal Protection Clause.

Justice Brown rejected this claim, writing, "We consider the underlying fallacy of the **plaintiff's** argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction on it."

In the Court's lone dissent, Justice John Marshall Harlan wrote, "Every one knows that the **statute** in question had its origins in the purpose, not so much to exclude white people from railroad cars occupied by blacks, as to exclude colored people from coaches occupied or assigned to white persons.... The thing to accomplish was, under the

guise of giving equal accommodation for whites and blacks, to compel the latter to keep to themselves while traveling in railroad passenger coaches. No one would be so wanting in candor as to assert the contrary."

The decision in *Plessy v. Ferguson* solidified the "separate but equal" doctrine that had been introduced in previous challenges and ushered in the era known as Jim Crow, which was dominated by the passage of state and local laws enforcing segregation in the South. The era, named after a character from the racist minstrel shows of the 1830s, would last more than 75 years.

Would society be different today if the Reconstruction Era had lasted longer? Taja-Nia Henderson, a Rutgers Law School professor, who has written extensively about issues of slavery, says she's not certain.

"In a perfect world, we would have seen protections against wanton violence and land loss and discrimination and social exclusion, and perhaps (just perhaps) a change in the era's pervasive culture of anti-blackness in much of the nation," Professor Henderson says. "At the very least, I can say with confidence that perhaps if Reconstruction had lasted longer, we would have historical examples of political risk taking, reconciliation, and **repudiation** of white supremacy at the highest levels of government. Without that historical example, it remains difficult to have real imagination about race, racism, subordination and inequality in the realm of electoral politics."

While the Reconstruction Amendments were ground breaking, especially for their time, their full potential has yet to be realized. The 14th Amendment would be instrumental in the 1954 landmark U.S. Supreme Court

decision in *Brown v. Board of Education*, which struck down the separate but equal doctrine. The 14th and 15th Amendments would provide the foundation for civil rights legislation, including the Civil Rights Act of 1964 and the Voting Rights Act of 1965, both of which cited the 14th Amendment's Equal Protection Clause. Setbacks have occurred, however, including the U.S. Supreme Court decision in *Shelby County v. Holder*, which diminished the gains made with the Voting Rights Act.

We'll never know what could have been accomplished had the Reconstruction Era not been cut short.

"Reconstruction was a squandered opportunity to incorporate fully the formerly enslaved into the nation's economic, political, and social fabric," Professor Henderson says. "We bear the burden of this dashed opportunity every day." ★

1. How do you think society might be different today if Reconstruction had lasted longer than 12 years?
2. Think about the quote: "When you're accustomed to privilege, equality feels like oppression." What does the quote mean to you?
3. Identify additional races or ethnicities that have been in the past or are currently being oppressed. How does the 14th Amendment protect them?
4. Today, one method of voter suppression is the requirement of an ID in order to vote. Many think of voter ID as a poll tax because it often costs money to obtain one. Do you agree or disagree with the notion that voter ID is a poll tax? Explain your answer.

Taxing Income With 16th Amendment

Nothing may be more complicated (or snooze-worthy) than a discussion of taxes, but that is what the 16th Amendment to the U.S. Constitution is all about. The Amendment states: “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**.”

Article I, Section 8 of the U.S. Constitution allowed Congress to “lay and collect taxes.” Article 1, Section 9, however, limited Congress to taxing each state according to its overall population, not its residents’ individual wealth. In other words, if a small state, such as Rhode Island, represented two percent of the country’s population, it would pay two percent of the total federal tax. The passage of the 16th Amendment in 1913 removed the apportionment requirement.

The first call for a federal income tax came during the War of 1812 as a way to fund the war. The proposal was never implemented. It wasn’t until the Civil War that the first federal income tax was imposed. The Revenue Act of 1861 charged a three percent flat tax on anyone earning more than \$800 (that would be \$22,300 in today’s dollars). That tax remained in effect until it was repealed in 1872.

A Tax By Any Other Name

Before the passage of the 16th Amendment, the primary source of federal revenue was the collection of **tariffs** and **excise taxes**. So, what’s the difference between a regular tax, an excise tax and a tariff?

Cynthia Blum, a professor at Rutgers Law School and co-director of its Federal Tax Law Clinic, explains that a tax is a **compulsory** payment imposed by and paid to a government authority. A tariff is a different type of tax, which is charged on imported goods and usually paid by the importer to the country’s customs service. An excise tax, Professor Blum says, is a tax paid by the consumer on the purchase of a specific good or service (i.e., a gas tax or taxes on alcohol). The government usually collects excise taxes from the producer or provider.

Tariffs are thought to penalize the lower classes. Professor Blum says that is because tariffs are based on imported items that may either be purchased directly by consumers or become part of a larger product sold to consumers. For example, a tariff on steel or aluminum will affect the price of a can of soda.

“Even though the importer turns over the tax to the customs service, the indirect result may be to increase the price of the goods for

the consumer,” Professor Blum says. “Lower income individuals expend a greater percentage of their income on consumption, as compared to higher income individuals, who are in a position to save much of their income. As a result higher prices have a greater impact on lower income individuals.”

Relief for the Poor

During the late 1800s, many believed that high tariff rates put the burden of funding the federal government on the poor and wanted to shift that burden to the wealthy by taxing income. That belief is still held by many today. In 1894, Congress passed the Wilson-Gorman Tariff Act, which lowered tariff rates. To make up for the shortfall of lower tariffs, the Act imposed a tax on corporate profits, gifts and inheritances, along with a two percent tax on incomes over \$4,000 (about \$116,000 today).

In 1895, the U.S. Supreme Court issued a decision in *Pollock v. Farmers’ Loan & Trust Co.*, which struck down the income tax proposed in the Wilson-Gorman Tariff Act. The Court ruled that the income tax imposed was not constitutional because it was a direct

tax not apportioned among the states based upon their population. The Court’s decision in the case would prevent the proposal of an income tax until the 16th Amendment was passed in 1913.

Once the Amendment was ratified by the states, Congress passed the Revenue Act of 1913, which lowered the tariff rate from 40 percent to 26 percent and established a one percent tax on income above \$3,000 (around \$66,000 today) and a six percent rate on those earning more than \$500,000 (around \$11 million today). Only three percent of the U.S. population was affected by the federal income tax at the time. ★



1. The article gave the example of a can of soda, which would be affected negatively by a tariff on aluminum. Think of other products you use that would be affected by tariffs. What industries would be affected?
2. Do you think it is fair to tax income? If not, how do you think the government should be funded?
3. Do you think taxes should be based on earnings or should everyone pay the same amount?
4. What would our country look like if there were no taxes?

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The Consent of the Governed and the 17th Amendment

The Declaration of Independence states: "Governments are instituted among Men, deriving their just powers from the consent of the governed." This is a fancy way of saying that the people should power government.

If that's what our forefathers believed, why did they originally leave the electing of U.S. senators to state legislatures and not the people? Professor Nolan McCarty, the Department of Politics Chair at Princeton University, explains that it was part of the "Great Compromise" to protect the **sovereignty** of the states. "In the Senate, states were represented as states, not people," he says.

Connecticut Compromise

Delegates from the states met in Philadelphia in the spring of 1787 to hash out the framework of how the United States would be governed. There were a few proposals considered when setting up the U.S. Legislature. First up was the Virginia Plan, which proposed creating a **bicameral** legislature (meaning two houses) where both houses would have proportional representation, meaning a state's population would determine how many representatives it would get. The smaller states were not keen on that plan, believing that their voices (and interests) would be drowned by the larger states. There was also the New Jersey Plan proposed by delegate William Paterson. The New Jersey Plan proposed a legislature with only one house where each state would have equal representation regardless of its population.

Eventually, the delegation from Connecticut blended the Virginia and New Jersey plans to come up with what is known as the Connecticut Compromise or the Great Compromise. The compromise was a bicameral legislature where the

upper house (the Senate) would have equal representation—two senators each—that were elected by state legislatures for six-year terms. In the lower house (the House of Representatives), representation would be proportional and the people of each state would elect their representatives for two-year terms.

Article I, Section 2 of the U.S.

Constitution states: "The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative..."

This section of the Constitution also contains the controversial three-fifths clause where slaves were counted as three-fifths for population purposes, something fought for by the Southern states in order to boost their states' representation.

