THE CONSTITUTION

Background of the Constitution

Constitutional Convention (1787)

The Congress of the Articles of Confederation in February, 1787, adopted a resolution calling for a convention of delegates from the thirteen states to be held in Philadelphia beginning in May "for the sole purpose of revising the Articles of Confederation." Twelve of the states chose convention delegates. Only Rhode Island declined to do so. Fifty-five men attended some or all of the convention. The convention was supposed to begin on May 14 but did not do so because not enough delegates had arrived to constitute a quorum. James Madison arrived early on May 3, and he and other delegates from Virginia and Pennsylvania then met informally and prepared a new plan of government to present to the convention once it began. Finally, on May 25, enough delegates had arrived to constitute a quorum, and the convention began. The delegates unanimously elected General George Washington to preside as the President of the Convention. The delegates soon decided that instead of simply "revising the Articles of Confederation," they would write a completely new constitution with a very different system of government from that which the nation had under the Articles.

After spending the entire summer behind closed doors in secrecy dealing with several difficult issues, on September 17, 1787, the new Constitution of the United States was completed. Thirty-nine delegates present at the end of the convention signed the Constitution. Three delegates – Edmund Randolph of Virginia, Elbridge Gerry of Massachusetts, and George Mason of Virginia—refused to sign it. The new Constitution was then sent to the states for ratification.

The Federalist, No. 1-85 (October,1787 – May,1788)

The framers of the new United States Constitution written at the 1787 Philadelphia convention understood that it represented a dramatic change in the government of the nation and that as a result there would be serious opposition to its ratification in some of the state conventions called for this purpose. Opposition was particularly strong in the state of New York, and those who supported the new Constitution understood that New York's ratification (along with Virginia's) was essential to the success of the entire effort to bring about this major change in the nation's government. Alexander Hamilton, a resident of New York and an advocate for the new Constitution, decided that a propaganda effort was needed to sway citizens of New York. Hamilton recruited two other supporters of the new Constitution – John Jay, a fellow New Yorker, and James Madison, a Virginian—to join him. Together, writing anonymously under the pseudonym Publius, the three men penned a series of 85 essays, numbered 1 thru 85, explaining the weaknesses of the Articles of Confederation as well as the virtues of the new Constitution and why it should be adopted. These essays were published in the newspapers of New York City beginning in October,1787, and ending in May,1788. Jay wrote only five of the essays, Madison wrote 26, Hamilton wrote 51, and three were written by Hamilton and Madison together. Apparently, the essays did not have a significant impact and were not widely read at

the time. Only years later were the 85 essays published together in book form and given the title, *The Federalist Papers*.

Federalist No. 10 (November, 1787)
Written by James Madison, Federalist No. 10 defended the republican form of government proposed by the new Constitution. It is believed that Madison was responding to an article written in another New York newspaper by Brutus, a pseudonym used by a New York opponent of the Constitution named Robert Yates. Brutus had argued that republican government can only flourish in small republics such as the individual states where people share similar interests. Madison argues that in such small republics government is susceptible to the problem of "factions." He defines a "faction" as a number of citizens united by some common interest adverse to the interest of other citizens or the interests of the community. He notes that "the most common and durable source of factions has been the various and unequal distribution of property. Those who hold, and those who are without property, have ever formed distinct interests in society." He concludes that nothing can be done about the causes of "the mischiefs of faction" and that "relief is only to be sought in the means of controlling its effects." He asserted that it is the great number of factions and their diversity in what he called an "extended republic" (the entire nation) that would make it more difficult for one faction to gain control. Groups would be forced to negotiate and compromise, thus arriving at solutions that would respect the interests of others.

Federalist No. 39 (January, 1788)
In Federalist No. 39, James Madison responds to an opponent of the new Constitution who argued that it was neither "republican" nor "federal." In the first part of the essay Madison defines or explores the structure of the "republican" government which he maintains the new Constitution creates. He defines a "republic" as "a government which derives all its powers directly or indirectly from the great body of the people." Madison maintains that the new Constitution meets this requirement. He points out that the people directly choose the House of Representatives and indirectly elect U. S. Senators, the President, and judges. Furthermore, he points out, the Constitution forbids titles of nobility and guarantees each state "a republican form of government."

In the second part of No. 39, Madison examines the "compound republic" created by the Constitution which is what we today call federalism. The Constitution, he points out, has both "national" and "federal" characteristics. The national government will have authority over individuals as national citizens, but in several ways, the new government will be federal in form. For example, he says, federalism is reflected in the method of ratification of the new Constitution where delegates to the state ratifying conventions will vote as citizens of their respective states. The federal form is also reflected, he notes, in the structure of the U. S. Senate where the states will be equally represented by senators chosen by their state legislature. Finally, Madison concludes, the fact that the individual states retain certain important powers is proof of the "federal" nature of the Constitution.

Federalist No. 51 (February, 1788)
In Federalist No. 51, James Madison explains and defends the checks and balances system in the new Constitution. Each branch of the government is given checks over the other two branches. “Ambition must be made to counteract ambition,” he writes. In an often quoted passage, Madison proclaims: “It may be a reflection on human nature, that such devices [checks and balances] should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary. In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself. A dependence on the people is, no doubt, the primary control on the government; but experience has taught mankind the necessity of auxiliary precautions.”

Madison also discusses the way republican government can serve as a check on the power of factions, and the tyranny of the majority. “In the federal republic of the United States… all authority in it will be derived from and dependent on the society, the society itself will be broken into so many parts, interests, and classes of citizens, that the rights of individuals, or of the minority, will be in little danger from interested combinations of the majority.” All of the Constitution’s checks and balances, Madison concludes, serve to preserve liberty by ensuring justice, and “Justice is the end of government. It is the end of civil society.”

Federalist No. 70 (March, 1788)
Opponents of the new Constitution argued that Article II which created the President as the chief executive would lead to a monarchy. In Federalist No. 70, Alexander Hamilton argues for the strong executive created by the Constitution rather than the lack of an executive under the Articles of Confederation. He argues that “energy in the executive is the leading character in the definition of good government. It is essential to the protection of the community against foreign attacks…to the steady administration of the laws, to the protection of property …to justice; [and] to the security of liberty ….”

Though some delegates had called for an executive council, Hamilton defended a single executive as “far more safe” because “wherever two or more persons are engaged in any common…pursuit, there is always danger of difference of opinion…bitter dissensions are apt to spring. Whenever these happen, they lessen the respectability, weaken the authority.” Hamilton also argued that a single executive would be watched “more narrowly” and vigilantly by the people than a group of people would be.

Federalist No. 78 (May, 1788)
In Federalist No. 78, Alexander Hamilton addresses the new judicial branch of the government created by the Constitution. He responds to the Constitution’s opponents who argued that the national courts created by the Constitution were unnecessary because state courts could handle all lawsuits and also that the national courts were dangerous because they would leave the people at the mercy of a distant national judiciary. Hamilton argues that a national judiciary was needed to handle cases between citizens of different states and those involving the Constitution and national laws. In one of the most remarkable and important points he makes concerning the

new judicial branch, he writes that “whoever attentively considers the different departments of power must perceive, that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous … The executive not only dispenses the honors, but holds the sword of the community. The legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The judiciary, on the contrary, has no influence over either the sword or the purse … It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.” He argues strongly as well for an independent judiciary when he writes, “For I agree, that ‘there is no liberty, if the power of judging be not separated from the legislative and executive powers.’ … The complete independence of the courts of justice is peculiarly essential in a limited Constitution.” Finally, Hamilton makes a strong argument in favor of the national judiciary’s power to judge actions of the legislative branch to determine if they are consistent with the Constitution: “It is far more rational to suppose, that the courts were designed to be an intermediate body between the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. The interpretation of the law is the proper and peculiar province of the courts.”

Brutus Essays (1787-1790)

The sixteen Brutus Essays written between 1787 and 1790 argued against the ratification of the new United States Constitution written at the 1787 Philadelphia convention. These essays countered the Federalist essays which argued in favor of ratifying the Constitution. Historians believe that Robert Yates, a New Yorker, was the author of the Brutus Essays. He chose the pen name Brutus in honor of the Roman statesman who murdered Julius Caesar to prevent Caesar from overthrowing the Roman Republic.

Brutus was wary of giving the national government too much power. He wrote, “Many instances can be produced in which the people have voluntarily increased the powers of their rulers; but few, if any, in which rulers have willingly abridged their authority. This is a sufficient reason to induce you to be careful, in the first instance, how you deposit the powers of government.”

Brutus had several specific objections to the proposed new Constitution. He believed it would infringe on the peoples’ liberty and argued that a bill of rights was needed. He thought the necessary and proper clause of Article I, Section 8 gave Congress too much power. He also believed that giving the Supreme Court the power to interpret the Constitution would lead to even greater power for Congress and would infringe upon the powers of the states.

Virginia Plan (1787)

The Virginia Plan was prepared by James Madison of Virginia, but Edmund Randolph of Virginia introduced this proposal for a new government at an early meeting of the 1787 Constitutional Convention. The Virginia Plan illustrates Baron de Montesquieu’s influence on Madison since, like Montesquieu in 1748, it called for three separate, independent branches of government: legislative, executive, and judicial. It also provided for a bicameral legislative branch with members of one chamber chosen by the people and members of the other chamber elected by the first chamber. Representation for each state in both chambers would be in proportion to the number of free inhabitants in the state: the larger the number of free inhabitants in a state, the

greater the number of members of both chambers that state would receive. The national legislature would have the power to overrule any state law that conflicted with "the articles of union" and to use force against states that resisted. The national legislature would choose a national executive as well as a national judiciary consisting of one or more supreme courts and lower courts. Finally, the executive and "a convenient number of the national judiciary" would comprise a Council of Revision with the authority to examine every act of the national legislature before it takes effect and every act of a state legislature before a veto thereof would be final. The Virginia Plan was supported by delegates from the more populous states. The U. S. Constitution as written and adopted at Philadelphia included several provisions of the Virginia Plan.

New Jersey Plan (1787)

William Patterson of New Jersey introduced the New Jersey Plan at the 1787 Constitutional Convention. It was in large part a response to the Virginia Plan introduced earlier at the convention. According to the New Jersey Plan, in addition to the powers Congress had under the Articles of Confederation, Congress would have the power to raise revenue by taxing imported goods, "by stamps on paper, vellum or parchment," and by postage on all letters passing through the post office. Unlike the Congress of the Articles, Congress would now also have the power to regulate trade and commerce. In addition, Congress would elect an executive to enforce all national acts and to direct military operations. The New Jersey Plan said nothing about changing the structure of Congress or the representation of states therein, and thus, Congress would remain a unicameral body in which each state would have one vote as it was under the Articles of Confederation. A national judiciary would be established consisting of a supreme court whose judges would be appointed by the executive and who would hold their offices during good behavior. Finally, the New Jersey Plan provided that acts of Congress and treaties would be the supreme law, and state judicial rulings and state laws to the contrary would be void. The New Jersey Plan was supported by delegates from the less populous states. The U. S. Constitution as written and adopted at Philadelphia included several provisions of the New Jersey Plan.

Connecticut Compromise OR the Great Compromise (1787)

Roger Sherman of Connecticut introduced the so-called Connecticut Compromise using ideas found in both the Virginia Plan and New Jersey Plan at the 1787 Constitutional Convention. Because there was general agreement among the delegates that Congress would be the more powerful of the three separate branches of the new government, representation for each state in this new Congress proved to be the most hotly disputed issue. For that reason, the Connecticut Compromise which eventually settled the issue is also called "the Great Compromise." It called for a bicameral U. S. Congress establishing a Senate and a House of Representatives. Each state would be equally represented in the Senate by two senators from each state regardless of the state's population. Each state's representation in the House of Representatives would be determined in proportion to the state's population as determined by the census to be conducted every ten years. The greater a state's population, the more members of the House of Representatives the state would be entitled to send. However, each state would be guaranteed a minimum of one member of the House regardless of the state's population. Historians agree that adoption of the Great Compromise was crucial to the success of the convention and the new Constitution.

Preamble

Preamble
The Preamble to the U.S. Constitution states: “We the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquility, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.”

NOTE: Written by Gouverneur Morris of Pennsylvania, the Preamble is the introduction to the Constitution. It explains the general purposes or goals of the government which it creates and declares that the Constitution is designed to secure those rights proclaimed in the Declaration of Independence. Its opening words, “We the People”, clearly establish the principle of “popular sovereignty.” In other words, the people are the source of the Constitution and the power of the government.

NOTE: The original draft of the Preamble considered at the 1787 Constitutional Convention was very different from the version finally adopted. If it had been adopted, the Preamble would have read: “We the people of the States of New Hampshire, Massachusetts, Rhode Island and Providence Plantations, Connecticut, etc. …” It would thus have been very lengthy since the name of every state in the Union would have been included, and it would not have included the goals found in the version of the Preamble finally adopted by the convention.

