

The Amendment Process

Overview

In this lesson, students will examine Article V of the Constitution, which outlines how the Constitution can be changed, or amended. They will evaluate the pros and cons of using the amendment process to effect change. First, students complete an introductory reading about Article V, the history of the amendment process, and the political complexities that arise when groups try to amend the Constitution. Then, students role-play members of a select commission to determine whether an amendment is necessary to reform the U.S. Senate.

Standards and Topics

- CCSS.ELA-LITERACY.RH.11-12.2: Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.
- CCSS.ELA-LITERACY.RH.11-12.10: By the end of grade 12, read and comprehend history/social studies texts in the grades 11-CCR text complexity band independently and proficiently.
- CCSS.ELA-LITERACY.SL.11-12.1.B: Work with peers to promote civil, democratic discussions and decision-making, set clear goals and deadlines, and establish individual roles as needed.

Topics: U.S. Constitution, amendments, U.S. Senate, politics, Constitutional Convention

Objectives

Students will be able to:

- Explain the amendment process outlined in Article V of the U.S. Constitution.
- Recommend a proposed amendment to the Constitution and assess its strengths and weaknesses.
- Evaluate the representation scheme of the U.S. Senate in group discussion and role play.

Materials

[Handout A: The Amendment Process](#) (one per student)

[Handout B: Should the Senate Be Changed?](#) (one per student)

Procedure

I. Focus Activity – Brief Discussion

- A. Ask students to identify an amendment to the U.S. Constitution they are familiar with, even if they do not remember the number of the amendment. (For example, students might say “the First Amendment” or “freedom of speech.”) Ask them, “If that amendment was being proposed today, how much support do you think it would get from the American people? Why?” (Accept reasoned responses.)
- B. Explain to students that today they are going to learn about and discuss the amendment process and why very few proposed amendments in U.S. history actually make it into the Constitution (i.e., get ratified).

II. Reading: The Amendment Process

- A. Distribute [Handout A: The Amendment Process](#) to each student. (Or assign as homework to begin activity the next day.)
- B. Once students have completed the reading, use Writing & Discussion questions 1 and 2 to check for understanding in a whole-class discussion.

III. Activity: Role Play: Should the Senate Be Changed?

- A. Organize students into groups of four or five.
- B. Distribute [Handout B: Should the Senate Be Changed?](#) to each student.
 1. Give students a few minutes to read the handout and the instructions on it.
 2. Check to see that all the groups know what the task is: Each group is a commission of constitutional scholars who will make a recommendation on a proposed amendment (printed on Handout B).
- C. Tell students to work together to make a decision.
 1. Display the four options for everyone to see:
 - (a) Keep the Senate as is.
 - (b) Adopt the proposed amendment.
 - (c) Abolish the Senate.
 - (d) Create a new option.
 2. They must provide at least two reasons for their group's decision, and must refer to facts and analysis in the text of the handouts in their reasoning.
 3. Each group needs a spokesperson.
 4. You can determine how much time they will need (probably 10-15 min.).
 5. If a group is stuck and not sure what to do, suggest they consider option (d) and look at each part of the proposed amendment and decide if any part should be changed. For example, should the senators serve for six years (i.e., running for election every six years)? Or should their term exactly match the House term of two years? Or should their term be some other length of time? And why?
- D. Have each group share their proposal and reasoning with the entire class.
 1. Keep a tally of the different proposals shared.
 2. Have the entire class vote on which proposal they like best.

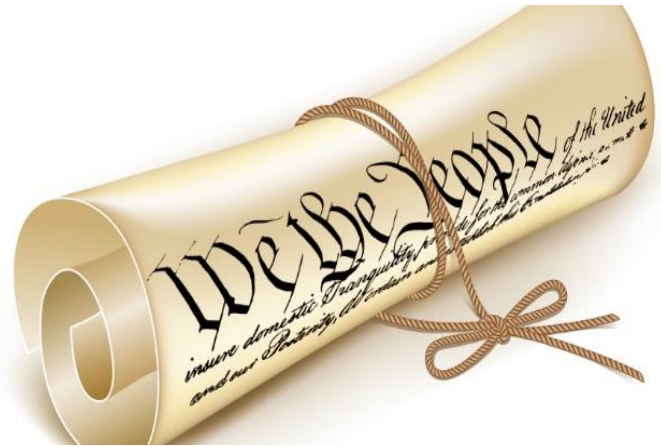
IV. Assessment/Closure

- A. Debrief the activity by asking the whole class the following questions:
 - Was it difficult to reach an agreement in your group? Why or why not?
 - Did you agree with how the whole class voted on the proposals? Why or why not?
- B. Assign Writing & Discussion question 3 for homework to be answered in a well-developed paragraph.
 1. Alternatively, question 3 can be assigned as a longer inquiry-based essay, for which this lesson is the basis.