In the end, the representation in the House would shake out like this: New Hampshire, three representatives; Massachusetts, eight; Rhode Island, one; Connecticut, five; New York, six; New Jersey, four; Pennsylvania, eight; Delaware, one; Maryland, six; Virginia, 10; North Carolina, five; South Carolina, five; and Georgia, three.

So, which house has more power—the Senate or the House of Representatives? Professor McCarty explains that the reason the Senate is considered the "upper" house and the House of Representatives is known as the "lower" house is pure numbers. In a bicameral legislature, the house with less members is known as the upper house. He says the Senate probably has more prestige because there are less senators but both houses are "pretty equal

legislatively."

Each house has power the other one doesn't. For example, the Senate solely approves presidential nominees, federal judicial nominees and approves treaties. The House of Representatives, however, holds the purse strings with the power to approve spending and the funding of the government. In addition, when a presidential election results in a tie, the House, per the Constitution, is the tiebreaker. The House has been called to break a presidential election tie twice, electing Thomas Jefferson in 1800 and John Quincy Adams in 1824.

The Constitution also gives the House the power to bring impeachment proceedings against government officials and then serve as the "prosecutor" in the trial. The trial, however, is held in the Senate where the senators would essentially serve as judge and jury. Since 1789, impeachment proceedings have been brought against 17 government officials, including two presidents—Andrew Johnson in 1868 and Bill Clinton in 1998 (both were **acquitted** in the Senate trial).

Corruption and Deadlock

When the framers were working out the details of the government, James Wilson of Pennsylvania was the only delegate who advocated allowing the people to directly elect senators in the spirit of "consent of the governed." That idea was rejected. The framers saw the Senate as a way to empower the states while creating a "check" on the potential "populism" of the House. With its longer



Consent *continued from page 9*

six-year terms, the Senate would moderate the representatives in the House who were more accountable to their constituents because of their shorter two-year terms.

As the country grew older, the system in the Senate stopped working and by the early 1800s there were calls to amend the Constitution because of issues of deadlock and corruption. According to Michael Waldman in his book *The Fight to Vote*, "The task of choosing a senator could paralyze a statehouse, crowding out other responsibilities. In the late 1890s alone, legislatures left fourteen Senate seats vacant because they could not resolve party squabbles." Waldman also wrote, "But the real problem with having state legislatures pick senators was the legislatures themselves: the new industrial robber barons found them easy to buy. According to one 1906 study, in seven states in the previous fifteen years 'charges of corruption have been put forward with enough presumptive evidence to make them a national scandal.' State legislators chose U.S. senators who doubled as industry representatives. Montana's senators represented copper; Pennsylvania's, steel; New York's, Wall Street."

An amendment to elect senators via popular election was first introduced in 1826, but didn't gain support until the 1890s. The most important argument at the time was the need to "awaken in the senators...a more acute sense of responsibility to the people." The Reformers, as those who advocated for the 17th Amendment were called, claimed the

Senate had become "an aristocratic body—too far removed from the people, beyond their reach, and with no special interest in their welfare."

The 17th Amendment to the U.S. Constitution, introduced in 1912 and adopted in 1913, established that the people would

directly elect senators from their respective states.

The amendment was implemented nationwide with the election of 1914.

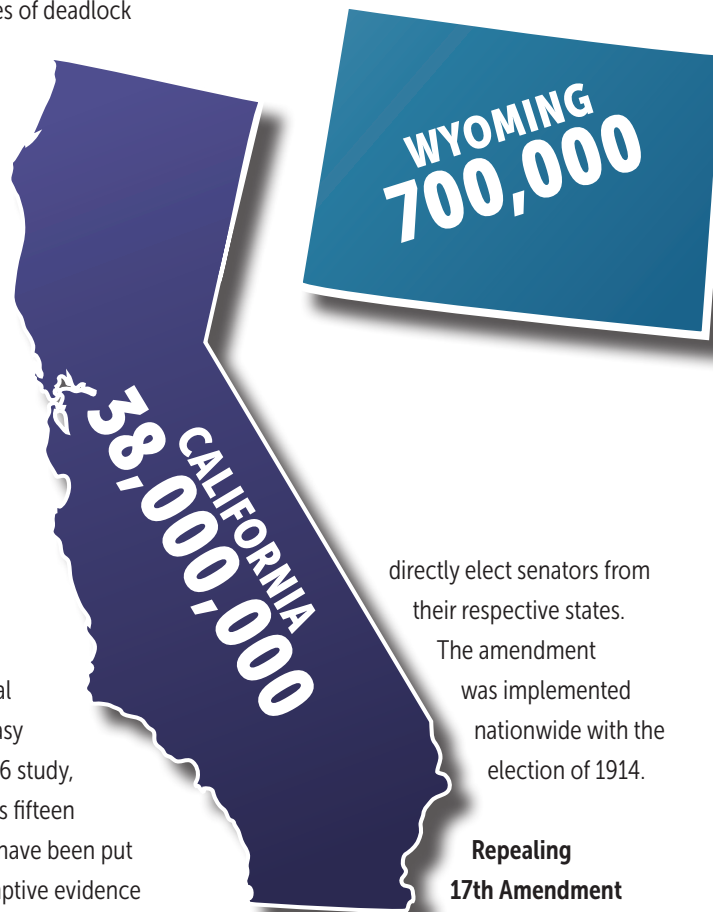
Repealing 17th Amendment

There have been calls to repeal the 17th Amendment; with some saying its implementation caused a decline in state's rights. Others claim it is an undemocratic representation of the people and creates an imbalance when a senator from a small state like Wyoming with a population of 700,000 has as much say as a senator from California, which has a population of 38 million.

Professor McCarty says that a case can be made that the current system is fair if you think of the states as "semi-sovereign units." The

issue of fairness comes in, he says, when you think of it as "senators representing people." Professor McCarty points out that the one part of the U.S. Constitution that can't be amended is the part that gives two senators to each state. Article V of the U.S. Constitution states: "No state without its consent can be deprived of its equal **suffrage** in the Senate."

Given how hard it is to amend the Constitution and the fact that three-fourths of states (including the small states that the current system benefits) would need to ratify such an amendment, Professor McCarty says the 17th Amendment is not going away any time soon. ★



1. What do you think of the unfair representation argument outlined in the post? Is it fair that all states have two senators no matter how many citizens in the state?

2. The southern states counted enslaved people as three-fifths of a person in order to boost their states representation in the House. What are your thoughts and feelings about this?

3. Today, the House of Representatives has 435 members and the Senate has 100 members. What are the advantages and/or disadvantages of having more or less people in each house?

4. Do you think it is fair that a "senator from a small state like Wyoming with a population of 700,000 has as much say as a senator from California, which has a population of 38 million?" Why or why not?

America Embarks On An “Experiment”

It has been called a failed experiment, as well as a “noble experiment” depending on which side of the issue you favor. The “experiment” was Prohibition, a nationwide ban on the production, importation and sale of alcoholic beverages. It was achieved by the **ratification** of the 18th Amendment to the U.S. Constitution and lasted nearly 14 years, from 1920 to 1933.

The Prohibition Movement, also known as the **Temperance** Movement, dates back as far as the 1820s and was propelled by religious groups who considered alcohol “evil” and at the heart of all of the country’s problems. Advocates of the movement claimed that banning alcohol would eliminate poverty, violence and immoral behavior, while also reducing crime.

Dry vs. Wet

In 1846, Maine was the first state to pass a prohibition law at the state level and by 1916, 23 of 48 states had passed similar laws. The passage of the 18th Amendment came down to the number of “dry” members of Congress, those that favored a nationwide prohibition on alcohol, and the “wet” members, those that were against Prohibition. The 1916 congressional election saw “dry” members take a two-thirds majority in the House, which is how the 18th Amendment was able to pass Congress on December 18, 1917. The states ratified the amendment on January 16, 1919, but it would not go into effect for a year.

The 18th Amendment instituted Prohibition nationwide, but it was the Volstead Act, passed by Congress on October 28, 1919, that enforced the amendment and created a special Prohibition unit within the Treasury Department. Through this Act, more than 1,500 federal agents were tasked with enforcing Prohibition.

Officially, Prohibition began at midnight on January 17, 1920. According to police reports, the first violation of the Volstead Act was recorded on January 17, 1920 at 12:59 a.m. in Chicago. According to the book, *Gentlemen Bootleggers*, in the first full year that the Volstead Act was in place, agents opened more than 29,000 cases violating it.