Article I

Article I, Section 1: Legislative Branch - A Bicameral U. S. Congress
The lengthiest of the seven articles of the Constitution, Article I, Section 1 begins by providing that all legislative power is vested in a U. S. Congress which consists of a Senate and a House of Representatives.

Article I, Section 2: The House of Representatives
All Representatives serve a two-year term and are chosen by direct popular vote of the people of their state. There are three qualifications one must have to be eligible to be elected to the House: (1) twenty-five years of age; (2) a citizen of the U. S. for seven years; and (3) an inhabitant of the state from which elected.

NOTE: There is no requirement to be a resident of the district of the state from which elected.

Section 2 also contained the so-called “Three-Fifths Compromise.” A state’s total population would be used to determine how much direct taxes the state would have to pay to support the new national government and the number of members of the new House of Representatives to which a state would be entitled. A state’s population would be determined by counting each free person as one person, each indentured servant would be counted as one person, Indians would not be counted, and three-fifths of “all other persons” would be counted.

NOTE: Delegates at the constitutional convention who adopted this language understood that "all other persons" meant slaves.

NOTE: This part of Section 2 was changed when Section 2 of the Fourteenth Amendment was added to the Constitution.

Section 2 also provides for a census to be conducted every ten years for determining the population of each state. It provides as well that each state will have at least one Representative, that the House will choose its Speaker and other officers, and that the House has the sole power to bring impeachment charges against executive or judicial officials. It does not set the size of the House of Representatives.

NOTE: There is no requirement that the Speaker must be a member of the House.

NOTE: Congress itself by law set the number of members of the House at 435 in 1913. This is a fixed number which does not change except temporarily when Congress admits a new state to the union.

Article I, Section 3: The U. S. Senate

The Senate is made up of two senators from each state regardless of the state's population. The term of office for each senator is six years. However, the terms of senators are staggered so that all senators are never up for election at the same time. Instead, only one-third of the members of the Senate are chosen every two years.

As written at the constitutional convention, the two senators from each state were elected by the state legislature of each state.

NOTE: This was changed in 1913 when the Seventeenth Amendment was added to the Constitution. That amendment provides for Senators to be elected by the people of the state.

There are three qualifications one must have to be a U. S. Senator: (1) 30 years of age; (2) a citizen of the U. S. for nine years; and (3) an inhabitant of the state from which chosen.

The Vice President of the United States serves as President of the Senate, but has no vote except when there is a tie.

The Senate chooses its other officers, including a President Pro Tempore to preside over the Senate when the Vice President is absent. The Senate has the sole power to try executive or judicial officials against whom impeachment charges have been voted on by the House of Representatives. Conviction requires a two-thirds vote of the Senators present. When the President is being tried by the Senate, the Chief Justice of the U. S. presides over the trial. When the Senate convicts an individual, that individual is removed from office and can never hold another office in the U. S. The individual may still be indicted, tried in a traditional court of law, and, if convicted, punished for violation of the law.

Article I, Sections 4, 5, and 6: Issues Concerning Both Chambers of Congress
Section 4 provides that the times, places, and manner of holding elections for both chambers of Congress shall be determined in each state by the state's legislature, but Congress may by law make or alter such regulations. Congress, it also provides, shall meet at least once every year beginning on the first Monday in December.

NOTE: The latter was changed to noon on the 3rd day of January when the Twentieth Amendment was added to the Constitution in 1933.

Section 5 provides: (1) that each house will be the judge of the elections, returns, and qualifications of its members; (2) that each house will determine its rules, punish its members for disorderly conduct, and by a two-thirds vote expel a member; and (3) that neither house during a session of Congress without consent of the other house shall adjourn for more than three days nor to any other place than that where the two houses are sitting.

Section 6 provides: (1) that senators and representatives shall be compensated for their services; (2) that except for treason, felony, and breach of the peace, members will be privileged from arrest during attendance at a session of Congress and in going to and returning from the same, and for any speech in either house they shall not be questioned in any other place; (3) that no member of either house during the time for which elected shall be appointed to any office under the authority of the U. S. which shall have been created or the payment thereof shall have been increased during such time; and (4) that no person holding another office in the U. S. government shall be a member of either house of Congress during the person's continuance in office.

Article I, Section 7: Bills for Raising Revenue, How a Bill Becomes a Law, The President's Legislative Powers
All bills intended to raise revenue (for example, all tax bills) must begin in the House of Representatives. However, the Senate must also pass such a bill for it to become law and may, of course, amend the bill.

NOTE: This means that the House has a larger voice in the passage of revenue bills since the Senate must react to what the House has already decided. Before they can become law, all bills must be passed in identical form by both the House of Representatives and the Senate and are then sent to the President. After a bill is presented to the President, he has ten days in which to take action. If he approves the bill, the President signs it, but if not, he vetoes it and returns it with his objections to the chamber where it began. That chamber then reconsiders the bill. After reconsideration of the bill, if two-thirds of the members of that chamber pass it, it is sent to the other chamber. If that chamber, after reconsideration of the bill, also passes the bill by a two-thirds vote, it becomes law. (In other words, Congress can override the President's veto by a two-thirds vote of the members of both houses.)

NOTE: The President does not have an item veto. In other words, the President must sign or veto the entire bill. The President cannot veto part or parts of a bill but approve the rest.

NOTE: Presidential vetoes are very rarely overridden because of the two-thirds requirement in both houses. As long as most or all of the President's own party members stand by him, and they usually will do so, Congress cannot achieve the two-thirds vote required. If the President does not sign a bill and does not return it to Congress with his objections within ten days after it is presented to him (Sundays excepted) and Congress is still in session, it becomes law as if he had signed it. However, if the president has not signed the bill, and Congress has adjourned thus preventing the bill's return to reconsider, it does not become law.

NOTE: The latter means that the President has what is called a pocket veto in this situation.

Article I, Section 8: Delegated or Enumerated Powers of Congress
The longest single part of the entire Constitution (eighteen paragraphs), Article I, Section 8 lists what are referred to as the delegated or enumerated powers of Congress.

Some of the most important powers granted Congress by Article I, Section 8 are the following: (1) to lay and collect taxes and duties; (2) to pay the debts and provide for the common defense and general welfare of the U. S.; (3) to borrow money on the credit of the U. S.; (4) to establish a uniform rule of naturalization (how one can become a naturalized citizen of the U. S.; (5) to coin money and regulate the value thereof; (6) to fix the standard of weights and measures; (7) to establish courts below the Supreme Court; (8) to pass legislation concerning any area that becomes the seat of the government of the U. S. (the District of Columbia).

Article I, Section 8: Congress' Power to Declare War and Grant Letters of Marque and Reprisal
One of the most important powers specifically granted Congress in Article I, Section 8 is the power to declare war.

NOTE: It is a power, however, which Congress has formally used only five times in American history: War of 1812, Mexican-American War, Spanish-American War, World War I, and World War II. Thus, the last time Congress formally declared war was World War II even though the nation has been involved in other wars since then. This power given Congress by the Constitution has sometimes appeared to be in conflict with the power given the President in Article II, Section 2 to be the Commander in Chief of the armed forces of the U. S. Controversy surrounding the President's power to involve the nation in war without Congress having formally declared war led Congress in 1973 to adopt the War Powers Resolution over President Richard Nixon's veto.

Congress is also given the power to grant "Letters of Marque and Reprisal."

NOTE: This means that Congress is authorized to issue a government license to a private person to attack and capture enemy vessels and bring them before courts for condemnation and sale. The U. S. has not issued a Letter of Marque and Reprisal in over 200 years, but during the American Revolution, they played an important role for the American colonies.

Article I, Section 8: Congress' Power under the Commerce Clause
One of the most important and often used powers granted Congress by Article I, Section 8 is the power "to regulate commerce with foreign nations and among the several states."

NOTE: This so-called "commerce clause" has been the constitutional authority Congress has used to pass many landmark acts such as the Kansas-Nebraska Act, the Compromise of 1850, the Interstate Commerce Act, and the Civil Rights Act of 1964. Congress' power under the commerce clause has also been the issue in several landmark Supreme Court cases, such as *Gibbons v Ogden* (1824), *Heart of Atlanta Motel v U. S.*, *Katzenbach v McClung* (1964), *South Dakota v Dole* (1987), and *U. S. v Morrison* (2000). If Congress is unable to point to any other constitutional authority for the passage of a law, it can almost always point to the commerce clause. This is because in the modern world, nearly everything or everybody at some time or another crosses state boundary lines or moves between the U. S. and another nation, and if it does so, it is probably subject to Congress' power to legislate.

Article I, Section 8: Congress' Power to Grant Patents and Copyrights
Another very important and frequently used power given Congress by Article I, Section 8 is the power to "promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries."

NOTE: Congress carries out this power by issuing copyrights and patents. A copyright is the exclusive right to publish and make money from a written, musical, or other artistic work for a limited time. A patent provides the same protection for inventions. The purpose of copyrights and patents, as the Constitution says, is to promote the progress of science and the arts. Individuals have more incentive to create and invent if they know they can protect the fruits of their labor.

Article I, Section 8, Paragraph 18: The Necessary and Proper Clause
The 18th and final paragraph of Article I, Section 8 read as follows: "Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all others vested by this Constitution in the government of the United States or in any department or officer thereof."

NOTE: This paragraph of Article I, Section 8 is sometimes called "the elastic clause." This is because it has been understood and interpreted by the Supreme Court to "stretch" the powers of Congress beyond those which are specifically listed in the first seventeen paragraphs of Article I, Section 8. In the landmark 1819 Supreme Court case *McCulloch v Maryland*, Chief Justice John Marshall and the Supreme Court interpreted the Necessary and Proper Clause, when combined with other powers specifically listed in the first seventeen paragraphs of Section 8, to give Congress the power to establish a Bank of the U. S. even though such a power is not specifically listed as being a power of Congress. As a result, it is frequently noted that Congress thus has what are called "implied powers."

Article I, Section 9: Limitations on Congress' Power

One limitation on Congress' power in Article I, Section 9 provides that "the migration or importation of such persons as any of the states now existing shall think proper to admit, shall not be prohibited by Congress prior to 1808 …"

NOTE: Without actually using the words, delegates at the 1787 Constitutional Convention understood that this meant Congress could not outlaw "the slave trade" before 1808 (twenty-one years after the writing of the Constitution). In 1808, Congress did exactly that and abolished the slave trade.

Another limitation in Section 9 provides that "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it."

NOTE: The Latin term habeas corpus means "have the body." It refers to the right of a person who has been arrested and jailed to be taken within a certain period of time before a neutral judge so that the judge may determine if the person is being detained for a lawful reason. The burden is on those holding the individual to persuade the judge that this is true. If the judge decides that this is not the case, the individual must be released.

NOTE: Only a few times in American history has this important protection for an accused person been suspended. One such occasion was during the Civil War when President Abraham Lincoln suspended the right in an area of the U. S. where there was no fighting. The Supreme Court in the 1866 case *Ex parte Milligan* declared Lincoln's action unconstitutional.

Two more limitations provide that "no bill of attainder or ex post facto law shall be passed."

NOTE: This prohibition on bills of attainder means that Congress cannot convict a person of a criminal offense. While Congress can pass criminal laws, only the courts can decide who may have violated those laws. The prohibition on ex post facto laws means that individuals cannot be convicted and punished for an act which when committed was not illegal.

Another limitation forbids Congress to lay any tax or duty on exports or to give preference to the ports of one state over those of another state.

One of the most important limits requires that Congress cannot spend any money from the U. S. Treasury except as a result of appropriations made by law, and a regular statement and account of receipts and expenditures of public money must be published from time to time.

Another limitation provides that the U. S. cannot grant any title of nobility.

A final limitation called "the emoluments clause" forbids any person holding any office in the government of the U. S. from accepting any present, "emolument," office, or title of any kind from any king, prince, or foreign government without Congress' consent.

Article I, Section 10: Limitations on the States"
Article I, Section 10 lists actions that states may not take as well as certain actions they can take only with the consent of Congress. NOTE: Some of the limitations are the same as those placed on Congress in Article I, Section 9.

No state can enter into any treaty, alliance, or confederation or grant Letters of Marque and Reprisal.

NOTE: An explanation of the meaning of Letters of Marque and Reprisal is found in the discussion of powers of Congress in Article I, Section 8 where Congress is given the power to issue such Letters.

No state can coin money or make anything but gold or silver coin payment for debts.

No state can pass any bill of attainder or ex post facto law. NOTE: See Article I, Section 9 for an explanation of these terms which are also prohibitions on Congress.

No state shall pass any law interfering with contracts nor shall any state grant any title of nobility.

Without Congress' consent, no state can place taxes on imports or exports except what may be absolutely necessary for enforcing the state's inspection laws, and the net result of any tax by any state on imports or exports is for the use of the U. S. Treasury, and all such laws are subject to revision and control of Congress.