The Amendment Process

Article V of the Constitution defines two methods for modifying the Constitution. First, Congress can propose amendments if two-thirds of the members of both the House of Representatives and the Senate approve. Second, two-thirds of the states can demand that Congress schedule a constitutional convention. Amendments that are proposed through either method must then be voted upon separately by the legislatures of every state, and three-quarters of these states must ratify, or approve, the proposed amendments.

It is difficult to assemble a two-thirds majority in Congress. It is even more difficult to get three-quarters of the state legislatures to ratify a proposed amendment. In more than 200 years since the Constitution was ratified, legislators have proposed more than 11,300 amendments to the Constitution. Only 33 have made it through Congress and only 27 have been approved by the necessary three-quarters of the state legislatures.



It is also difficult to convince two-thirds of the states to petition the federal government to hold a constitutional convention. Since the original meeting was convened in 1787, legislatures from various states have made more than 400 applications calling for a constitutional convention. None of these efforts has succeeded. Over the years, several states and political organizations have called for a convention to consider amendments to reduce corporate spending on elections, reduce the power of the federal government, require a federal balanced budget, and impose term limits for members of Congress and Supreme Court justices, among many other proposals.

Article V of the Constitution says nothing about what a convention may or may not do. If a convention is held, must it deal with only one proposed amendment? Could delegates vote on any number of amendments? Could they vote to abolish the Constitution itself? The Constitution provides no answers to these questions. Opponents of a constitutional convention fear that the vague provisions in Article V could put the Constitution in the hands of special-interest groups who could then rewrite the supreme law of the land. It would be difficult to predict the consequences of a constitutional convention.

Too Sacred to Be Touched?

Proponents of both the constitutional convention and the amendment process argue that changing the Constitution is a positive result of civic participation. U.S. Senator Orrin Hatch has stated that the amendment process is “participatory democracy set forth by the Constitution.” Proponents also see amendments as a method to correct problems that lie outside the realm of constitutional law.

Many amendment advocates cite Thomas Jefferson who looked back at the newly drafted Constitution and observed, “Some men look at constitutions with sanctimonious reverence . . . too sacred to be touched.” Jefferson believed that constitutional amendments create positive change because each generation is “capable of taking care of itself and ordering its own affairs.”

But considering the Constitution as “too sacred to be touched” is not the only argument against the amendment process. Several factors contributed to the founders’ resolution to make the Constitution difficult to amend.

Interpretation. The Constitution describes most powers and rights in broad, open-ended language. The framers, or delegates to the Constitutional Convention of 1787, did this purposely. They wanted the Constitution’s provisions to apply to numerous situations. This interpretation allows the judicial branch to consider the specific factors of each case in the light of broad constitutional law. It also makes the Constitution adaptable to modern situations without needing amendments all the time.

Unintended consequences. Those who drafted the Constitution tried to make all its components fit together as a coherent, balanced whole. In contrast, amendments are pieces added to the Constitution. Opponents to the amendment process worry that by using amendments to solve particular problems, legislators may create unintended consequences in other areas of constitutional, federal, or even local law.

Legislating political or social issues. Some amendment proposals have been introduced to address specific political or social issues. Opponents to the amendment process argue that political issues come and go, and social values change. They fear that amendments can create permanent changes to temporary problems. They point to the 18th Amendment, which banned the production and sale of alcohol in the United States, ushering in the era of Prohibition. This was the only amendment to address a social issue — the consumption of alcohol. It was soon proven to be unenforceable and had to be repealed with the 21st Amendment.

Although few amendments have made it through the difficult proposal and ratification process, several serious attempts have recently been made. Here is an example.

The Balanced-Budget Amendment

Balanced-budget amendments have been introduced in Congress 12 times. These proposals called for the federal government to balance its books every year so that the federal government’s spending would not exceed the federal government’s income (revenue from taxes, fees, and other sources). In other words, the government would not be allowed to go into debt in order to function and provide services.