Unintended Consequences

While some statistics show fewer hospitalizations for alcoholism during Prohibition,

there were also more than 10,000 deaths attributed to alcohol poisoning. These deaths were the result of citizens making their own alcohol and being inexperienced with the techniques involved. In many cities, like New York, Chicago and Los Angeles, Prohibition gave rise to bootlegging, **speakeasies** and organized crime. Al Capone, one of the most notorious gangsters of the 1920s, made approximately \$60 million a year (\$720 million in today’s dollars) from illegal alcohol distribution. According to U.S. National Archives, it is estimated that as many as 100,000 speakeasy clubs were in business by 1925 in New York City alone. Fun fact, Atlantic City was a prominent site for bootlegged liquor distribution.

These unintended consequences are why many call Prohibition a “failed experiment.” T.J. Jackson Lears, a history professor at Rutgers University, says the reason Prohibition failed is because the government attempted to legislate morality.

“Prohibition attempted to police private behavior in ways that most Americans found intrusive, annoying and even oppressive,” Professor Lears says. “It made a social practice, tolerated for centuries and widely rooted in tradition and custom, into a federal crime.”

Professor Lears says there is “no way Prohibition could have worked” and likens it to the war on drugs of the 1970s, referring to the federal government’s efforts to stop the illegal use of drugs by increasing arrests for low-level drug offenses.

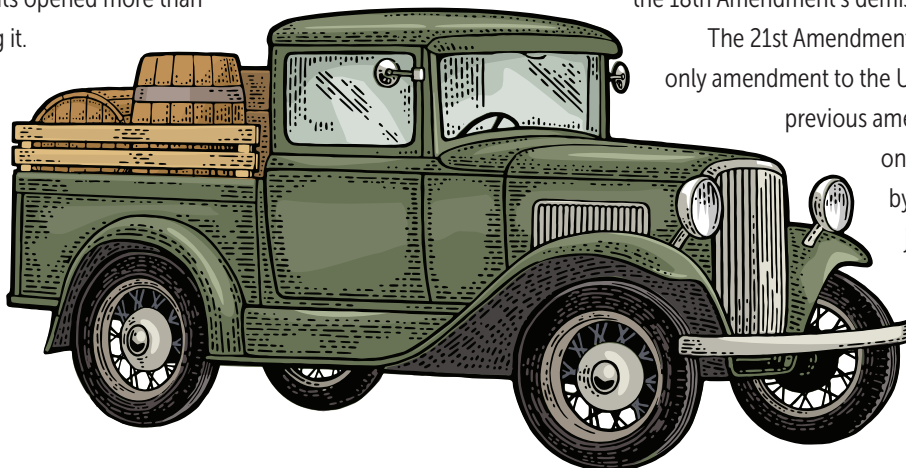
“Like the war on drugs, the war on alcohol created more damage than the substance it was meant to prohibit,” Professor Lears says.

Repealing an Amendment

Enthusiasm for Prohibition started to wane in the late 1920s, with many anti-Prohibition activists claiming it was denying Americans much-needed jobs and revenue for the government. In 1932, presidential candidate Franklin D. Roosevelt made **repealing** the 18th Amendment part of his platform. After Roosevelt won the election, the 18th Amendment’s demise was assured.

The 21st Amendment is unique in two ways. It is the only amendment to the U.S. Constitution that repeals a previous amendment. In addition, it is the only amendment that was ratified by state ratifying conventions (for just this purpose) instead of state legislatures.

The ratification of the 21st Amendment on December 5, 1933



“Experiment” continued from page 11

repealed the 18th Amendment, as well as the Volstead Act. While there was no longer a federal ban on alcohol after the passage of the 21st Amendment, it was left up to the states to regulate the sale and distribution of liquor. Some states chose to “stay dry.” In fact, today there are more than 500 municipalities in the U.S. that do not allow for the sale of liquor and are considered “dry.” Approximately 18 million people live in those municipalities. The states with the most “dry” counties include: Arkansas, Georgia, Kansas, Kentucky, Mississippi, South Dakota, Tennessee and Texas. Kansas prohibited public bars until 1987. The state’s reluctance may have stemmed from the fact it was the first state (in 1881) to outlaw alcoholic beverages in its constitution. Another fun fact, the distillery for Jack Daniels is located in Tennessee’s Moore County, which is dry.

In a 1932 letter, John D. Rockefeller Jr., a financier and philanthropist of the time who was also a solid supporter of Prohibition, wrote, “When Prohibition was introduced, I hoped that it would be widely supported by public opinion and the day would soon come when the evil effects of alcohol would be recognized. I have slowly and

reluctantly come to believe that this has not been the result. Instead, drinking has generally increased; the speakeasy has replaced the saloon; a vast army of lawbreakers has appeared; many of our best citizens have openly ignored Prohibition; respect for the law has been greatly lessened; and crime has increased to a level never seen before.”

So was the 18th Amendment a violation of Americans’ rights? Professor Lears says the framers of the Constitution would have surely thought it was. ★

1. What similarities or differences do you see between Prohibition and the effort to legalize marijuana?
2. Professor Lears compares Prohibition to the War on Drugs. What similarities or differences can be drawn between the two?
3. Some Americans found the 18th Amendment intrusive. What other laws can you think of that could be described that way?
4. Do you agree or disagree that it is up to Congress to regulate morality? Explain your answer.

DO YOU WANT TO BE BETTER INFORMED?

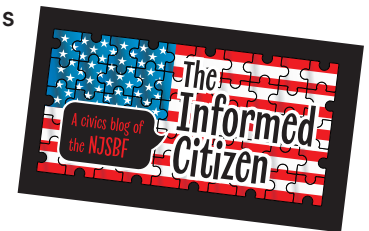
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DC Residents—Taxation With Some Representation

The United States was born in rebellion, so it is fitting that the origins of the nation’s capital can be traced back to a rebellion as well.

In 1783, while the Continental Congress was meeting in Philadelphia, 400 soldiers who were angry over not being paid for their Revolutionary War service, descended on the meeting. The members were forced to flee to Princeton, NJ as a result, since the state of Pennsylvania refused to offer protection.

In 1787, when the framers of the U.S. Constitution were debating the location of the nation’s capital, they would remember the incident in Philadelphia and decide that the seat of the federal government should be under federal control, not dependent upon any state for protection.

Article I, Section 8, Clause 17 of the U.S. Constitution, referred to as the “District Clause,” reads: “The Congress shall have Power...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...”

Why DC?

Several Northern and Southern states offered land for the location of the federal government; however, in 1790, Alexander Hamilton and James Madison cut a deal with Thomas Jefferson in the role of mediator. Over dinner, Jefferson brokered an agreement where Hamilton would receive support for his Assumption Act, which would require the federal government to assume all state debt incurred during the Revolutionary War; and Madison would receive support for the Residency Act, which would place the capital in the South.

Maryland and Virginia gave 10 square miles to establish what would eventually become the District of Columbia or

Washington, DC. In 1846 Virginia would **retrocede** its land, so the territory that makes up DC today once belonged entirely to Maryland.

Between 1790 and 1800, residents of the district, who were no longer citizens of any state, were still able to vote in their previous state’s elections. With the Organic Act of 1801, the national government moved to its permanent site and the district was officially placed under the control of Congress—that is when DC voters became **disenfranchised**. They were not allowed to vote for President of the United States and had no control over local elections either.

When Alexander Hamilton realized that the residents of the new seat of government did not have representation in Congress, he proposed an amendment that would grant them voting rights when the district achieved a certain size. The amendment did not pass. Washington, DC residents would be disenfranchised for the next 160 years until the ratification of the 23rd Amendment in 1961.

23rd Amendment

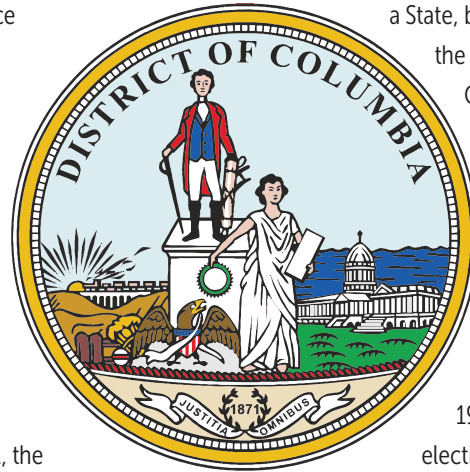
When the federal district was first established, it had approximately 5,000 residents. By 1960, it had more than 700,000. That’s a lot of citizens with no representation who still had to pay federal taxes.