No state without consent of Congress can keep troops or ships of war in time of peace or enter into agreement or compact with another state or with another nation or engage in war unless invaded or in such imminent danger that delay is not possible.

Article II

Article II, Section 1: The Executive Branch – President's Term of Office, Election, Qualifications, Vacancy in the Presidency, Compensation, and Oath of Office

NOTE: Article II is only approximately one-half as long as Article I and its discussion of the U. S. Congress.

Section 1 begins with a declaration that "the executive power shall be vested in a President of the United States of America" and that the term of office of both the President and the Vice President is four years.

NOTE: As written at the Constitutional Convention in 1787, there was no limit on the number of four year terms a President could serve. George Washington established the precedent that a President would only serve two terms when he declined to seek a third term. This remained true until Franklin D. Roosevelt ran for and was elected to a third term in 1940 and a fourth term in 1944.

Section 1 then describes how the President and the Vice President will be elected.

NOTE: In doing so, it makes no mention of the popular vote in choosing the President and Vice President nor does any other part of the Constitution.

Section 1 creates a body called the Electoral College comprised of individuals called electors which elects the President and Vice President. Each state chooses a number of electors who cast electoral votes in whatever way each state's legislature decides. The number of electors (electoral votes) to which each state is entitled is equal to the number of U. S. Senators from the state (two from each state as provided in Article I) plus the number of U. S. Representatives from the state (as provided in Article I, at least one from each state and the number above one determined by the state's population). Thus, each state has at least three electors (electoral votes). No U. S. Senator or U. S. Representative or person holding an office of profit or trust under the U. S. can serve as an elector.

NOTE: The following paragraph describing the presidential election process was replaced in 1804 when the Twelfth Amendment was added to the Constitution.

As written at the 1787 Constitutional Convention, electors met in their individual states and voted for two individuals, at least one of whom could not be from the same state as the electors. After the state's electors voted, the results were sent to the President of the Senate who in the presence of the Senate and House opened and counted the votes. The individual with the largest number of the electoral votes, if it was a majority of the whole number of electoral votes, became President. If more than one person had a majority and there was a tie, the House would choose the President. If no individual had a majority of the electoral votes, the House, voting by states with each state having one vote, would choose the President from among the top five electoral vote winners. To win this election in the House, the winning candidate would need a majority of the states' votes. After the President is chosen, the individual with the greatest number of electoral votes would be the Vice President, but if two or more have the same number of electoral votes, the Senate chooses the Vice President.

Section 1 specifically spells out only three qualifications which an individual must possess to serve as President: (1) a "natural born citizen" of the United States; (2) 35 years of age; and (3) a resident of the United States for fourteen years.

NOTE: There is general agreement among constitutional scholars that "natural born citizen of the U. S." means that at birth one must be a citizen of the U. S., not that one must have been born on the soil of the U. S. However, this requirement has never been tested in the courts, and therefore, there is no court ruling on its meaning. What it does clearly mean is that naturalized citizens of the U. S. are ineligible to be President or Vice President, although they are eligible to hold any other position in American government.

NOTE: The following paragraph regarding a presidential vacancy was changed when the Twenty-Fifth Amendment was added to the Constitution in 1967.

Section 1 also provided for what happened if the President were removed from office, died, resigned, or was unable to discharge his duties. In such a situation, the Vice President would become President. If both the President and the Vice President should be unable to perform the duties of the office of President for any reason, Congress by law would decide who would then act as President.

Section 1 also provides that the President shall be compensated for his service and that this compensation cannot be increased or decreased during the period for which the President is elected. Finally, it prescribes the oath or affirmation that the President must take before he assumes the office of President.

Article II, Section 2: Powers of the President
Section 2 of Article II lists the President's powers.

NOTE: These powers are fairly few in number, but they are written in very vague language and thus capable of interpretation and argument. Recall that important legislative powers are given to the President in Article I, Section 7.

One of the most important powers granted the President is that of Commander in Chief of the armed forces of the United States and of the militia of the several states when called into service for the United States.

NOTE: The President, among other things, chooses who occupies command positions in each branch of the armed forces. At the same time, the President can remove individuals from command positions as President Harry Truman did when he removed General Douglas MacArthur as Commander of American Forces during the Korean War.

NOTE: As has occurred several times in American history, the President can commit American troops abroad and involve them in conflict even though Congress has not formally declared war.

The President grants reprieves or pardons for offenses committed against the United States, but he cannot pardon an individual who has been impeached.

NOTE: The President cannot issue pardons for offenses against a state. The President has the power to make treaties with other nations, but these treaties must be approved by a two-thirds vote of the United States Senate.

NOTE: Presidents have gotten around this requirement for Senate approval of treaties by negotiating what are called "executive agreements" instead of treaties. These do not require Senate approval.

The President has the power to appoint ambassadors, other public ministers, and justices of the Supreme Court with the advice and consent of the Senate.

Article II, Sections 3 and 4: Duties of the President, Impeachment of the President/Vice President/and Other Officers

Article II, Section 3 provides that the President must give Congress information on the State of the Union and recommend to Congress measures he thinks necessary.

The President is authorized on extraordinary occasions to convene either or both houses of Congress, and where the two houses disagree on the time of adjournment, the President can adjourn them at a time he thinks proper.

The President receives foreign ambassadors and other public ministers.

NOTE: The President's power "to receive foreign ambassadors" means the President has an important power called "recognition." When he "receives" an ambassador from a foreign nation, the President "recognizes" on behalf of the United States the government of that nation which the ambassador represents as the legitimate, rightful government of that nation.

The President must "take care that the laws be faithfully executed."

NOTE: The President is thus authorized to take whatever action deemed necessary to enforce the laws of the U. S.

Section 4 of Article II provides that the President, the Vice President, and all civil officers of the United States can be removed from office if impeached for, and convicted of, "treason, bribery, or other high crimes and misdemeanors."

NOTE: What exactly "other high crimes and misdemeanors" means has been a subject of debate and controversy, and no one is certain about exactly what it means. The House of Representatives brings impeachment charges against an official by a majority vote of the House. Conviction and removal from office on the charges voted by the House requires a two-thirds vote of the Senate.

NOTE: In the nation's history, the House of Representatives has successfully voted impeachment charges against two Presidents – Andrew Johnson and Bill Clinton. A third President – Richard Nixon – resigned the office before the House could vote impeachment charges against him. The Senate, however, has never convicted and removed from office any President.

Article III

Article III, Section 1: The Judicial Branch

NOTE: Article III is by far the shortest of the three articles creating the three branches of the U. S. government.

Section 1 of Article III vests the judicial power of the U. S. in one Supreme Court and in such U. S. courts below the Supreme Court as Congress may choose to establish.

NOTE: The Constitution thus specifically creates only one court – the U. S. Supreme Court. Congress has created all U. S. courts below the Supreme Court. Congress thus has more power over these lower courts than it does over the Supreme Court. Since Congress creates these courts, it decides all kinds of questions concerning them and can alter or eliminate them at any time.

NOTE: Section 1 does not specify the number of members of the Supreme Court even though it establishes the Court. Congress by law sets the number of members, and that number has varied through history. It has not always been an odd number. The first Supreme Court in 1789, for example, as set by Congress in the Judiciary Act of 1789, had only six members. Congress by law set the number of members at nine in 1869 and has not changed that number since then. The only serious but unsuccessful attempt to change the number occurred in 1937 when President Franklin D. Roosevelt tried to persuade Congress to change the number of justices.

NOTE: As noted, Articles I and II spell out qualifications which an individual must have to be eligible to serve as a member of the House and the Senate or as the President. However, Article III does not specify any qualifications which an individual must have for appointment as a Supreme Court Justice or a judge of one of the other courts created by Congress.

NOTE: The President's power to appoint Supreme Court Justices and judges of lower U. S. courts is granted in Article II.

Section 1 provides that Supreme Court Justices as well as judges of the lower U. S. courts created by Congress "shall hold their offices during good behavior."

NOTE: This means that these presidential appointees serve for life unless they seriously misbehave in which case they are subject to removal by Congress through the impeachment process. No Supreme Court Justice in American history has been impeached by the House and convicted and removed from office by the Senate. A few lower U. S. court judges have been impeached, convicted, and removed from office.

Finally, Section 1 provides that both Justices of the Supreme Court and lower court judges shall be compensated for their service and that this compensation cannot be reduced during the time they hold these offices.

Article III, Sections 2 and 3: Jurisdiction of the Courts, Trial by Jury, Treason

Section 2 of Article III spells out in detail the jurisdiction of the U. S. courts or, in other words, all the cases which these courts may hear. Of great significance, Section 2 provides that "in all cases affecting ambassadors, other public ministers, and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make."

NOTE: Original jurisdiction refers to those cases which begin at the Supreme Court or, in other words, those cases which the Supreme Court is the first court to hear. Of course, if a case begins at this Court, it also ends there since there is no other court above the Supreme Court. Section

2 has been interpreted to mean that the only cases falling under the Supreme Court's original jurisdiction are: (1) cases involving foreign ambassadors or other foreign diplomatic personnel; and (2) cases between two or more states. There are very few original jurisdiction cases as indicated by the fact that in any given term, the Court hears at most only one or two such cases. In most terms, it hears no such cases. The Supreme Court is, therefore, primarily an appellate court which means that the overwhelming majority of cases it reviews each year come to it on appeal only after having first been heard and decided by a lower U. S. court or by a state court. The fact that Congress is authorized to regulate the Supreme Court's appellate jurisdiction, but not the Court's original jurisdiction, is therefore significant even though Congress has never used this power to any great extent. The Supreme Court in the 1803 case Marbury v Madison declared unconstitutional a part of an action of Congress which the Court interpreted as altering the Court's original jurisdiction.

NOTE: Article III does not specifically grant the Supreme Court the power called "judicial review" whereby it could rule the actions of the states or the other two branches of the national government as constitutional or not. There is some evidence, however, that most of the framers of the Constitution intended the Court to have such a power, and in Federalist No. 78, Alexander Hamilton makes clear his belief that the Court possessed such a power. In any case, the Supreme Court under the leadership of Chief Justice John Marshall established this important power for itself over the other two branches of the national government in the 1803 case *Marbury v Madison* and over actions of the states in *Fletcher v Peck* (1810), *Martin v Hunter's Lessee* (1816), and *Cohens v Virginia* (1821).

Section 2 also provides that, except for cases of impeachment, the trial of all crimes shall be by jury and that this trial shall be held in the state where the crime was committed

Section 3 of Article III defines treason as levying war against the U. S. or giving aid and comfort to the nation's enemies. It provides that no one can be convicted of treason except by the testimony of two witnesses to the overt act or by the individual's confession in open court.

NOTE: This is the only criminal offense defined in the Constitution.

Article IV

Article IV, Sections 1 and 2: Horizontal Federalism: State to State Obligations
Sections 1 and 2 of Article IV provide that there are three obligations which each state has to every other state (or to citizens of other states). First, each state must give "full faith and credit to the public acts, records, and judicial proceedings of every other state." Note: This means that each state must recognize and enforce such things as wills, divorces, marriages, etc. legally made in other states.

Second, each state must extend the same "privileges and immunities" to citizens of other states that the state extends to its own citizens.

NOTE: As a general rule, a state must treat citizens of other states who happen to be in that state the same way the state treats its own citizens. There are only a few exceptions

to this general rule. For example, a state cannot deny citizens of other states the right to hunt and fish in the state, but it can charge out of state citizens more for a hunting or fishing license.

Third, a person charged in any state with a crime who flees and is found in another state, "shall on demand of the executive authority of the state from which he fled, be delivered up …"

NOTE: This is referred to as "extradition." Most of the time, when a governor of one state requests that the governor of another state to which a fugitive from justice has fled extradite the accused person back to the state from which the fugitive fled, it will be done.

Section 2 also provided that "no person held to service or labor in one state, under the laws thereof, escaping into another, shall, in consequence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due."

NOTE: Those present at the 1787 Constitutional Convention understood that this so-called "fugitive slave clause" referred to slaves who had escaped from their owners. This portion of Section 2 was rendered inoperative when the Thirteenth Amendment was added to the Constitution.

Article IV, Sections 3 and 4: Admission of New States and Obligations of National Government to States

Section 3 of Article IV gives Congress full control over the admission of new states into the union. The only limitation on Congress' power is that a new state cannot be formed within the jurisdiction of an already existing state nor can a state be created by joining two or more existing states or parts of such without consent of Congress and the state legislatures involved.

NOTE: Congress can lay down one or more conditions which a territory seeking admission to the union as a state must meet before Congress will grant the admission.

Section 4 addresses the obligations the national government has to the states. The first such obligation provides that the national government must "guarantee every state a republican form of government."

NOTE: This is called "the guarantee clause." Its meaning has never been interpreted by the U. S. judiciary, and in fact, in the 1849 case *Luther v Borden* the Supreme Court declared that enforcement of the clause was "a political question" for Congress to decide and not a justiciable issue for the judiciary.