These proposals often become the subject of fierce political struggles between Democrats and Republicans. In 1994, Republicans in the House of Representatives introduced a balanced-budget amendment. The proposed amendment required Congress to authorize with a two-thirds vote any spending beyond the budget limits.

Proponents cited a continuous string of unbalanced federal budgets. They argued that the nation would bankrupt itself if the budget were not balanced. They also argued that experience showed that Congress and the executive branch would not balance the budget unless forced to do so. This amendment got the two-thirds majority it needed in the House. Action then shifted to the Senate.

A majority of U.S. senators opposed the balanced-budget amendment. They challenged the notion that a balanced budget was necessary for the nation’s fiscal stability. Others felt that a balanced budget was an economic or social issue that was subject to change. Many others thought that if Congress and the president failed in their responsibility to balance the budget as required by a new amendment, the federal courts might have to make spending cuts or raise taxes. Action by the courts in this area could create unintended consequences by violating the separation of powers as defined in the Constitution. The balanced-budget amendment lost by one vote in the Senate.

Republican strategists made a balanced-budget amendment a high priority again in 1996. Republican Senator Orrin Hatch stated that the nation's Democratic leadership was incapable of balancing the budget without being forced to do so by the Constitution. Senate Democratic leaders stopped the Republican-led effort by arguing that the new amendment would have unintended consequence of reducing funding for Social Security, which is federal monetary aid to people with little or no income, especially senior citizens. Once again, the proposal for a balanced-budget amendment was defeated by one vote in the Senate.

Calls for a balanced budget amendment tend to arise in periods of high federal debt and not in times of federal surplus (when the government has more income than necessary to function). In 2011, when Congress raised the national debt ceiling (the legal limit of how much revenue the government may borrow), the legislation doing so required Congress to consider a new balanced budget in the near future. However, in November of that year, the House of Representatives failed to pass it.

Writing & Discussion

1. What are two methods for modifying the Constitution?
2. Why do you think the framers made the Constitution so difficult to amend? Do you agree that it should be? Why or why not?
3. What is one amendment to the Constitution you would support if it were proposed? Can you think of any unintended consequences it would have? How much support do you think the proposed amendment would have nationwide? Explain.

Should the Senate Be Changed?

One of the major compromises in the Constitutional Convention was between the small states and big states. The small states wanted each state to have the same number of representatives in Congress. The big states wanted representation based on population. The compromise was to have one house of Congress (the House of Representatives) base its representation on population (with each state having at least one representative) and for each state to have two senators in other house (the Senate) regardless of population.



This compromise became part of Article I of the Constitution and has worked for more than 200 years. Journalist and political scientist Fareed Zakaria admits that the Senate is “undemocratic,” but it provides stability. One of the Senate’s main purposes is to make Congress an effective check against the executive branch. Zakaria notes that since the French Revolution (beginning in 1789), France “went through two monarchies, two empires, one proto-fascist dictatorship, and five republics before it got to the present regime. The United States, by contrast, has had a continuous constitutional existence since 1789.”

But critics claim that the Senate should be democratic. It currently gives each state two senators regardless of population, which leads to extremely disproportionate representation of states with small populations, like Wyoming. The nation is now 50 states, not 13 when the Constitution was ratified in 1789. The “compromise” no longer applies. Political writer Timothy Noah points out that “50 senators representing the 25 smallest states, and hence a mere 16 percent of the population, could . . . block passage of a bill favored by the other 84 percent of the population.”

You have been elected to Congress and are on the U.S. House Committee on the Judiciary that considers proposed constitutional amendments. You must make a decision about a proposed amendment that would reform the Senate. Later, the whole House of Representatives will vote on your committee’s decision. The amendment reads:

The Senate of the United States shall be composed of at least one senator from each state, chosen by the people of the several states, for six years; and each senator shall have one vote.

Do the following:

1. Discuss what the advantages are to having the Senate as it is.
2. Discuss what the disadvantages are.
3. Decide on one of these options: (a) Leave the Senate as it is, (b) recommend the proposed amendment to make the Senate based on population (just like the House of Representatives) with six-year terms (unlike the House, where the terms are two years), (c) propose an amendment to abolish the Senate (leaving only the House of Representatives), or (d) revise the proposed amendment or create your own with a different option.
4. Review the section “Too Sacred to Be Touched?” in the reading. Discuss the possible unintended consequences of your group’s decision. Discuss if an amendment would be a permanent change to a temporary problem or not.
5. Be prepared to report your decision and reasons for it to the class. Choose a spokesperson for your commission.