The 23rd Amendment, which was passed by Congress in 1960 and **ratified** by the states in March 1961, treats the District of Columbia as if it were a state for the purposes of electing the President of the United States. The Amendment gives the District “A number of electors...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.”

Congress still retained control over the District and its laws.

As a result of the 23rd Amendment, DC residents were able to participate in the presidential election of 1964 and every presidential election since.



Representation Still Not Full

According to a 2007 Congressional Research Service report, “as early as 1801 citizens of what was then called the Territory of Columbia voiced concern about their political disenfranchisement.” It wasn’t just about electing the president, but about representation in Congress as well.

In 1871, DC was given a delegate to Congress, but that representation was terminated in 1875. Then in 1971, the federal district was granted one non-voting delegate in the House of Representatives, which they still retain today. Non-voting members are allowed to participate in some functions of the House of Representatives, including introducing legislation, speaking on the House floor and voting in committees. He or she is not allowed to vote on legislation. So, what’s the benefit here?

“By being aware of what’s going on you are having influence,” Brian Cige, a constitutional law attorney, says. “You’re better off knowing what’s going on [and participating even on a limited basis] than not having a representative at all.”

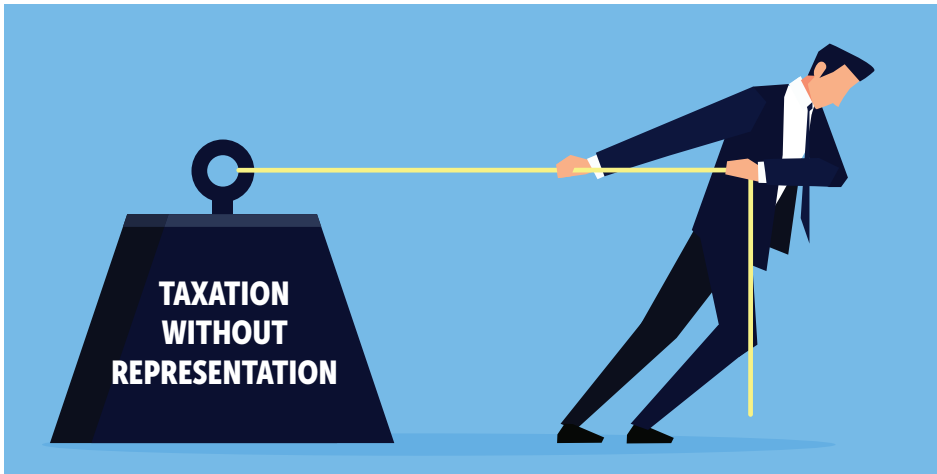
Residents of DC have no representation in the U.S. Senate, which some say is “taxation without representation.” Sound familiar?

DC Residents *continued from page 13*

Cige says “taxation without representation” only applies to states, which DC is not. He believes that as soon as the land was ceded to the federal government, the rights of the people who lived there

More than 150 constitutional amendments addressing the disenfranchisement of DC voters have been introduced in Congress since the late 19th century. While the 23rd Amendment took

than 60 percent of DC’s workforce is made up of non-residents. Congress also retains the power to **veto** any law that the Council passes.



were converted from the rights of citizens in a state to the rights of citizens who live in a U.S. territory. He acknowledges that DC is not identified as a territory but says that’s essentially what it is and how, for the most part, it is treated.

In 1820, the U.S. Supreme Court weighed in on DC’s “taxation without representation” claim and decided it was not the same as the British taxing colonists, ruling “...and certainly the constitution does not consider their want of a representative in Congress as exempting it from equal taxation.”

The nation’s capital has representation, Cige says, they are just represented differently. He also points out that DC enjoys more representation than other U.S. territories, which are not provided electors to vote for President of the United States. U.S. territories include, Puerto Rico, Guam, Northern Mariana Islands, U.S. Virgin Islands and American Samoa.

care of voting for President, other proposals would have given the district full representation.

Only one, the 1978 DC Voting Rights Amendment, which would have granted representation to the district in both houses of Congress, treating it as a state, was sent to the states for consideration, with a seven-year deadline for it to be ratified. When time expired on the amendment in 1985, only 16 states had ratified the proposed amendment, far from the 38 needed.

While DC is still under the control of Congress, in 1973 under the District of Columbia Home Rule Act, it was allowed to elect its own mayor and establish a 13-member Council of the District of Columbia. The Act specifically prohibited the Council from enacting certain laws, including instituting a commuter tax on individuals who work in the District but live elsewhere. More

Statehood?

Population-wise, Washington, DC has more citizens than the states of Vermont and Wyoming. Residents of DC overwhelmingly support it becoming the 51st state in the union and began pursuing statehood in the early 1980s. There are several obstacles which prevent that from happening, including the belief that it would violate the District Clause, which states that the federal seat needs to be separate from the states for safety reasons (remember the Philadelphia soldiers).

Cige also says that with the **partisan** atmosphere in politics today, he doesn’t see it happening. Still, DC’s non-voting delegate has introduced legislation many times which would make DC a state and provide them with two senators and at least one voting member in the House of Representatives. If DC were to become a state, it would be a long road with many hurdles to overcome. ★

1. In your opinion, are DC residents victims of “taxation without representation?” Why or why not?
2. The U.S. has not added a state to the union since 1959 when Alaska and Hawaii both achieved statehood. Should Washington, DC become our 51st state? Why or why not?
3. Why might you choose to live in DC? Why might you choose not to live in DC?

A Long Road for the 27th Amendment—And the ERA Too

The 27th Amendment to the U.S. Constitution, which is the last one to be added to the document, states: “No law varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.” It’s pretty straightforward, essentially saying any pay raise that Congress gives itself will not take effect until another election occurs.

What is unique about this amendment is that it was proposed by James Madison in 1789, but **ratified** more than 200 years later in 1992. Madison sent the amendment, along with 11 others, to the states for ratification on September 25, 1789. Ten of those amendments would become the Bill of Rights.

The road to the 27th Amendment’s ratification would have ended there, but in 1982 Gregory Watson, a University of Texas at Austin student, wrote a paper for a political science course arguing that Madison’s amendment was still viable and could be ratified since Congress had not put an expiration date on it. He received a “C” on the paper (the professor was not convinced by his argument). To prove his point, he instituted a letter-writing campaign to state legislatures that had not ratified the amendment.

A 1921 U.S. Supreme Court ruling held “ratification [of a constitutional amendment] must be within some reasonable time after the proposal.” A later decision from the Court, however, ruled that it is up to Congress to determine whether an amendment with no time limit is still viable.

Needless to say, Watson’s letter-writing campaign was a success and the 27th Amendment was ratified, becoming part of the U.S. Constitution on May 5, 1992. In 2017, Watson’s grade was even changed to an “A.”

Providing Inspiration for ERA

The passage of the 27th Amendment changed everything for the Equal Rights Amendment (ERA), which was thought to be dead. The ERA was sent to the states for ratification on March 22, 1972 and ultimately received approval from 35 states, falling three states short of the 38 needed. To ERA advocates, if the 27th Amendment could pass after a 203-year-long delay then there was hope for the ERA as well. It indicated to them that Congress has the power to maintain the legal viability of the ERA’s 35 state ratifications, meaning that they still only needed three more for it to pass. So advocates adopted the “three-state strategy” in 1994. The strategy focused on urging the 15 states that had not ratified the amendment to do so.

As a result of the new strategy, Nevada ratified the ERA in March 2017 and Illinois did the same in May 2018. To date, 13 states (Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Utah and Virginia) still have not ratified the ERA. In 2018, an effort for Virginia to be the final state ratification failed.

History of ERA

In 1923, on the 75th Anniversary of the first Women’s Rights Convention in Seneca Falls, NY, Alice Paul introduced the Equal Rights Amendment. The original amendment stated: “Men and women shall have equal rights throughout the United States and every place subject to its jurisdiction. Congress shall have power to enforce this article by appropriate legislation.”

That amendment was introduced in every congressional session until it passed both houses of Congress with reworded language in 1972. The current ERA states: “Section 1: Equality of rights under the law shall not be denied or abridged by the United States or by any state on account of sex. Section 2: The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article. Section 3: This amendment shall take effect two years after the date of ratification.”