The second such obligation is that the national government shall protect the states against "invasion" and from "domestic violence" when requested by a state legislature or by a governor.

NOTE: If a state is invaded, the nation is invaded, and national government intervention would occur. Furthermore, if there is "domestic violence" in a state, the President may

act even if he is not requested to do so by the state's governor or legislature, particularly if a U. S. law or court decision is involved.

Article V

Article V: Amending the Constitution
Article V spells out the two-step process by which the Constitution can be amended or changed. The first step is "proposing an amendment." Article V provides that there are only two ways to propose an amendment: (1) by a two-thirds vote of the members of both houses of the U. S. Congress; or (2) by a national convention called by Congress when two-thirds of the states petition Congress to do so. Once an amendment has been proposed by one of these two methods, the second step is "ratification of the proposed amendment." Article V provides that there are only two ways by which a proposed amendment can be ratified and that Congress decides which of the two ways shall be used: (1) by the state legislatures of three-fourths of the states; or (2) by special state conventions in three-fourths of the states.

Article V originally provided that there were two parts of the Constitution which were protected from being amended. One was that prior to 1808 no amendment could change that part of Article I, Section 9 which forbade Congress to interfere with "the slave trade." That limit is no longer valid today. Consequently, the only limit today provides that no state, without its consent, can be denied its equal representation in the U. S. Senate.

NOTE: The President has no formal role in the amendment process other than the fact that he can indicate his support for or his opposition to a proposed amendment. He does not possess a veto over proposed amendments.

NOTE: The national convention method for proposing an amendment has never been used, probably because there are too many unanswered questions about it. All amendments thus far added to the Constitution have been proposed by a two-thirds vote of both houses of Congress.

NOTE: Of the two methods by which a proposed amendment can be ratified, the special state convention method, as Congress decided, has only been used one time. The Twenty-First Amendment is the only amendment ever ratified by that method. The 21st Amendment is thus unique for two reasons, the second reason being that it is the only amendment ever added to repeal another amendment (the Eighteenth Amendment which had called for the prohibition of alcohol in the U. S.).

NOTE: Article V sets no time limit for the states to make up their minds whether to ratify after a proposed amendment is sent to them for ratification. However, Congress can set a time limit. For every recent proposed amendment, Congress has set a seven year time limit. If Congress does not set a time limit, since the Constitution does not, then the states have forever.

NOTE: In the history of the U. S. under this Constitution, there have been thousands of ideas for proposed amendments, but Congress has only proposed 33 amendments. Of

those 33, the required number of states have ratified 27 which would seem to indicate that the most difficult step is getting an amendment proposed. The most recent proposed amendment which failed to be ratified by the required number of states was a proposed amendment which would have treated the District of Columbia as a state and given it representation in both houses of Congress.

NOTE: One of the most important uses of the amendment process has been to overrule a decision of the U. S. Supreme Court. Four of the twenty-seven amendments added to the Constitution have been added for that precise purpose: (1) Eleventh; (2) Fourteenth; (3) Sixteenth; and (4) Twenty-Sixth.

NOTE: Aside from the first ten amendments (the Bill of Rights), which were added to guarantee fundamental rights of the American people, another important reason for amending the Constitution has been for the purpose of extending the right to vote. These five amendments were added for that purpose: (1) Fifteenth; (2) Nineteenth; (3) Twenty-Third; (4) Twenty-Fourth; and (5) Twenty-Sixth.

Article VI

Article VI: Debts Contracted Under the Articles of Confederation, The Supremacy Clause, Religious Tests

Article VI contains three provisions. The first provision states that debts contracted under the Articles of Confederation before the adoption of the present Constitution were still valid. While important at the time, it is no longer of importance today.

The second provision in Article VI, Paragraph 2 is one of the most important principles of the entire Constitution. It is called “the supremacy clause” or “the supreme law of the land clause.” The three things which constitute the supreme law of the land are: (1) the U. S. Constitution itself; (2) laws of the U. S. made in pursuance of the Constitution; (laws of Congress so long as those laws are not in conflict with the Constitution); and (3) treaties. Furthermore, Paragraph 2 states that “judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.”

The third provision of Article VI states that U. S. Senators, U. S. Representatives, members of state legislatures, and all executive and judicial officers of the U. S. and the states are bound by oath or affirmation to support the Constitution.

In the only mention of religion in the original Constitution as written at Philadelphia, Article VI finally states that “no religious test shall ever be required as a qualification for holding any office or public trust under the United States.

Article VII

Article VII: Ratification of the Constitution
NOTE: Because the framers had spent the entire summer of 1787 writing the new Constitution, and because they believed that its adoption was essential to the nation's survival, they wanted to make certain as best they could that it would be ratified and thus take effect.

For the reasons noted above, the framers carefully spelled out the ratification procedure. Article VII reveals their strategy. First, the proposed new Constitution was not sent to the Congress of the Articles of Confederation for its approval. The framers understood that the Confederation Congress was not likely to approve a document that greatly increased the power of the national government by reducing the power of the states. Second, the proposed new Constitution was to be ratified by special state conventions in the states, not by the state legislatures. Third, for the Constitution to be adopted and thus take effect, ratification by the special state conventions of only nine states was required, rather than ratification by all thirteen states.

NOTE: It was generally understood, however, that ratification by the special state conventions of two states – Virginia and New York—was essential to the success of the endeavor. It was also true that opposition to the new Constitution was particularly strong in both of those states. The special state conventions in those two states did ratify the new Constitution, but the vote in both was very close.

NOTE: The framers' strategy in sending the proposed new Constitution to special state conventions, rather than to the state legislatures, was also smart because it meant that some of the framers could themselves then be elected as delegates to their state conventions and advocate for its adoption. For example, this was true in Virginia where James Madison, often called "the Father of the Constitution," was chosen as a delegate to the Virginia ratifying convention where he played a leading role in arguing for the adoption of the Constitution he had helped write.

Amendments 1-10

First Amendment: No Establishment of Religion Clause (1791)
The First Amendment contains two different guarantees relative to religion. The first one provides that "Congress shall make no law respecting an establishment of religion."

NOTE: It is most often referred to as "the establishment clause." Its meaning has been one of the most disputed issues in American history. There is general agreement among Americans that one thing "the Establishment Clause" certainly means is that government cannot establish a national religion or a national church. Beyond that, however, there is considerable disagreement about its meaning.

NOTE: Some Americans and some members of the Supreme Court have subscribed to Thomas Jefferson's view that the clause created "a wall of separation between church and state." The argument has been over how high that wall should be. The two questions or problems that have most frequently been involved in disputes involving "the establishment clause" are: (1) What kind

of government aid to church schools, if any, is permissible? (2) What kind of religious activity on public property such as public schools, courthouses, or capitol grounds, if any, is permissible?

NOTE: In the early history of the U. S., "the establishment clause" was interpreted as only applying to and limiting the power of the national government, However, in the landmark 1947 case *Everson v Board of Education of Ewing Township*, the Supreme Court ruled that the clause was "incorporated" by the due process of law clause of the Fourteenth Amendment and thus now also applies to and limits the actions of state and local governments.

First Amendment: Free Exercise of Religion Clause (1791)
The second of the two different religious guarantees of the First Amendment provides that "Congress shall make no law prohibiting the free exercise of religion."

NOTE: Like "the establishment clause," the meaning of the "free exercise clause" has been one of the most disputed issues in American history.

NOTE: In 1878 in *Reynolds v United States*, one of the earliest cases the Supreme Court heard and decided involving "the free exercise clause," the Court determined that an individual has an absolute right to believe anything or nothing in terms of religion but not an absolute right to act on or practice that belief. For example, one can believe in the name of one's religion in human sacrifice, but this does not mean that government cannot prevent action on that religious belief.

NOTE: One religious group in the twentieth century which was particularly active in bringing challenges to government actions on grounds of violation of "the free exercise clause" was Jehovah's Witnesses. For example, in the landmark 1943 case *West Virginia State Board of Education v Barnette*, Jehovah's Witnesses challenged a public school policy requiring students to participate in a daily Pledge of Allegiance and salute to the American flag as a violation of their sincerely held religious beliefs. The Supreme Court ruled in favor of Jehovah's Witnesses.

NOTE: Like "the establishment clause," in the early history of the U. S., "the free exercise clause" was interpreted as only applying to and limiting the power of the national government. However, in another landmark case initiated by Jehovah's Witnesses, the 1940 case of *Cantwell v Connecticut*, the Supreme Court ruled that the clause was "incorporated" by the due process of law clause of the Fourteenth Amendment and thus now also applies to and limits the actions of state and local governments.

First Amendment: Freedom of Speech (1791)
This third guarantee of the First Amendment states that "Congress shall make no law abridging freedom of speech."

NOTE: Throughout American history, this has been one of the most important and often litigated issues. Some of the most important and often quoted Supreme Court opinions have been written in these cases.

NOTE: Like the other guarantees of the First Amendment, in the early part of the nation's history, the freedom of speech guarantee only applied to and limited the national government. However,

in the landmark 1925 case *Gitlow v New York*, the Supreme Court ruled that the freedom of speech was "incorporated" by the due process of law clause of the Fourteenth Amendment and thus now also applies to and limits the actions of state and local governments.

NOTE: One important issue which the Supreme Court has had to resolve concerning the freedom of speech guarantee is the nature of speech, and specifically if it is restricted in meaning only to oral, spoken words. The Court on several occasions has ruled that speech does not have to be oral, spoken words. Rather, it has ruled that "symbolic speech" is also protected by the freedom of speech guarantee. For example, in the landmark 1989 case *Texas v Johnson*, the Court ruled that burning the American flag as a means of protesting government policy was speech and was protected by the First Amendment.

NOTE: One of the most important and frequently used tests devised by members of the Supreme Court to judge freedom of speech cases is called the "clear and present danger test" enunciated by Justice Oliver Wendell Holmes, Jr. in the landmark 1919 case *Schenck v United States*. Holmes wrote: "But the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a crowded theater and causing a panic. …The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger …"

NOTE: Another important freedom of speech issue has concerned the question of whether public school students enjoy freedom of speech in the schoolhouse. In the landmark 1969 case *Tinker v Des Moines* School District, the Supreme Court ruled that students do enjoy freedom of speech in the schoolhouse when it stated: "Neither students nor teachers shed their constitutional rights at the schoolhouse gate." However, the Court in that case as well as in others has made it clear that the freedom of speech rights of students in the public schools are not the same as they are in the world outside the public school.

First Amendment: Freedom of the Press (1791)
The fourth guarantee of the First Amendment provides that "Congress shall make no law abridging the freedom of the press."

NOTE: From the colonial period of American history to the present day, the press has played an important role in American democracy in informing the public about what is going on in the nation and the world, and particularly in informing the public about the actions of their government and government officials. In early American history, the word "press" was limited in meaning to newspapers, pamphlets, magazines, and books. Today, "press" has a much broader meaning such as "media" and includes not only those earlier means of communication but also radio, television, the Internet, Facebook, Twitter, etc.

NOTE: Like the other guarantees of the First Amendment, in the early part of the nation's history, the freedom of press guarantee only applied to and limited the national government. However, in the landmark 1931 case *Near v Minnesota*, the Supreme Court ruled that freedom of the press was "incorporated" by the due process of law clause of the Fourteenth Amendment and thus now also applies to and limits the actions of state and local governments.

NOTE: A variety of issues involving the freedom of press guarantee have arisen throughout American history including libel, prior restraint, and freedom of the press v the right to a fair trial. Libel is usually defined as written defamation, a false statement that harms a person's reputation in written form. The Supreme Court has ruled that what one has to prove in order to win a libel suit depends on who or what one is. Most Americans are considered "private citizens" and have to prove less than do "public officials" who hold governmental positions. "Public officials" must prove what the Court calls "actual malice." They must not only prove that what was published was false but also that it was published with knowledge that it was false or with "reckless disregard" of whether it was false. The media today thus have more protection where "public officials" are concerned.

NOTE: A freedom of the press issue on which the Supreme Court has taken the most steadfast position concerns what is called "prior restraint" which refers to the government interfering with the media by attempting to prevent something from being published in the first place. The Court has made it very clear that "prior restraint" by government is hardly ever allowed.

First Amendment: Freedom of Assembly (1791)
The fifth guarantee of the First Amendment provides that "Congress shall make no law abridging the right of the people peaceably to assemble."

NOTE: Like the other guarantees of the First Amendment, in early American history the freedom of assembly guarantee only applied to and limited the national government. However, in the landmark 1937 case *DeJonge v Oregon*, the Supreme Court ruled that the freedom assembly was "incorporated" by the due process of law clause of the Fourteenth Amendment and thus now also applies to and limits the actions of state and local governments.

NOTE: If one thinks about the freedom of assembly, it quickly becomes apparent that it is closely tied to other freedoms of the First Amendment such as speech and religion. Unless one only seeks to speak to oneself or only views religion in terms of one individual, it is obvious that these freedoms are intertwined. Freedom of speech and free exercise of religion also involve freedom of assembly.

