

AMENDING THE CONSTITUTION

FORMAL AMENDMENT PROCESS

One major weakness of the Articles of Confederation was the amendment process, which required unanimous approval for amendments to become effective. The framers of the Constitution anticipated the need to change the Constitution and provided a process to amend the Constitution (Article V) that required both state and national action (a form of federalism). Amending the Constitution requires proposal, a national function, and ratification, a state function. Amendments may be proposed in Congress by two methods and ratified in the states by two methods, creating four possible methods for formally amending the Constitution.

The Founders designed the amendment process to be difficult enough that Congress could not add so many amendments that the original document would end up with little meaning.

Formal amendments are written changes to the Constitution. They add to, change the wording of, or delete language from the Constitution. Only 27 formal amendments have been added to the Constitution since its adoption. The first ten amendments, the Bill of Rights, were added in 1791.

THE CONSTITUTION MAY BE FORMALLY AMENDED IN FOUR WAYS:

1	Proposed by 2/3 vote of each house of Congress	→→→	Ratified by 3/4 of the state legislatures	<i>Used 26 times</i>
2	Proposed by 2/3 vote of each house of Congress	→→→	Ratified by special conventions in at least 3/4 of the states	<i>Used once - 21st Amendment</i>
3	Proposed by a national constitutional convention called by Congress at the request of 2/3 of the state legislatures	→→→	Ratified by 3/4 of the state legislatures	<i>Never used</i>
4	Proposed by a national constitutional convention called by Congress at the request of 2/3 of the state legislatures	→→→	Ratified by special conventions in at least 3/4 of the states	<i>Never used</i>

INFORMAL AMENDMENT PROCESS

Although the United States Constitution has been formally changed only 27 times, there have been many changes in the way in which the American government operates. Thomas Jefferson believed each generation might need new Constitution. This hasn't occurred because of the changes that have allowed the Constitution to adapt to changing times (especially with Congress' use of implied powers). Most of those changes have come about through the informal amendment process and do not involve actually changing the wording of the Constitution. Informal changes in the Constitution may occur in the following ways:

- ◆ **Legislative Branch:** Congress has passed various acts that have altered or made clear the meaning of the Constitution. For example, under Article III Congress is given the authority to create lower courts, which they did through the Judiciary Act of 1789. Another example, the Commerce Clause allows Congress to regulate and promote interstate and international commerce. Over time, Congress has passed many laws that define the Commerce Clause, including regulations on forms of commerce that didn't exist in 1789, such as air routes and internet traffic.
- ◆ **Executive Branch:** Presidents may negotiate executive agreements with other countries, an authority not mentioned in the Constitution. The Constitution requires that foreign treaties be ratified by the Senate, but executive agreements do not. These agreements are used to circumvent the formal process, especially for routine matters that might simply slow the work of the Senate down. The use of executive agreements rather than treaties allows the president to bypass the Senate.
- ◆ **Judicial Branch:** Of all the branches, the judiciary has been the most influential in interpreting the Constitution. Article III defines the power of the judiciary very broadly, but does not specifically mention judicial review - the power of the courts to declare statutes unconstitutional and interpret the Constitution when disputes arise. That power was first established in *Madison v. Marbury* in 1803, when Chief Justice John Marshall claimed judicial review as a prerogative of the court in his famous majority opinion issued in the case.
- ◆ **Custom and usage:** Traditions that have been incorporated into the political system and which have lasted over time have changed the meaning of the Constitution. Senatorial courtesy in the Senate and the "no-third-term" tradition in the Presidency (until the Twenty-second Amendment made it part of the Constitution) are examples.