In 1978, Congress voted to extend the original seven-year deadline for ratification of the ERA until June 30, 1982. Despite the extension, no more states had ratified the amendment by the new deadline.

Still Needed?

To date, the only equality among men and women specified in the U.S. Constitution is the right to vote. According to the Alice Paul Institute in Mt. Laurel, NJ, from birth the way males and females obtain their constitutional rights are different. “We have not moved beyond the traditional assumption that males hold rights and females, if treated unequally, must prove that they hold them.”

But critics contend the ERA is no longer needed because women have made great strides since the time the amendment was first proposed, pointing to laws protecting women against discrimination. U.S. Census Bureau data reveals, however, that women still earn 80.5 cents for every dollar a white man earns and women of color earn even less—61 cents for African American women and 53 cents for Latina women. Asian American women fare a little better, earning 85 cents. To



A Long Road *continued from page 15*

put this in perspective, an African American woman doing the same job must work for 20 months to earn the same amount that a white man earns in a year.

According to the Institute for Women's Policy Research, for white women, the earnings gap will not close until 2059. Estimates are that the gap likely won't close for African American women until 2119 and not until 2224 for Latina women. The U.S. is ranked 45th in the Global Gender Gap of nations, coming in behind Belarus and Namibia. Iceland comes the closest to full gender pay equality, followed by Finland, Norway, Sweden and Denmark.

"**Statutes** are not enough because they can be **rescinded**," said the late Lenora Lapidus, director of the Women's Rights Project at the American Civil Liberties Union. "A constitutional amendment is permanent."

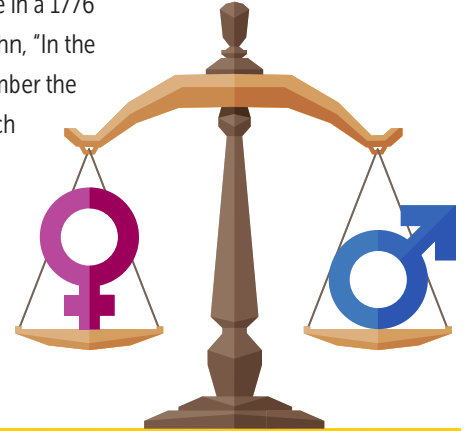
Where We Go From Here

According to Lapidus, once the last state ratification is obtained there will be some issues to work out. "Congress has to take some action to extend the deadline or some other action needs to be taken," she advised.

By extending the deadline in 1978, Congress demonstrated that it does have that power. In addition, Article V of the U.S. Constitution has no mention of a time limit for a constitutional amendment, just that three-fourths of state legislatures need to ratify for it to become part

of the U.S. Constitution. Another argument that the imposed deadline should not bar final ratification is that it appears in the proposing clause, not the actual amendment.

Abigail Adams wrote in a 1776 letter to her husband, John, "In the new code of laws, remember the ladies and do not put such unlimited power into the hands of the husbands." Perhaps if the ERA is ultimately ratified, the ladies will finally be remembered. ★



1. Do you think that a constitutional amendment should have a time limit? Why or why not?
2. The Alice Paul Institute states "females, if treated unequally, must prove that they hold [rights]." What rights have men always had that women have had to fight for over the years?
3. The 27th Amendment is the last one added to the U.S. Constitution. What amendment would you propose to the document?

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Respect

“Right to Vote” *continued from page 1*

to vote (as long as they met the property requirement). A dispute between Newark and Elizabethtown over a courthouse in Essex County would change everything. Men on both sides of the dispute brought out women to cast ballots (in some cases illegally). In addition, men dressed up as women to cast ballots to boost their cause. This flagrant case of voter fraud led the New Jersey Legislature to adopt new voting laws in 1807, **disenfranchising** all but white males.

By the 1850s property ownership requirements had been relaxed and almost all white males were eligible to vote. While the “right to vote” was not mentioned in the original Constitution, it is, however, outlined in four amendments (15th, 19th, 24th & 26th).

African American men

Ratified on February 3, 1870, the 15th Amendment to the U.S. Constitution states: “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.”

The 15th Amendment was the last of what are known as the “Reconstruction Amendments,” adopted after the Civil War, between 1865 and 1870. The first of the Reconstruction Amendments was the 13th Amendment, which abolished slavery and the second was the 14th Amendment, which made all former slaves citizens of the United States and also established equal protection under the law.

Members of the Women’s Suffrage Movement were devoted **abolitionists** and spoke out against slavery; however, some in the movement opposed the 15th Amendment, favoring universal **suffrage**, which would have included giving women the vote.

At the time, women suffragists claimed that they were entitled to the vote under the 14th Amendment’s promise of equal

protection under the law; however, when the 15th Amendment was ratified, it did not include a protection for women. While Frederick Douglass, the famous African American abolitionist, was an ardent supporter of women’s rights throughout his lifetime, he also believed that African American men shouldn’t have to wait to gain their suffrage just so that women could benefit as well.

“I must say I do not see how anyone can pretend that there is the same urgency in giving the ballot to woman as to the negro. With us, the matter is a question of life and death, at least, in fifteen States of the Union.” Douglass said in a speech. “When women, because they are women, are dragged from their homes and hung upon lampposts; when their children are torn from their arms and their brains dashed upon the pavement... then they will have the urgency to obtain the ballot.”

While women would have to wait another 50 years to gain suffrage, for African Americans (men and women) the promise of the 15th Amendment wouldn’t really be fulfilled until the passage of the Voting Rights Act of 1965. In addition, the benefits of the 14th Amendment would not truly be realized until the 1954 U.S. Supreme Court decision in *Brown v. Board of Education*.

Women

The divide on supporting the 15th Amendment caused a rift within the Women’s Suffrage Movement and it split into two separate organizations. The National American Woman Suffrage Association (NAWSA) was founded by Susan B. Anthony and led in 1900 by Carrie Chapman

Catt. Alice Paul, a New Jersey native, led the more radical National Woman’s Party (NWP). NAWSA eventually won the support of President Woodrow Wilson to their cause, while the NWP routinely picketed outside the White House, with members, called the “Silent Sentinels,” often being arrested. When Paul was arrested in October 1917, she reportedly told the judge, “As members of the disenfranchised class, we do not recognize the court established by a police officer from whose election women were excluded. We do not admit the authority of the court, and we shall take no part in the court’s proceedings.”

The 19th Amendment, which mirrored the wording of the 15th Amendment, except for the words “on account of sex,” was ratified on August 18, 1920, giving more than 27 million women the right to vote.

The Poor and Poll Taxes

In his book, *The Fight to Vote*, Michael Waldman writes, “The poll tax was riveted into place starting in the 1890s as part of the disenfranchising laws and constitutions.

By 1904 every ex-Confederate state had adopted it. The tax kept poor black and white citizens from voting. In 1900, when three-quarters of the population in those states had an average annual income of \$55 to \$64, the poll tax was typically a hefty \$1.”

The 24th Amendment, ratified on January 23, 1964, stated that for federal elections, the right to vote “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.” The amendment only applied to federal elections (i.e., president, vice president,



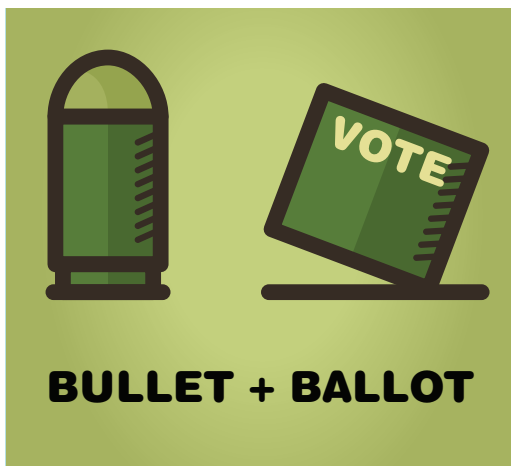
“Right to Vote” *continued from page 17*

U.S. senator and representatives). States were still allowed to impose taxes at the local and state level.

Two years later, the U.S. Supreme Court in *Harper v. Virginia Board of Elections* would prohibit tax payment in all U.S. elections, not just federal elections. Ironically, the Court did not use the 24th Amendment to strike down the state poll taxes as unconstitutional. Instead, the Court ruled that the poll tax is a violation of the Equal Protection Clause outlined in the 14th Amendment.