NOTE: The principle issues the Supreme Court has had to deal with concerning freedom of assembly involve where, when, and how people can assemble peaceably. Like the other First Amendment freedoms, it is not an "absolute" right. Government can place reasonable time, place, and manner restrictions on the freedom of peaceable assembly.

First Amendment: Freedom to Petition (1791)
The sixth guarantee of the First Amendment provides that "Congress shall make no law abridging the right of the people to petition the government for a redress of grievances."

NOTE: The Supreme Court ruled in the 1937 case *DeJonge v Oregon* that the right to petition is "incorporated" by the due process of law clause of the Fourteenth Amendment and thus now also applies to the actions of state and local governments.

NOTE: Individuals have the right to petition government to express their views and ask for change. The framers of the Constitution and the Bill of Rights brought with them a strong tradition from the colonial period of petitioning government in the face of tyranny. More than once the colonists petitioned the English to cease what they considered oppressive and unfair English behavior. It is not surprising, therefore, when the time came to frame our own Constitution that the right to petition government would be included among the freedoms of the people.

Second Amendment: Keep and Bear Arms (1791)
The Second Amendment provides: "A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed."

NOTE: The Second Amendment is the only amendment with what is called a "preamble" which refers to the opening words of the amendment: "A well-regulated militia, being necessary to the security of a free state." It is this "preamble" which has led to strong and lasting disagreement about the meaning of the amendment. Interpretation of the Second Amendment differs between those who believe the amendment protects an individual right and those who argue that the "preamble" renders it a group right, namely that of a "well-regulated militia."

NOTE: For much of this nation's history, the Supreme Court and other U. S. courts sided with those who argued that it was not an individual right but rather that of "a well-regulated militia." Furthermore, the amendment was viewed as applying only to the national government and not to state and local governments. This changed, however, in 2010 when the Supreme Court in the landmark case *McDonald v City of Chicago* ruled not only that the right to keep and bear arms is an individual right but also that it now applies to and limits state and local government actions.

Third Amendment: Quartering of Soldiers (1791)
The Third Amendment provides: "No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law."

NOTE: The framers of the Constitution brought with them a legacy of guarding their homes against what they saw as unreasonable and tyrannical government intrusion. In the Declaration of Independence, for example, one of the charges against the king was that without colonists' consent he had "quartered large bodies of armed troops among us." Since Americans did not like this when the English government was doing it, it is not surprising that they did not want their own government doing it either.

NOTE: There has never been a single Supreme Court case involving the Third Amendment. Along with the Seventh Amendment, the Supreme Court has never directly addressed the meaning of the Third Amendment. However, in the 1965 case *Griswold v Connecticut*, the Court cited the Third Amendment as one part of the Bill of Rights that creates "zones of privacy" and thus a constitutional right to privacy.

NOTE: Because there has never been a Supreme Court case involving the Third Amendment, this explains why it is often referred to as "the forgotten amendment." It also explains why the

Third Amendment, regardless of what it says, even today only applies to and limits the national government, not state and local governments. In other words, it is one of only four parts of the Bill of Rights which has never been "incorporated."

Fourth Amendment: Unreasonable Searches and Seizures (1791)
The Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

NOTE: The amendment does not prohibit all searches and seizures but only those which are unreasonable.

NOTE: One of the most important parts of this amendment is "probable cause." If law enforcement officers wish to search a home or other place, they must first convince a judge that they are in possession of information that such a search would produce evidence that a criminal offense has been committed. Furthermore, a lawful warrant must specifically describe the place to be searched and the person or things to be seized. This part of the amendment was most likely included to prevent our own government from doing what occurred in the colonial period of our history when English officials had used general search warrants called "writs of assistance" to search anywhere, at any time, for anything.

NOTE: The Supreme Court has ruled, however, that there are some situations where a search and seizure is permissible without a warrant. One such situation is where an individual has voluntarily consented to a search. Another is that police without a warrant can legally carry out a limited "pat down" of an individual behaving suspiciously. A warrant, the Court has also ruled, is not needed when police are "in hot pursuit" of a suspect, or when an officer sees incriminating evidence of the commission of a criminal offense "in plain sight."

NOTE: In early American history, the Fourth Amendment, like other guarantees of the Bill of Rights, was interpreted as only applying to and limiting the national government, not state and local governments. However, in the landmark 1949 case *Wolf v Colorado*, the Supreme Court ruled that the amendment now also applies to and limits actions of state and local officers. Nevertheless, the Court also ruled in this case that evidence seized in violation of the amendment by state and local officers was still admissible against the accused in a state court. It was not until 1961 in the landmark case *Mapp v Ohio* that the Supreme Court ruled that the so-called "exclusionary rule" now also applies to and limits state and local courts – namely, that evidence seized in violation of the amendment is inadmissible against the accused.

NOTE: Another important issue involving the Fourth Amendment concerns its application in the public school environment: Do public school students enjoy the protection of the Fourth Amendment? The Supreme Court's answer has been "yes," but the Court has made it clear that there is at least one important difference in the public school environment. In the 1984 landmark case *New Jersey v TLO*, the Court ruled that public school officials only need "reasonable suspicion" rather than "probable cause" to conduct a legal search and seizure.

Fifth Amendment: Grand Jury Clause (1791)
The Fifth Amendment provides several protections for the accused person in criminal cases. The first protection provides: “No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury …”

NOTE: The function of a grand jury is not to determine the innocence or guilt of an accused person but rather to determine if the government has enough evidence against the accused to proceed to trial. If the grand jury decides that enough evidence exists, it returns an indictment or, in other words, a “true bill.” The accused has no legal right to appear before a grand jury to argue the accused’s case, and therefore, the grand jury only hears the prosecution’s side of the case. Consequently, it is no surprise that grand juries almost always do what the prosecution wishes and returns a “true bill.”

NOTE: Because many believe that grand juries do not serve the function for which they were originally established, namely to serve as a check on arbitrary actions by the government, most states do not use grand juries. The Supreme Court long ago ruled that states are not required to do so and has not changed its position. In other words, the Court has not “incorporated” the grand jury clause into the due process of law clause of the Fourteenth Amendment and thus made it apply to the state and local governments.

Fifth Amendment: No Double Jeopardy Clause (1791)
The second protection afforded an accused person in a criminal case by the Fifth Amendment provides: “nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb.”

NOTE: This means that the same government cannot try a defendant for the same offense more than once. However, some criminal offenses may be a violation of both state and national law. If that is true, then both governments can accuse and try the individual, and that is not double jeopardy.

NOTE: In early American history, like other amendments of the Bill of Rights, the no double jeopardy clause only applied to and limited the national government. However, in the landmark 1969 case *Benton v Maryland*, the Supreme Court “incorporated” the clause into the due process of law clause of the Fourteenth Amendment and thus ruled that the clause now also applies to and limits state and local governments.

Fifth Amendment: No Self Incrimination Clause (1791)
The third protection afforded an accused person in a criminal case by the Fifth Amendment provides: “nor shall any person be compelled in any criminal case to be a witness against himself.”

NOTE: Government thus cannot force an accused person to testify against himself. By allowing people to refuse to answer questions that might make them seem guilty, the Fifth Amendment resolves the conflict between defending oneself and telling the truth. As noted by the English jurist, Sir William Blackstone, this protection has its roots in English legal tradition.

NOTE: In the early history of the U. S. this protection against compulsory self-incrimination only applied to and limited the national government. However, in the landmark 1964 case *Malloy v Hogan*, the Supreme Court "incorporated" the protection into the due process of law clause of the Fourteenth Amendment and thus ruled that it now also applies to and limits state and local governments.

NOTE: Furthermore, in the landmark 1966 case *Miranda v Arizona*, the Court reinforced its 1964 decision when it ruled that the protection requires the police to inform criminal suspects of their right to remain silent prior to any questioning, and that failure to do so would render a confession thus obtained inadmissible against the accused at trial.

Fifth Amendment: Due Process of Law Clause (1791)
The fourth protection afforded an accused person in a criminal case by the Fifth Amendment provides: "nor shall any person in any criminal case be deprived of life, liberty, or property, without due process of law."

NOTE: This is the first of two due process of law clauses found in the U. S. Constitution. They both say the same thing. The difference is that the due process clause in the Fifth Amendment applies to the national government whereas the one in the Fourteenth Amendment applies to state and local governments.

NOTE: The due process of law clause means that government has to follow certain rules and established procedures in everything it does in proceeding with a criminal case against an individual. Due process consists of many things, including many of the protections found in other amendments such as a fair trial by an impartial jury of one's peers, no self-incrimination, no double jeopardy, right to counsel, etc. Due process, as many scholars have noted, has its roots, among other sources, in 1215's Magna Carta where the English monarch was compelled to agree that "no free man shall be taken or imprisoned … or in any way destroyed … except by the lawful judgment of his peers or by the law of the land."

NOTE: The Supreme Court used the Fifth Amendment's due process of law clause when it put an end to racial segregation in the public schools of the nation's capital, the District of Columbia. When the Court used the equal protection of the laws clause of the Fourteenth Amendment to declare racial segregation by law in the states unconstitutional in the landmark 1954 case *Brown v Board of Education of Topeka, Kansas*, racial segregation also existed in the public schools of the nation's capital. The problem was that the Constitution has no equal protection of the laws clause aimed at the national government. Therefore, what the Supreme Court did in order to render racial segregation in the District's public schools unconstitutional is called "reverse incorporation." The Court used the due process of law clause of the Fifth Amendment to make the equal protection of the laws clause of the Fourteenth Amendment apply to the national government.

Fifth Amendment: Takings Clause (1791)
The fifth and final protection of the Fifth Amendment is unlike the amendment's other four protections which were directed to the rights afforded an accused person in a criminal case. This fifth protection is called the "Takings Clause." It provides: "nor shall private property be taken for public use without just compensation."

NOTE: This generally accepted power of government to take privately-owned property in order to build such things as roads, schools, libraries and other public facilities is called "eminent domain." Government is required by the clause to pay the private property owner "just compensation" which is usually understood to mean the fair market value of the property when it uses this power of "eminent domain" to take the property for public use. The compensation provided has not often been the cause of dispute concerning the "takings clause."

NOTE: The "takings clause" was the first protection of the Bill of Rights to be incorporated and applied to the state and local governments by the Supreme Court in the 1897 case *Chicago, Burlington, & Quincy Railroad v Chicago*.

NOTE: The most recent dispute concerning the "takings clause" arose as a result of a Supreme Court decision in the 2005 case *Kelo v City of New London*. In this case, the Supreme Court stirred controversy by its different interpretation of the meaning of the term "public use." The Court interpreted the term to mean "public benefit" such as anticipated economic development in a region as a result of government's taking private property.

Sixth Amendment: Speedy, Public Trial, By an Impartial Jury (1791)
The Sixth Amendment spells out seven different rights of the accused in "all criminal cases."

NOTE: The Supreme Court has "incorporated" and thus applied to the state and local governments all seven of these rights.

The first three rights are "a speedy and public trial by an impartial jury …" Note: The right to a speedy trial does not refer to how long a trial lasts but rather to the amount of time that passes between the time the accused is arrested, charged, indicted, and then is actually placed on trial. For example, if ten years passes and the accused is not brought to trial, this was not a speedy trial. The right to a public trial simply means that the accused cannot be tried behind closed doors in private. The public, including the media, must have access to the trial.

NOTE: The right of the accused "in all criminal cases" to a trial by an impartial jury has given rise to several important questions which the Supreme Court has had to answer. The right does not apply to what are called "petty offenses" usually defined as offenses punishable by six months or less confinement. The Court has ruled that a traditional twelve-person jury is not always required. For less serious criminal cases six-person juries are permissible. The same is true of the traditional requirement of unanimous jury verdicts. In some instances, a jury verdict need not be unanimous. Another important issue involves a possible collision between the accused's right to a trial by an impartial jury and the freedom of the press under the First Amendment to cover a trial's proceedings. The Supreme Court has ruled that the accused's right

to a trial by an impartial jury is so important that a judge can and should impose certain restrictions on how the press covers the trial. Another important issue relative to the right to a trial by an impartial jury concerns the composition of a jury. The traditional rule is that a jury should be made of one's peers which has been interpreted to mean that as close as possible the composition of a jury should reflect the population of the area where the trial is being held. For example, if the population of an area where a trial is being held is overwhelmingly African American, then it could not be a trial by a jury of one's peers if African Americans were excluded from jury service.

Sixth Amendment: Informed of Nature and Cause of Accusation, Confrontation Clause, Compulsory Process for Favorable Witnesses (1791)

Three more rights of the accused in all criminal cases according to the Sixth Amendment are "to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor."