The Young

The last amendment to the U.S. Constitution that expanded the franchise was the 26th Amendment, which stated: “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.”

This amendment was largely brought about by protests to the Vietnam War, where the sentiment of “old enough to fight, old enough to vote” was common. In other words, if 18-year-olds, who were being drafted, were old enough to go to war, they were old enough to vote for the leaders who were sending them there.

Not everyone agreed. Some questioned the maturity and responsibility of those so

young. In fact, in 1969, New Jersey voters defeated a state proposal to lower the voting age. However, the notion of “the bullet and the ballot go together,” popular during the Civil War era, was once again in the forefront and

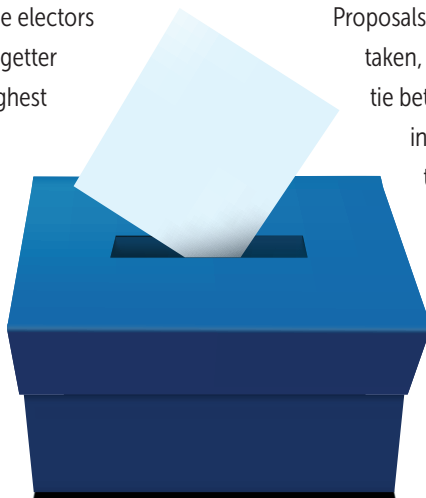
the 26th Amendment was ratified on July 1, 1971.

In terms of protecting voting rights, it is worth remembering how the franchise started to realize how far we’ve come and to maintain the resolve not to slip backward. ★

1. Do you think an increase in the number of voters makes a country more democratic? How?
2. How did the 15th Amendment change the lives of African American men?
3. How did the 19th Amendment change the lives of women?
4. What was the purpose of the poll tax? Today, some consider voter ID laws as a modern day poll tax. What are current voter ID laws? What do you think? Are they equivalent to a poll tax? Why or why not?
5. Some legislators have proposed lowering the voting age to 16. How do you feel about that? Would you be ready to vote at that age?

The Presidency *continued from page 1*

In the original system of electing a president, the electors of each state voted for two candidates. The top vote getter became president, while the person with the next highest total was appointed vice president. In 1796, John Adams received the most votes and finishing in second place was Thomas Jefferson. The problem with that outcome was that the two men were from different parties and found it hard to work together, especially on foreign affairs. At a time when the French Revolution was raging, President Adams was pro-British, while Vice President Jefferson favored the French.



Proposals were made to fix the rules, but no action was taken, which resulted in the election of 1800 ending in a tie between Vice President Jefferson and Aaron Burr. In incidents of a tie, the election of the president falls to the House of Representatives, which took 36 votes to break the election gridlock.

Ratified in 1804 (in time for that year’s presidential election), the 12th Amendment gave way to how the system works today where each party nominates their “team” for president and vice president. Instead of casting two votes for president, electors cast one vote for president

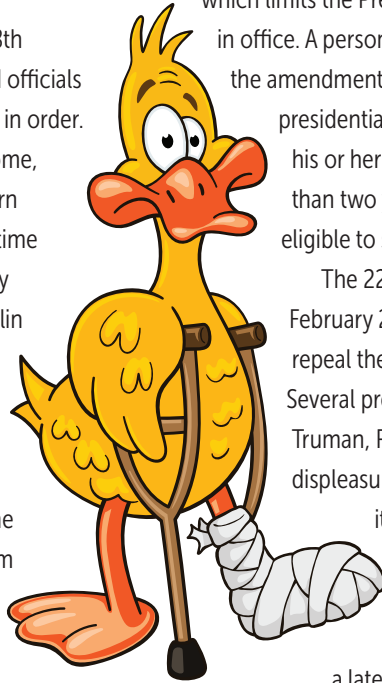
The Presidency *continued from page 18*

and one vote for vice president (or their team). The amendment also stipulates that the vice president is subject to the same eligibility requirements of the president (natural born citizen, at least 35 years old and a resident of the U.S. for at least 14 years). Since the vice president is next in line for the presidency, it was thought that he or she should be constitutionally eligible for the office as well.

Quack, Quack—Avoiding a Lame Duck

With the ratification of the 20th Amendment in 1933, January 20th was officially designated as the day that the President would take the oath of office. Prior to the 20th Amendment, the President took office on March 4th, a date that was set in 1788. With Election Day held in November, that created an almost four-month “*lame duck*” period of governance. The congressional term began in March as well. The 20th Amendment moved that date to January 3rd.

The March date may have been selected because 18th century America functioned at a slower pace and elected officials probably needed the time to prepare and get their affairs in order. The trip to the capitol could also be a long journey for some, depending on what state they were from. With the modern age, however, that was no longer the case. The long lag time between the old and new administrations was particularly difficult after the elections of Abraham Lincoln and Franklin D. Roosevelt. President Lincoln could not address the problem of the Southern secession until he became President, and likewise, President Roosevelt needed to deal with the Great Depression, but couldn’t until he took the oath of office. The 74th Congress in 1935 was the first to begin on January 3rd and the first presidential term under the 20th Amendment was President Roosevelt’s second term, which began on January 20, 1937.



Seeking a Third Term

When the U.S. Constitution was being written, there was much debate over term limits for the President. Thomas Jefferson advocated for a seven-year term with no eligibility for re-election, others proposed a two-term limit with differing lengths of time in office. Alexander Hamilton and James Madison supported presidential lifetime appointments (keep in mind that a “lifetime” in 1787 was much shorter than it is now). Hamilton also didn’t want the president elected by the people, but selected by Congress. The concept of a lifetime appointment was not endorsed, failing six votes to four. One Virginia delegate compared the idea to having an “elective *monarchy*.”

Ultimately, the Framers settled on four-year presidential terms, but

left no restrictions on how many times a president could be re-elected. President Washington, however, set a tradition with his presidency of only serving two terms. Thomas Jefferson carried on the tradition after his second term in office as well.

Three presidents—Ulysses S. Grant, Grover Cleveland and Woodrow Wilson—attempted and failed to gain a third term. Multiple presidential terms didn’t become a problem until 1940 when President Franklin D. Roosevelt ran and was elected to a third term. President Roosevelt was so popular in fact that he was elected to an unprecedented fourth term in office, though he only served three full terms. He died a few months into his fourth term on April 12, 1945, after serving as president for 4,422 days.

In response to President Roosevelt’s unprecedented elections, Congress proposed the 22nd Amendment to the U.S. Constitution, which limits the President to two terms or a maximum of eight years in office. A person can actually serve 10 years as President under the amendment. If the Vice President finishes two years or less of a presidential term, he or she is still eligible to serve two terms of his or her own. If however, a Vice President serves out more than two years of a presidential term, he or she would only be eligible to serve one more term.

The 22nd Amendment was ratified by the states on February 27, 1951. Five years later, the first of 54 attempts to repeal the 22nd Amendment was undertaken in Congress. Several presidents over the years, including Presidents Harry Truman, Ronald Reagan and Bill Clinton, have voiced their displeasure with the amendment. President Reagan called it “an infringement on the democratic rights of the people.” In a *Rolling Stone* interview, President Bill Clinton suggested altering the amendment to say “two consecutive terms,” allowing for re-election at a later date.

Who’s Up Next?

The 25th Amendment, ratified by the states on February 10, 1967, basically deals with the order of presidential succession and what happens if or when a president is unable to fulfill the duties of the office. The issue has been debated as far back as John Tyler in 1841 when he took over for President William Henry Harrison, who died of pneumonia just 32 days after taking office (the shortest presidency in American history). There was confusion at the time about whether Tyler was actually president or acting president.

Presidential succession acts in 1792, 1886 and 1947 attempted to clarify the issue but the 25th Amendment, ratified in 1967, made some

The Presidency *continued from page 19*

things clearer and others a little murkier. The amendment contains four sections, with Sections 1 and 2 clarifying the role of the Vice President. Section 1 stipulates that upon removal of the president from office due to death or resignation, the Vice President becomes President, not just assuming the duties of the office but with all the power that the office holds. Section 2 of the amendment states that when there is a vacancy in the office of Vice President the President “shall nominate” a replacement who would need to be confirmed by a majority of both Houses of Congress. In the past when a VP had taken over for a president he had not bothered to appoint a replacement in the VP role.

Section 3 of the 25th Amendment allows the President to voluntarily and temporarily transfer the powers of the presidency to the Vice President. This has happened a few times when, for example, a President has undergone surgery. During the time the President is under anesthesia, the Vice President is in charge.

It is Section 4 of the 25th Amendment where things get a little dicey. While Sections 1 through 3 have been invoked before, this section has never been tested. In 1963, when President John F. Kennedy was assassinated, members of Congress pondered what would have happened if the President had survived but was in a mentally diminished capacity. Despite the issues with the Tyler presidency and the fact that seven more presidents died in office after that, it was the assassination of President Kennedy that was the real motivation for the 25th Amendment. Section 4 of the amendment allows for the involuntary removal of a president and the process begins with the Vice President. If the VP and the majority of the President’s cabinet believe that the President is “unable to discharge the powers and duties of his office,” under Section 4, they can submit a written statement to that effect to Congress.

Where this section gets a little murky is that the President can submit “his written declaration that no inability exists” and resume the powers of the office. Presumably, the President would then fire his cabinet members (though not the Vice President because he is an elected official). Legal scholars argue that this could potentially lead to two cabinets and two Presidents (the VP acting as President as well as the President in question). Ultimately, Congress would have to vote on whether the President is fit to return to office. In order to remove a President from office, a two-thirds majority (called a super majority) in both chambers of Congress (Senate and the House) is required.

Senator Birch Bayh, who is credited with writing the 25th Amendment, said years later that “the determination of the president’s disability is really a political question” not a medical one. That is why there is no medical diagnosis required to invoke Section 4 of the amendment. ★



1. Why do you think the eligibility requirements of the president (natural born citizen, at least 35 years old and a resident of the U.S. for at least 14 years) are important?
2. What benefits or difficulties come with being a “lame duck” president?
3. Research the three presidents that attempted but failed to win a third term. What were the circumstances in each case? What was their motivation for breaking with convention to seek a third term?
4. Do you agree with the 22nd Amendment or do you think as President Reagan did that it infringes on the rights of the American people?
5. What problems do you think might occur if a President was allowed to be re-elected indefinitely?
6. What do you think of Section 4 of the 25th Amendment? Do you think a President’s VP and cabinet have the right to determine whether or not a President is fit to serve? Explain your reasoning.

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Not So Fast *continued from page 1*

Essentially the Amendment protects states from legal **liability** in federal court from citizens of other states. That means if you live in New Jersey and you have a beef with Pennsylvania, you can't sue them in federal court. The Amendment also prohibits citizens of foreign countries from suing a state in federal court as well. The concept of protecting states in this way is known as **sovereign immunity**.

The 11th Amendment clarified Article III, Section 2 of the U.S. Constitution, which states that the federal judiciary has the authority to decide "...Controversies between two or more States;—[between a State and Citizens of another State;—]..."

Why Was an Amendment Needed?

It all started with the 1793 U.S. Supreme Court case of *Chisholm v. Georgia*. Alexander Chisholm was a citizen of South Carolina and the executor of Robert Farquhar's estate. Farquhar had supplied goods to the state of Georgia during the Revolutionary War and was never paid. In an attempt to recover the debt, Chisholm sued in the U.S. Supreme Court. The **defendant**, the state of Georgia, refused to appear before the Court, claiming they could not be sued without their consent.

In a 4 to 1 decision, the Court ruled for Chisholm, saying that

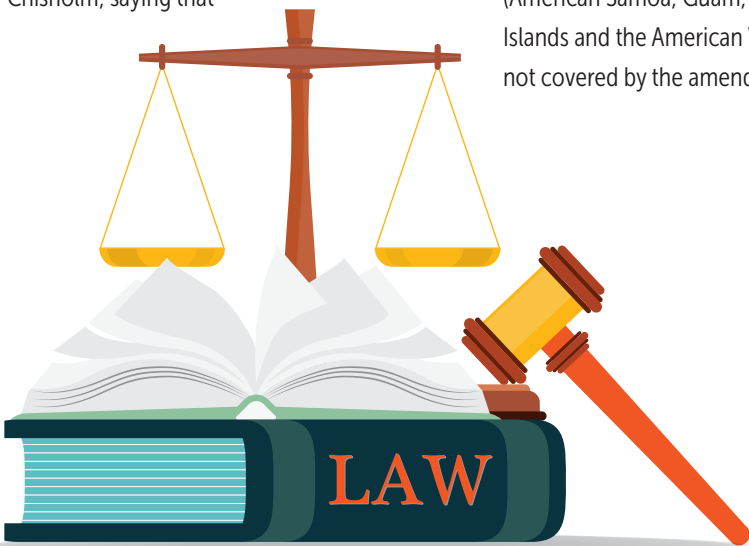
Article III, Section 2 revoked the states' sovereign immunity and granted federal courts the authority to hear disputes between private citizens and states.

Justice James Iredell issued a **dissenting opinion** in the case claiming that all states are **sovereign** under Common Law and could not be sued without consent. While his was the lone dissent in the case, it would be the basis of the 11th Amendment and ultimately the law of the land.

With the fear that other citizens would bring similar suits, legislators acted quickly to pass the 11th Amendment. Once it was ratified by the states, it effectively **overruled** the *Chisholm* decision and any other cases that were brought as a result of the Court's decision.

Fun fact, while 12 of the 15 states at the time (Vermont and Kentucky had been added to the original 13 states) ratified the 11th Amendment in 1795 and South Carolina ratified it in 1797, the states of New Jersey and Pennsylvania never ratified the amendment. On June 25, 2018, New Jersey symbolically "post-ratified" the 11th Amendment.

Another fun fact, the U.S. Court of Appeals for the First Circuit ruled in 1983 that the 11th Amendment also applied to Puerto Rico. The other four territories of the U.S. (American Samoa, Guam, Northern Mariana Islands and the American Virgin Islands) are not covered by the amendment. ★



1. Why should states enjoy "sovereign immunity?"
2. Do you think it is fair for a state to say someone can't sue them? Why or why not?
3. What can happen if a state, or anyone, has too much power?

Thank you to members of the Review Panel for

The Informed Citizen, the NJSBF's civics blog for reviewing the articles in *Beyond the Bill of Rights*:

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Individual articles from *Beyond the Bill of Rights* may be found on our civics blog, *The Informed Citizen*. Visit informedcitizen.njsbf.org

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Does the U.S. Constitution Need a Re-Write?

As a rule, written constitutions don't last that long. Legal experts estimate the lifespan of a constitution is less than 20 years. Indeed, the United States' first foray into a constitution, the Articles of Confederation, only lasted six years before making way for our current U.S. Constitution, the oldest still in use today.

So, at the age of 230 years, is it time for a constitutional rewrite? Members of both political parties say yes—and no.

Articles of Confederation

It was clear pretty early on that the Articles of Confederation, ratified by all 13 states in 1781, was not working. It left the country's central government weak, unable to collect taxes and having to rely on the states to voluntarily send tax money to fund the central government. You can imagine how that worked out.

According to the National Constitution Center, there were many issues with the Articles, including the fact that it didn't establish a common U.S. currency. The federal government printed its own money, but each state could also do so. This made trade between the states difficult and a bit like going to a foreign country and having to exchange currency. In addition, the document was hard to amend, requiring unanimous consent from all 13 states.

The final nail in the Articles of Confederation's coffin was the tax protest known as Shays' Rebellion, led by Revolutionary War veteran Daniel Shays. The protest began on August 31, 1786 and lasted for six months. Massachusetts farmers protested the loss of their farms by taking over the Court of Common Pleas and releasing men who were imprisoned because they could not pay their debts. Because the federal government did not have the money to pay an army, the rebellion of more than 4,000 was ultimately defeated by a privately-funded militia, paid for by town merchants. The rebellion made clear to U.S. leaders such as Alexander Hamilton and George Washington that action was needed to amend the Articles. So, a Constitutional Convention was called.

Get Me a Rewrite

Most delegates to the Constitutional Convention gathered in Philadelphia beginning in May 1787 thinking they were going to "tweak" the Articles. Nolan McCarty, a political science professor at Princeton University and chair of its Department of Politics, says it is hard to say whether all the delegates had the goal of throwing out the Articles of Confederation and writing a new constitution in mind, but they started working on a new one pretty quickly.



The framers of the new U.S. Constitution provided two ways to amend it, which are outlined in Article V of the new constitution. One way is for a member of Congress to propose an amendment. That proposal then needs two-thirds approval in both

the House and Senate before it goes to the states for **ratification**. Since 1789 more than 11,000 proposed amendments have been introduced in Congress. Of those measures, 33 amendments have been sent to the states for ratification and of those 33, only 27 have obtained ratification and been enshrined in the U.S. Constitution.