NOTE: "To be informed of the nature and cause of the accusation" simply means that a defendant has the right to know the specific charge against him and cannot be convicted of one crime on an indictment charging a very different crime. "The confrontation clause" means that the defendant has a right to be present at his trial and to cross-examine witnesses against him. Those accusing a defendant of having committed a criminal offense must face him "eyeball to eyeball" in the courtroom. Only for compelling reasons can there be an exception to this confrontation right, and traditionally that exception involves situations where children are crime victims and could suffer traumatic consequences if forced to face an individual accused of having committed a serious offense against them. Even in this situation, however, confrontation must still occur in some form, perhaps through closed circuit television. The right "to have compulsory process for obtaining favorable witnesses" simply means that the defendant is entitled to subpoena or summon witnesses who could possibly produce testimony favorable to the defendant.

Sixth Amendment: Right to Counsel (1791)

The seventh and final right of the accused in all criminal cases provided by the Sixth Amendment is "to have the assistance of counsel for his defense."

NOTE: Many constitutional scholars consider this to be the most important right of an accused person in criminal cases. The reason is that many accused persons are not aware of all their constitutional rights, and if they are not aware of what these rights are, they cannot assert them. Counsel not only knows the rights of the accused and thus allows the accused to assert them but also knows how to assert those rights and others in a court of law.

NOTE: For much of American history, all this right meant, however, was that the accused had a right to the assistance of counsel if the accused could afford one. In 1938, however, the Supreme Court ruled that in any criminal case in a federal court, the U. S. government must supply counsel for indigent or poverty-stricken defendants. The Court has since extended that rule to felony criminal cases in state courts and more recently to any criminal case in a state court where a jail sentence of any length, even one day, is possible. The rule has not yet been extended to those criminal cases where only a fine is the possible punishment. The most recent issue concerning the assistance of counsel concerns not just the right to counsel but the right to "effective counsel"

which means the defendant has a right to have counsel who knows what he should do and actually does it. In several instances in recent years, the Supreme Court has overturned defendants' convictions because in the Court's view, the defendant had "ineffective counsel."

Seventh Amendment: Jury Trial in Some Civil Cases (1791)
The Seventh Amendment provides that in civil cases "where the value in controversy shall exceed $20, the right of jury trial shall be preserved …"

NOTE: Together with the Third Amendment, the Seventh Amendment is often referred to as "the forgotten amendment." There has never been in U. S. history a single Supreme Court case involving the Seventh Amendment. Unlike most of the other rights of the Bill of Rights, the Supreme Court has never "incorporated" the amendment. As a result, the Seventh Amendment has no application to state and local courts.

Eighth Amendment: No Excessive Bail or Fines and No Cruel and Unusual Punishment (1791)
The Eighth Amendment contains two important protections for the accused in criminal cases: (1) no "excessive bail or fines;" and (2) no "cruel and unusual punishments."

NOTE: The Supreme Court has not "incorporated" the "no excessive bail or fines" protection into the due process of law clause of the Fourteenth Amendment and thus applied it to the state and local governments. Therefore, today it still only applies in U. S. courts, but the meaning of the word "excessive" remains unsettled.

NOTE: The Supreme Court has "incorporated" the "no cruel and unusual punishment" protection into the due process of law clause of the Fourteenth Amendment, and thus today it does apply to state courts. Through the years the Supreme Court has heard and decided several important issues involving the "no cruel and unusual punishment" prohibition. The Court has ruled, for example, that capital punishment or the death sentence, does not violate the prohibition. However, it has ruled that executing those who are mentally retarded, no matter what they may have done, does violate the prohibition. It has also ruled that executing those who were under the age of 18 when they committed a criminal offense does violate the prohibition. At the same time, the Court has ruled that corporal or physical punishment like paddling in the public schools does not violate the prohibition.

Ninth Amendment: Other Rights of the People (1791)
The Ninth Amendment provides: "The enumeration in the Constitution of certain rights should not be construed to deny or disparage others retained by the people."

NOTE: The people may have other rights besides those which are specifically listed in the Constitution. This was James Madison's response to the argument that listing the rights of the people could be dangerous because it might lead to the belief that the rights listed were the only rights the people had. For most of this nation's history, the Ninth Amendment, like the Third and Seventh Amendments, was "a forgotten amendment." Only in the modern era has the amendment been resurrected. Though the Supreme Court has been reluctant to decide cases based solely on the Ninth Amendment, it has been cited particularly by some justices as

establishing a constitutional right to “privacy” even though that term never appears anywhere in the Bill of Rights. In fact, in the 1965 case *Griswold v Connecticut*, Justice Arthur Goldberg in a concurring opinion became the first justice in U. S. history to base a vote in a case solely on the Ninth Amendment.

Tenth Amendment: Reserved Powers of States or the People (1791)
The Tenth Amendment provides: “The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively or to the people.”

NOTE: The Tenth Amendment has sometimes been called “the states’ rights” amendment. It is a key part of the Constitution on which states have relied when they have argued that the national government has exceeded its power under the Constitution. Of the amendments demanded by Anti-Federalists in the state conventions called to ratify the Constitution, one calling for “a reserved powers clause” for the states was by far the most common. The language of the Tenth Amendment echoes language James Madison wrote in Federalist No. 45. There Madison wrote that the powers of the national government would be “few and defined” and would mainly be external powers whereas powers reserved to the states would be “numerous and indefinite.” It is thus not surprising that when Madison authored the Bill of Rights, he would include one attempting to reassure the opponents of the Constitution that the states would continue to occupy an important role under the new Constitution.

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Eleventh Amendment: Denial of Jurisdiction for U. S. Courts in Certain Cases (1795)
The Eleventh Amendment added to the Constitution in 1795 provides: “The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state.”

NOTE: The Eleventh Amendment was the first amendment added to the Constitution to change a part of the original Constitution and, at the same time, the first amendment added to overturn a Supreme Court decision.

NOTE: As written at the 1787 Constitutional Convention, Article III, Section 2 extended the jurisdiction of U. S. courts to cases “between a state and citizens of other states” and to cases “between a state, or the citizens thereof, and foreign states, citizens, or subjects.” In the debate over the ratification of the new Constitution, some opponents argued against these provisions on the grounds that they violated “the doctrine of sovereign immunity” which asserts that a sovereign government cannot be sued without its consent. In 1793, the Supreme Court under its first Chief Justice John Jay heard *Chisholm v Georgia*, a case brought by a citizen of South Carolina against the state of Georgia. The Court ruled in Chisholm’s favor. After Georgia vigorously protested the Court’s action, Congress by overwhelming votes in both houses proposed what became the Eleventh Amendment, and three-fourths of the states quickly ratified it. The amendment alters Article III, Section 2 and specifically denies federal courts jurisdiction to hear suits brought by citizens of one state (or of another nation) against another state.

Twelfth Amendment: Presidential/Vice Presidential Election (1804)
NOTE: Under the presidential election system established in Article II, Section 1 of the 1787 Constitution, each elector of the Electoral College voted two times, but was not required to state for whom he was voting for President and for whom he was voting for Vice President. The framers' idea was that the electors, free of any political alliances, would simply cast their votes for "the best man." The individual who received a majority of the electoral votes, became President, and the individual who received the second largest number of electoral votes automatically became Vice President.

NOTE: In the nation's first two presidential elections (1788 and 1792) the system worked because of George Washington and because the nation had only one political group, the Federalists. By 1796, however, there were two political groups, the Federalists and the Democratic-Republicans, and George Washington had departed the nation's government. The fourth presidential election in 1800 revealed problems with the 1787 presidential election system. For the only time in the nation's history, there was a tie in the electoral vote between Thomas Jefferson and Aaron Burr, both members of the Democratic-Republican Party. Pursuant to the Constitution, the election was thrown into the House of Representatives controlled by the Federalists who preferred neither Jefferson nor Burr. Finally, voting by states, as provided by the Constitution, on the 36th ballot, the House chose Jefferson to be the nation's third President. In 1803, Congress proposed the Twelfth Amendment, and it was ratified by three-fourths of the states in June,1804.

The Twelfth Amendment made these major changes in Article II's presidential election system: (1) Each elector in the electoral college has one electoral vote for President and one electoral vote for Vice President, and voting by the electors for President is separate and distinct from their voting for Vice President; (2) if no candidate for President wins a majority of the electoral votes for President, the House of Representatives voting by states with each state having one vote chooses the President from among the top three electoral vote winners, instead of from the top five as Article II had originally provided: (3) if no candidate for Vice President receives a majority of the electoral votes for Vice President, the Senate, with each senator having one vote, chooses the Vice President from the top two electoral vote winners; and (4) no person constitutionally ineligible to be President can be Vice President.

Thirteenth Amendment: Abolition of Slavery (1865)
Section 1 of the Thirteenth Amendment added to the Constitution in 1865 provides: "Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction."

NOTE: The "fugitive slave" provision of Article IV, Section 2 of the 1787 Constitution was thus repealed.

Section 2 provides: "Congress shall have power to enforce this article by appropriate legislation."
NOTE: Congress began debating a proposed constitutional amendment abolishing slavery in the entire nation in 1864, and the proposed amendment passed the Senate. However, not until

1865 were the Republicans in the House able to persuade enough Democrats to vote for the proposed amendment and secure the required two-thirds vote. Disagreement arose immediately over the meaning of the amendment, particularly the extent of Congress' authority to enforce it through "the enforcement clause" of Section 2. Some argued that all the amendment did was to end the "master-slave" relationship and that consequently no more federal action was needed or warranted. Others argued that the amendment required further action by Congress to assure full and equal rights for former slaves.

Fourteenth Amendment: Section 1- Definition of Citizenship (1868)
The first sentence of Section 1 of the Fourteenth Amendment added to the Constitution in 1868 states: "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside."

NOTE: For several reasons, many constitutional scholars argue that, aside from the Bill of Rights, the Fourteenth Amendment is the most used, significant, and far-reaching amendment ever added to the Constitution.

NOTE: As written at the 1787 Constitutional Convention, the Constitution said nothing about who was a citizen of the United States. In the 1857 case *Dred Scott v Sanford*, the Supreme Court declared that slaves were property and were not and could never be citizens of the U. S. The first sentence of the Fourteenth Amendment for the first time in the Constitution defines American citizenship, and, for only the second time in American history, the constitutional amendment process was used to overturn a Supreme Court decision, namely the Court's decision in *Dred Scott v Sanford*.

Fourteenth Amendment: Section 1 -- Limitations on the States – Privileges or Immunities Clause (1868)
The remainder of Section I of the Fourteenth Amendment provides three important limitations on state governments. The first of the three declares that "no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

NOTE: Article IV of the Constitution has an identical phrase, but it guarantees that states will treat out-of-state citizens the same way they treat their own citizens.

NOTE: This first of these three important limitations on the states speaks of "the privileges or immunities of citizens of the United States" while the other two limitations spelled out in Section 1 speak of the states being forbidden to deny "any person" due process of law or the equal protection of the laws.

NOTE: The Framers of the Fourteenth Amendment viewed the privileges or immunities clause as the most important of the three clauses placing limitations on the states. They believed that the privileges or immunities clause required the states to respect all of the rights specifically listed in the first ten amendments (the Bill of Rights). The Supreme Court in the 1873 *Slaughterhouse Cases* rejected that view and interpreted the clause so narrowly that, as a result, the clause was made virtually useless forever.

Fourteenth Amendment: Section 1 -- Limitations on the States – Due Process of Law Clause (1868)
The second of the three limitations imposed on the states by Section 1 provides: "nor shall any state deprive any person of life, liberty, or property, without due process of law."

NOTE: The Fifth Amendment also contains a due process of law clause. The difference is that it applies to and thus limits the government of the United States whereas this same provision in Section 1 of the Fourteenth Amendment applies to and limits the states.

NOTE: Beginning in the early decades of the twentieth century, a majority of the Supreme Court, through a process called "incorporation," began using the due process of law clause of Section 1 to make most of the individual rights of the Bill of Rights apply to and limit the states. In other words, the Court has used the due process clause to largely overturn the Supreme Court's decision in the 1833 case *Barron v Baltimore* where the Court ruled that the Bill of Rights only applied to and limited the national government, not the states. This is sometimes called "the due process revolution" or "the second Bill of Rights." For example, all of the specific rights of the Bill of Rights except for (1) the Third Amendment, (2) the grand jury clause of the Fifth Amendment, (3) the Seventh Amendment, and (4) the protection against excessive bail or fines of the Eighth Amendment today apply to and limit the states just as they have applied to and limited the national government since they were written.

Fourteenth Amendment: Section 1 -- Limitations on the States – Equal Protection of the Laws Clause (1868)
The third of the limitations imposed on the states by Section 1 provides: "nor shall any state deny to any person within its jurisdiction the equal protection of the laws."

NOTE: In the late nineteenth century, the Supreme Court interpreted the "equal protection of the laws clause" very narrowly. For example, the Court declared Congress' Civil Rights Act of 1875 outlawing racial discrimination in public accommodations such as hotels and restaurants unconstitutional. The Court reasoned that Congress could only prohibit discrimination by "state action," not private discrimination as was being done by private individuals who owned hotels and restaurants.