The second way the framers provided to amend the U.S. Constitution is for two-thirds of state legislatures (today that would be 34) to petition Congress for a Constitutional Convention. This second way of amending the constitution has never been used but is causing anxiety for members of both political parties.

Rewriting the Constitution

According to the Constitutional Rights Foundation, over the years there have been approximately 400 petitions from state legislatures calling for a Constitutional Convention for one reason or another. None of those efforts were successful.

Today, parties on both sides of the aisle are calling for a Second Constitutional Convention (also called an Article V Convention), but for different reasons. For instance, beginning in the late 1970s, an effort by conservatives to require a Balanced Budget Amendment started calling for a Constitutional Convention to consider the matter. The campaign had the support of as many as 32 states at one time, but four states **rescinded** support, bringing the number today to 28. There is an ongoing, coordinated effort that targets 11 other states to come on board.

On the other side of the aisle, there is an effort to **overturn** the U.S. Supreme Court decision in *Citizens United v. FEC* via an Article V Convention. *Citizens United* dealt with campaign finance reform and held that restricting independent political spending by corporations was an infringement of free speech. Led by the left-wing group called Wolf PAC, right now the effort only has the support of five states, including New Jersey.

No Rules

Both sides are concerned that a Second Constitutional Convention might get out of hand, and before you know it, the U.S. Constitution will



Re-Write *continued from page 22*

have been re-written, with cherished constitutional rights in jeopardy. Critics point to the fact that there are no rules outlined in the U.S. Constitution concerning the convening of a Constitutional Convention. For example, how would delegates be chosen, how many delegates would each state have, would the proceedings be limited to just the amendment that has been proposed or could the scope of the convention be widened?

The Center on Budget and Policy Priorities, a **nonpartisan** think tank, stated: "To illustrate the importance of these issues, consider that if every state had one vote in the convention and the convention could approve amendments with a simple majority vote, the 26 least populous states—which contain less than 18 percent of the nation's people—could approve an amendment for ratification."

Proponents of an Article V Convention say that a complete re-write of the Constitution wouldn't happen because three-fourths of states would still need to ratify any proposed revision, meaning that any extreme proposal could be blocked by just 13 states.

Still, the concern is warranted; after all, it happened once before. The Center on Budget and Policy Priorities pointed out in a 2017 report that the 1787 convention "ignored the ratification process under which it was established and created a new process, lowering the number of states needed to approve the new Constitution and removing Congress from the approval process."

Some constitutional scholars, such as Sanford Levinson, a professor at the University of Texas Law School, believe that a Constitutional Convention is the only hope for any type of substantial reform and has called for a "wholesale revision of our nation's founding document."

Others point out that it is a different time and political climate than in 1787. An editorial in the *Greensboro News & Record* stated: "The first convention was guided by a presiding officer [George Washington] who put country above politics. That's another reason why a second convention should be avoided. There is no George Washington among us today."

In a memo outlining all the Article V Convention campaigns from the right and the left, Common Cause, a non-profit watchdog group, stated: "Simply put, an Article V Constitutional Convention is a dangerous and uncontrollable process that would put Americans' constitutional rights up for grabs...There would be no way to limit the scope of a Constitutional Convention and no way to guarantee that our civil liberties and constitutional process would be protected."

So, why did the framers provide this second option? Although it is just a guess, Professor McCarty thinks the framers had to provide the Constitutional Convention option because they had just used it.

"Not including the option in the constitution might have gotten in the way of making the new constitution seem legitimate," he says, which

may also account for the lack of guidance in terms of the parameters or logistics of a convention.

No Need

According to Professor McCarty, the flexibility of the U.S. Constitution negates the need for an Article V Convention.

"The reason it is the oldest constitution is because it is the shortest and the most bare bones and as a result the most flexible," he says. "The need to formally change the constitution goes away with judicial review."

Professor McCarty doesn't see the support for a Constitutional Convention.

"Given the enormity and complexity of organizing it and the uncertainties of what it would produce, a Second Constitutional Convention is extremely unlikely," Professor McCarty says. "There are problems that could be fixed if people agreed on the solutions. But, I don't see that happening in this current polarizing environment." ★

1. The article mentions that under the Articles of Confederation each state had its own currency. Imagine that were still the case. What advantages or disadvantages do you think it would cause?
2. If there were to be another Constitutional Convention and the document were re-written, what amendment would you add? What amendment would you repeal? Why?
3. The Founding Fathers compromised when writing the U.S. Constitution. Do you think that same compromise would be possible today? Why or why not?
4. As an American citizen you have many rights under the U.S. Constitution. Number the following rights from 1 to 10 in order of importance to you, number 1 being most important and number 10 being the least important. Have a conversation about why you chose to place the rights where you did.
 - a. Free Speech
 - b. Right to Bear Arms
 - c. Freedom of Religion
 - d. Trial by Jury
 - e. Freedom Against Unreasonable Searches
 - f. Right to Protest
 - g. Right to Remain Silent and Not Incriminate Yourself
 - h. Right to Petition the Government
 - i. Right to a Speedy Trial By an Impartial Jury of Your Peers
 - j. Right to Due Process of Law
5. The article gives some examples of how the Articles of Confederation were deficient to the needs of the new nation. Research the Articles and list more examples. If it had not been scrapped, what problems do you think it would cause today?

Glossary



acquitted: when someone is freed from a criminal charge by a verdict of not guilty.

abolition: the action or act of abolishing a system or practice.

abolitionist: someone who opposes slavery.

apportionment: allocation or distribution.

bicameral: a legislative body that has two branches or chambers.

bootlegger: a person that makes, distributes or sells goods (in this case alcohol) illegally.

cession: the formal giving up of rights or property.

chattel: an item of property other than real estate.

clemency: a pardon or shortening of a prison sentence.

compulsory: required or enforced.

defendant: in a legal case, the person or entity accused of civil wrongdoing or a criminal act.

disenfranchise: to deprive of a privilege or right.

dissenting opinion: a statement written by a judge or justice that disagrees with the opinion reached by the majority of his or her colleagues.

due process: legal safeguards that a citizen may claim if a state or court makes a decision that could affect any right of that citizen.

enumeration: establishing the number of something.

equity: justness or fairness.

excise tax: a tax on manufactured goods.

franchise/suffrage: the right to vote.

illiterate: unable to read or write.

jurisdiction: authority to interpret or apply the law.

lame duck: an official who is in the final period of his or her term of office after a successor has been selected.

liability: an obligation of responsibility for an action or situation, according to the law.

loitering: lingering in a public place with no particular purpose.

majority opinion: a statement written by a judge or justice that reflects the opinion reached by the majority of his or her colleagues.

monarchy: the form of government with a monarch (king or queen) as the head.

naturalized: admitted to the citizenship of a country.

nonpartisan: not adhering to any established political group or party.

overrule: to void a prior legal precedent.

overturn: to void a prior legal precedent.

partisan: a strong supporter of a party, cause or person.

peonage: the use of laborers bound in servitude because of a debt.

plaintiff: person or persons bringing a civil lawsuit against another person or entity.

poll tax: a voting fee, which was used to disenfranchise black voters.

ratification: the action of formally signing a contract or agreement to make it official.

ratified: approved or endorsed.

ratify: to give formal consent to an agreement.

repeal: to revoke, annul or abolish an existing law (or constitutional amendment).

repudiation: rejection of a proposal or idea.

rescind: revoke, cancel or repeal.

retrocede: to take territory back again.

segregation: the policy of separating people from society by race or social class.

sovereign: indisputable power or authority.

sovereign immunity: legal doctrine that says states (in this case) are immune from federal lawsuits.

sovereignty: supreme power or authority.

speakeasy: an illegal liquor store or nightclub.

specious: superficially plausible, but wrong in actuality.

statute: legislation that has been signed into law.

subjugation: bringing someone or something under control or domination.

suffrage: the right to vote in political elections.

tariff: a tax paid on a particular class of imports or exports.

temperance: not drinking alcohol.

vagrancy: legally refers to being without visible means of support.

veto: a constitutional right to reject a decision or proposal.

voter suppression: a strategy used to influence the outcome of an election by discouraging or preventing certain groups of people from voting.