NOTE: In the same time period, the Supreme Court in the 1896 case *Plessy v Ferguson* ruled that a state law requiring racial segregation on railway cars did not violate the equal protection of the laws clause as long as "the separate facilities were equal." It was not until much later that the Court took a broader view of the equal protection of the laws clause and overruled some of the Court's own earlier decisions such as *Plessy*. In addition, in the later decades of the twentieth century, the Court also began to interpret the equal protection of the laws clause to prohibit gender discrimination as well as discrimination in other areas such as voting or the drawing of legislative districts.

Fourteenth Amendment: Sections 2-5 (1868) – Other Provisions
The meaning of Section 2 of the Fourteenth Amendment was very clear. It repealed the so-called "three-fifths compromise" of Article I, Section 2 of the original Constitution and provided for a reduction of representation in the U. S. House of Representatives for any state denying the right

to vote to males over 21 years of age. Note: This provision served to anger leaders of the women's rights movement because for the first time it introduced the word "male" into the Constitution.

The meaning of Section 3 was also very clear. Anyone who had held office in the government of the U. S. or any state and had taken an oath to support the U. S. Constitution but then committed treason by supporting the Confederacy was forbidden to hold any U. S. or state office.

The meaning of Section 4 was also equally clear. Debts incurred by the Union during the Civil War would be honored, but any debt incurred by the rebellious southern states was not the responsibility of the U. S. or any state.

Section 5 of the amendment provides that "Congress shall have the power to enforce, by appropriate legislation, the provisions of this article."

NOTE: Congress has used this so-called "enforcement clause" of Section 5, for example, in adopting part of the Voting Rights Act of 1965 in which Congress forbade the states to deny the right to vote to any citizen who had completed the sixth grade in the U. S. regardless of his or her language. The Supreme Court upheld Congress' action using the enforcement clause.

Fifteenth Amendment: Denial of Right to Vote on Account of Race (1870)
Section 1 of the Fifteenth Amendment added to the Constitution in 1870 provides that "the right of citizens of the United States to vote shall not be abridged by the United States or by any state on account of race, color, or previous condition of servitude."

Section 2 provides that "the Congress shall have power to enforce this article by appropriate legislation."

NOTE: In 1869, when Congress began to consider what became the Fifteenth Amendment, a few members advocated that the amendment should extend the vote to women as well as African Americans. Another version would not only have protected the right to vote but also the right to hold office. In an effort to secure the amendment's passage, its supporters adopted the least aggressive version. Instead of granting a positive or absolute right to vote, the proposed amendment which Congress adopted was framed in terms of a prohibition on the use of race, color, or previous condition of servitude to deny the right to vote. Noticeably, the amendment does not mention gender which meant that male, former slaves could not be denied the right to vote, but women of all races could still be denied that right. Congress later used the enforcement clause of Section 2 to pass the Civil Rights Acts of 1957 and 1960 as well as the Voting Rights Act of 1965.

Sixteenth Amendment: Income Tax (1913)
The Sixteenth Amendment added to the Constitution in 1913 provides that "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."

NOTE: Article I, Section 8 of the original Constitution gave Congress the power to "lay and collect taxes," but Article I, Section 9 forbade Congress from "laying capitation, or other direct tax" unless such tax was apportioned among the states in "proportion to the Census." If an income tax was a "direct tax," it would thus be unconstitutional because it could not be apportioned among the states in proportion to their population. For that reason, before the Civil War, most revenue for the government of the U. S. was raised through tariffs (taxes on imported products.) In 1861, Congress passed the Revenue Act of 1861, the nation's first tax on personal incomes, to help pay for Civil War expenses, but that law was repealed in 1872. In 1894, Congress passed another income tax law, the Revenue Act of 1894, which placed a flat two per cent tax on incomes above $4,000. In the 1895 case *Pollock v Farmers Loan and Trust Company*, the Supreme Court declared that this was a direct tax that was not apportioned among the states in proportion to the Census and was therefore unconstitutional as a violation of Article I, Section 9. In 1907, Republican President Theodore Roosevelt gave his support to an income tax, and in 1908, the Democratic Party's platform endorsed the idea. In 1909, the Sixteenth Amendment giving Congress the power to levy and collect an income tax and altering Article I, Section 9 was proposed by Congress, and in 1913 was added to the Constitution after being ratified by three-fourths of the states.

NOTE: For only the third time in U. S. history, Congress thus used the formal amendment process to overturn a decision of the Supreme Court.

NOTE: Just a few months after adoption of the Sixteenth Amendment, Congress passed an income tax with a top rate of 7 percent for those in the highest income bracket. Replacing the tariff, the personal and corporate income tax quickly became the major source of revenue for the national government.

Seventeenth Amendment: Popular Election of U. S. Senators (1913)
Article I, Section 3 of the Constitution written at the 1787 Constitutional Convention provided that the two U. S. senators from each state would be chosen by the state legislature of each state. Adopted in 1913, the Seventeenth Amendment changed the method by which these senators are chosen. It provides that the two senators from each state will be "elected by the people thereof." The amendment thus changed part of Article I, Section 3.

NOTE: As the Constitution was originally written in 1787, the House of Representatives was the only one of the four parts of the new national government to be chosen by direct, popular vote. The Populist Party in 1892 became the first political party in the U. S. to support popular election of U. S. senators. In the so-called "Progressive Era" of American history, the reform idea caught on, and the Democrats and Republicans, the two major parties, came around to supporting the idea. The Seventeenth Amendment providing for direct, popular election of senators thus became reality in 1913.

Eighteenth Amendment: Prohibition (1919)
Section 1 of the Eighteenth Amendment added to the Constitution in 1919 provided: "After one year from the ratification of this article the manufacture, sale, or transportation of intoxicating liquors within, the importation thereof into, or the exportation thereof from the United States and all territory subject to the jurisdiction thereof for beverage purposes is hereby prohibited."

Section 2 provided: “The Congress and the several states shall have concurrent power to enforce this article by appropriate legislation.”

NOTE: Efforts to limit or ban alcohol consumption began in the United States long before the prohibition movement of the early years of the twentieth century. In the 1870s, women formed the Women’s Christian Temperance Union and tended to dominate the temperance (abstinence from alcohol) movement until the formation of the Anti-Saloon League in 1893 which soon became the leading national organization promoting prohibition. Many women involved in the women’s rights movement were also active in the temperance movement. The prohibition movement had much support in the South where between 1907 and 1915, eight states adopted prohibition laws. By 1917, fourteen more states in the West had adopted such laws. When the two houses of Congress adopted the proposed Eighteenth Amendment in 1917, most of the opponents were from urban areas of the North.

NOTE: The Eighteenth Amendment is the only successful effort to convert a social policy into a constitutional mandate. It is also the only amendment that sought to restrict the rights of the people. The Eighteenth Amendment is also the only amendment which has been repealed by a later amendment, namely the Twenty-First Amendment. Prohibition, as provided by the Eighteenth Amendment, has sometimes been called “the noble experiment.”

Nineteenth Amendment: Suffrage for Women (1920)

The Nineteenth Amendment added to the Constitution in 1920 provides: “The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex. Congress shall have power to enforce this article by appropriate legislation.”

NOTE: At the end of the Civil War and with the adoption of the Thirteenth Amendment, women’s rights advocates who had worked for slavery’s abolition believed that it opened the door for also securing rights for women. Instead, their male allies focused on securing civil and political rights for male, former slaves. When the framers of the Fourteenth Amendment incorporated the word “males” in that amendment and then omitted the word “sex” from the Fifteenth Amendment, women’s rights advocates were understandably upset. In 1869, Elizabeth Cady Stanton and Susan B. Anthony formed the National Women’s Suffrage Association. Leaders of the women’s rights movement adopted a new strategy by deciding to push for women’s suffrage at the state level. Between 1890 when Wyoming was admitted to the union and was the first state to grant women suffrage and 1919 when Congress proposed the Nineteenth Amendment and sent it to the states for ratification, thirty states had granted women some form of suffrage. Thirteen of those states only permitted women to vote in presidential elections, but seventeen states permitted women to vote in all elections. Eighteen states, including all of the southern states, did not allow women to vote at all.

NOTE: World War I helped accelerate the movement for women’s suffrage after women played key roles in the war effort. After having previously opposed the amendment, President Woodrow Wilson changed his position and supported it as a war measure which made it more acceptable to some members of Congress.

NOTE: The Nineteenth Amendment is often called "the Susan B. Anthony Amendment" after one of its earliest and most enthusiastic supporters.

Twentieth Amendment: Dates for End of Terms of President, Vice President, Congress, Presidential Succession (1933)
Section 1 of the Twentieth Amendment added to the Constitution in 1933 provides: "The terms of the President and Vice President shall end at noon on the 2oth day of January, and the terms of Senators and Representatives at noon on the 3rd day of January … and the terms of their successors shall then begin."

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

Section 3 deals with situations where a President-elect dies before inauguration or where the nation does not choose a President before the newly set inauguration date. It specifies that the newly elected Vice President will serve in those situations. Section 4 authorizes Congress to adopt laws to handle situations where one of the presidential or vice presidential nominees dies before Congress can break a deadlock in the electoral college.

NOTE: The Constitution as adopted at the 1787 Constitutional Convention did not set a date for the election of the President, Vice President, U. S. Senators, or U. S. Representatives nor a date for the beginning of their terms. Early in the nation's history under this Constitution, Congress by law set these dates: the first Tuesday after the first Monday in November as the date for all national elections and the first Wednesday in March as the date when the terms of the President, Vice President, and members of both chambers of Congress would begin. As a result, although elected in November, newly elected officials did not take office until the following March, and those defeated in November correspondingly did not leave office until March. Also, Article I, Section 4 of the original Constitution provided that Congress would assemble at least once each year beginning on the first Monday in December.

NOTE: Often called the "lame duck amendment," the Twentieth Amendment shortens the time that so-called "lame duck" Presidents, Vice Presidents, and legislators (that is, those defeated in November) remain in office. While there is still a "lame duck" period between November and January, it is shorter than the previous November to March "lame duck" period.

Twenty-First Amendment: Repeal of Prohibition (1933)
Section 1 of the Twenty-First Amendment added to the Constitution in 1933 provides: "The eighteenth article of amendment to the Constitution of the United States is hereby repealed."

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

NOTE: The Twenty-First Amendment is the only amendment ever added that repeals another amendment, the Eighteenth. It is also the only amendment ever ratified by special state

conventions in the states as directed by Congress when it proposed the amendment. Congress feared that rural dominated state legislatures would reject the proposed amendment. It also demonstrates how quickly public opinion can change. Although the Eighteenth Amendment had resulted in a reduction in alcohol consumption, it also stirred great resistance. Government prosecution of bootleggers manufacturing and selling liquor illegally clogged the courts, and organized crime flourished. In addition, the alcohol industry was a potential source of employment and tax revenue at a time when the nation was confronting the Great Depression. Section 2 of the amendment allowed states to continue to regulate alcohol if they chose to do so, and many states in turn allowed local governments to decide policy in this matter.

Twenty-Second Amendment: No Third Term for the President (1951)
Section 1 of the Twenty-Second Amendment added to the Constitution in 1951 limits an individual from serving as President for more than two four-year terms (eight years), or in the case of a Vice President who serves one day more than two years of another President's term to one full four year term (six years and one day). Correspondingly, if a Vice President serves less than two years of another President's term, then that individual can if elected serve two full terms of his own (absolute maximum an individual can thus serve as President is ten years).

NOTE: The framers of the Constitution as adopted at the 1787 Constitutional Convention debated the question of limiting the number of four -year terms a President could serve, but decided not to impose such a limit. For most of our history, the precedent set by George Washington, the nation's first President, not to seek a third term even though he could have done so stood. Washington's precedent lasted until 1940 when Democrat Franklin D. Roosevelt sought and won a third term as President and then in 1944 sought and won a fourth term. Republicans, with the support of some southern Democrats unhappy with Franklin Roosevelt, began a successful movement to propose an amendment limiting how long a President may serve. The amendment did not apply to President Harry Truman, the President when the amendment was adopted. The first President limited by the 22nd Amendment was Dwight Eisenhower, the first Republican President since 1933.

Twenty-Third Amendment: Right to Vote for President/Vice President for District of Columbia (1961)
Section 1 of the Twenty-Third Amendment added to the Constitution in 1961 grants the District of Columbia, the nation's capital, three electoral votes in the Electoral College for the purpose of choosing the President and Vice President of the United States.

NOTE: Before 1961 when the Twenty-Third amendment was added to the Constitution, residents of the nation's capital had no vote for President and Vice President of the U. S. even though they must pay taxes and follow the laws of the U. S. As adopted at the 1787 Constitutional Convention, electoral votes in the Electoral College created to choose the President and Vice President were apportioned to the states. The number assigned each state was determined by adding the number of a state's U. S. Senators (two per state) and the number of a state's U. S. Representatives (at least one for each state and above one determined by a state's population). The District of Columbia is not a state and hence has no senators and no representatives. (Today it does have a non-voting delegate in the House but still no senators.) The Twenty-Third Amendment assigns the District three electoral votes which is the number the smallest state has.

Today the District has a total population greater than that of several states. In 1978, Congress proposed the D. C Voting Rights Amendment which would have treated the District as if it were a state and given it voting representation in both the House and the Senate, but the proposed amendment was not ratified by the required number of states and therefore failed.

Twenty-Fourth Amendment: Prohibition on Poll Tax For Voting (1964)
Section 1 of the Twenty-Fourth Amendment added to the Constitution in 1964 provides: "The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any state by reason of failure to pay any poll tax or other tax," and Section 2 authorizes Congress to enforce this amendment by appropriate legislation.

NOTE: In the era after the Civil War, southern states used the poll tax to keep African Americans from voting, and by the 1890s, some states were using it to discourage poor whites from voting. By 1908, all of the southern states had adopted the poll tax as a requirement for voting. In some states, it was cumulative which meant that if a citizen wished to vote, that citizen not only had to pay the poll tax for voting in the coming year but also had to pay the poll tax for previous years. By 1953, six of the eleven southern states had abolished the poll tax. As the civil rights movement developed and flourished in the 1950s and 1960s, a movement to ban the poll tax as a requirement for voting gained support. In 1962, Congress proposed the Twenty-Fourth Amendment banning the poll tax as a requirement for voting in national elections, and it was ratified in 1964 by the required number of states but without approval by any of the southern states.

NOTE: The amendment only forbade the use of the poll tax as a requirement for voting in national elections. Consequently, some southern states still tried to use it as a requirement for voting in state elections. In 1966, the Supreme Court ruled that a poll tax requirement for voting in state elections violated the equal protection of the laws clause of the Fourteenth Amendment.

Twenty-Fifth Amendment: Presidential Disability, Vacancy in Vice Presidency (1967)
NOTE: Based on the language of Article II, Section 1, everyone understood that the Vice President became President on the death of the President or his resignation or removal from office. This had occurred prior to the adoption of the 25th Amendment on eight occasions. Several important issues, however, were either unclear or not answered by Article II. For example: (1) Would the Vice President become Acting President if the President was unable to function?; (2) Could the President resume his office on recovering from his disability, and, if so, how?; (3) Who determines if the President is disabled if not the President himself?; (4) What happens if there is a vacancy in the vice presidency?; (5) What exactly was the Vice President's position when he took over for the President? The nation should have been aware of the silence or lack of clarity of the original Constitution on these issues. For example, several times in our history there had been a vacancy in the vice presidency. Also President James Garfield had lingered for 80 days before he finally succumbed to an assassin's bullet. President Woodrow Wilson was a bedridden invalid for the final 18 months of his presidency. President Dwight Eisenhower had suffered a heart attack and had to leave Washington to recover. However, it was President John Kennedy's assassination in 1963 which finally persuaded many individuals

that the Constitution needed to be amended to clarify or answer the issues left unanswered by Article II. The 25th Amendment was proposed by both chambers of Congress in July, 1965, and by February, 1967, three-fourths of the states had ratified it.

Section 1 of the Twenty-Fifth Amendment makes it clear that when the President is removed from office, dies, or resigns, the Vice President becomes President.

Section 2 provides that if there is a vacancy in the office of Vice President, the President appoints a new Vice President with approval by a majority vote of both houses of Congress.

Section 3 addresses those situations where the President knows ahead of time that he is going to be disabled. When the President communicates in writing to the President Pro Tem of the Senate and the Speaker of the House that he is going to be disabled, the Vice President becomes Acting President until the President communicates in writing to the same two officials that he has recovered.

Section 4 addresses those situations where the President is unable to communicate his disability or there is disagreement about his disability. The Vice President becomes Acting President if the Vice President and a majority of the Cabinet … communicate in writing to the President Pro Tem of the Senate and the Speaker of the House their decision that the President is unable to perform his duties.

When the President communicates in writing to the same two officials that he has recovered, the President resumes his office unless the Vice President and a majority of the Cabinet … communicate in writing to the same two officials in four days their judgment that the President is still disabled.

When this disagreement occurs, if Congress is not in session, it must assemble in 48 hours to decide the dispute.

Congress has 21 days to resolve the dispute. A two-thirds vote of both houses is required for the Vice President to win the dispute and remain Acting President. Anything less, and the President resumes his office.

NOTE: Not very many years after the amendment was added to the Constitution, part of the amendment was used not once but twice. In 1973, Vice President Spiro Agnew was forced to resign as Vice President, and President Richard Nixon appointed long-time U. S. Representative Gerald Ford with easy approval by both houses of Congress to be the new Vice President. In 1974, when President Nixon became the first President in history to be forced to resign the presidency rather than be impeached, Vice President Ford became President Ford and then appointed Nelson Rockefeller to succeed himself as Vice President.

Twenty-Sixth Amendment: Lowering Voting Age to 18 (1971)

Section 1 of the Twenty-Sixth Amendment added to the Constitution in 1971 provides: “The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be

denied or abridged by the United States or by any state on account of age. Section 2 gives Congress power to enforce the amendment by appropriate legislation.

NOTE: Since the founding of the United States, in a carryover from colonial and English precedents, states had been consistent in setting the voting age at 21. The U. S. Constitution adopted at the 1787 Constitutional Convention made little mention of the right to vote and did not grant the right to anyone. During or after every major war in the nation's history, there had been an effort to lower the voting age based on the argument that anyone old enough to fight and perhaps die for the country was old enough to participate in voting for those who made the decision to go to war. For a long time, the movement made little or no progress in the face of the prevailing notion that 21 was the age of maturity. During and after World War II, several states considered lowering their voting age, but Georgia was the only state which did so. In the 1950s and 1960s, several groups pushed the states to lower their voting age, but only Kentucky, Alaska, and Hawaii did so. The Vietnam War apparently changed the situation. Congress in the Voting Rights Act of 1965 lowered the voting age in all elections to 18. When that provision in the Voting Rights Act was challenged, the Supreme Court in 1970 ruled that Congress could do this for voting in national elections but not state elections. The result was that in national elections the voting age in all states was 18, but in most states, the voting age in state elections was still 21. Congress moved quickly and proposed the 26th Amendment.

NOTE: A constitutional amendment has never been proposed and ratified as quickly as the 26th Amendment. This is also the fourth, and thus far last, amendment added to overturn a Supreme Court decision.

Twenty-Seventh Amendment: Congressional Pay Raises (1992)
Added to the Constitution in 1992, the Twenty-Seventh Amendment provides: "No law varying the compensation for the services of the Senators or Representatives, shall take effect, until an election of Representatives shall have intervened."

NOTE: The amendment means that if Congress votes itself a pay raise, and it can, it must wait two years before members can begin collecting that raise, meanwhile all members of the House and one-third of the Senate will have to face the voters

NOTE: In 1789, Representative James Madison, as he had promised in the debate over ratification of the new Constitution, introduced in the House of Representatives several proposed amendments to the Constitution. The House and the Senate adopted twelve of Madison's proposed amendments and sent them to the states for ratification. Article V of the Constitution sets no time limit within which the states must act. Congress can do so, but did not do so when it proposed these twelve amendments. In 1791, three-fourths of the states at that time ratified ten of Madison's proposed amendments. Two of Madison's proposed amendment were not ratified by three-fourths of the states and thus failed of ratification. For most Americans, these two were long forgotten. One of these two concerned the size of the House of Representatives, is still forgotten, and in the judgment of most scholars will never be adopted. The other long forgotten proposed amendment concerned the salary of members of the two chambers of Congress which Congress by law sets for itself. Through the years states had continued to ratify the proposed amendment. In the late 1970s and 1980s Congress had given itself several pay

raises which stirred opposition, and a movement to ratify Madison's long forgotten amendment began. In May, 1992, the state legislature of the state of Michigan became the last state needed to achieve the three-fourths majority needed.

Principles of the Constitution

Checks and Balances

The Framers of the U. S. Constitution created a government with three separate and independent branches, each with distinct powers, different constituencies, chose in different ways, and with competing interests. If one branch attempts to act outside its constitutional bounds, one or more of the other branches can stop, or check, that overreach of power. Some examples of the checks and balances are: the President's veto power over bills passed by the two chambers of Congress; Congress' ability to override a President's veto by a two-thirds vote of both chambers; the requirement that the Senate by a two-thirds vote must ratify treaties negotiated by the President; the Supreme Court's power to declare acts of the president or acts of Congress unconstitutional; Congress' control of the nation's treasury and thus money the other two branches need to operate; and the Senate's approval of judicial appointments made by the President. These checks and balances provide some of the "auxiliary precautions" against the abuse of power that James Madison spoke of in Federalist No. 51. In framing a government based on separation of powers along with checks and balances, the framers of U.S. government were influenced by the thinking of the French philosopher Baron de Montesquieu and his The Spirit of the Laws.

Separation of Powers

Influenced by the writings of the French philosopher Baron de Montesquieu, the English philosopher John Locke, and other political theorists, the Framers of the U. S. Constitution created a system of government with power divided among three distinct branches. Montesquieu argued that if there was concern about anyone having too much power, the answer was simple. Because government, he noted, has three major functions -- making law, enforcing or executing law, and interpreting law and settling disputes – the way to prevent anyone from having too much power was to create three separate branches and assign each branch one of the three functions. The Framers believed this type of governmental system would best protect the liberty of the people.

The U. S. Constitution outlines the powers of the legislative (or lawmaking) branch in Article I, the powers of the executive (law enforcement or law execution) branch in Article II, and the powers of the judicial (law interpretation and settlement of disputes) branch in Article III.

Federalism

Federalism is a system of government with dual sovereignty. The U. S. Constitution divides power between the national and state governments. This is what James Madison called a "double security." The Constitution specifically lists the powers of the legislative branch of the national government in Article I, the powers of the executive branch in Article II, and the powers of the judicial branch in Article III. The Tenth Amendment reserves to the states or the people powers not denied to the states and not delegated to the national government.

As the Framers anticipated, the power struggles that have sometimes occurred between the national and state governments have also served as part of the system of checks and balances designed to prevent abuse of power and protect individual rights.

A federal system of government such as that found in the U. S. and a few other nations can be compared to a unitary system of government that Great Britain and most nations of the world have. In a unitary system all power is in the central government, and local governments have only those powers granted them by the central government. A federal system is also very different from what the U. S. had under its first national constitution, the Articles of Confederation, where all the power was lodged in the state governments. A federal system is thus a compromise between a confederation system and a unitary system.

Popular Sovereignty

Influenced by philosophers such as Thomas Hobbes, John Locke, and Jean Jacques Rousseau, the framers of the U. S. Constitution believed in the doctrine of popular sovereignty which asserts that the people are the source of government power. Actions of government and the laws it makes should represent the will of the people. Thomas Jefferson articulated this doctrine in the Declaration of Independence when he wrote "…to secure these [inalienable] rights, Governments are instituted among Men, deriving their just powers from the consent of the governed."

In Federalist No. 22, Alexander Hamilton wrote: "The fabric of American empire ought to rest on the solid basis of THE CONSENT OF THE PEOPLE. The streams of national power ought to flow from that pure, original fountain of all legitimate authority." Of course, the clearest endorsement of the fundamental importance of the doctrine of popular sovereignty in the American Constitution is the opening words of the Constitution's Preamble "We the people of the United States … do ordain and establish this Constitution of the United States."

Limited Government

Another fundamental principle of the American system of government is limited government which means government is not all powerful. The ultimate power is in the hands of the people as the words of the Preamble of the U.S. Constitution indicate. The U. S. Constitution as written at the constitutional convention in 1787 placed several limits on the power of either the national government or the state governments or both. For example, Article I, Section 9 lists several limitations on the power of the national government, and Article I, Section 10 lists certain limitations on the powers of the states.

Amendments added to the Constitution over time have also placed important limitations on government. The Bill of Rights originally placed certain very basic limitations on the national government only. However, using the due process of law clause of the Fourteenth Amendment, the Supreme Court through a doctrine called "incorporation" has made most of those limitations of the Bill of Rights also apply to and limit the power of the state governments. In addition, Section 1 of the Fourteenth Amendment placed three major limitations on the power of state governments. The Fifteenth, Nineteenth, Twenty-Fourth, and Twenty-Sixth Amendments limit the power of both national and state governments as far as the right to vote is concerned.

Individual Rights (Majority Rule versus Minority Rights)
The Framers of the U. S. Constitution and the American system of government believed in the natural rights theory which holds that the rights of the people do not come from government but rather come from nature or from God. Here the Framers were greatly influenced by some of the great "natural rights" philosophers such as the Englishman John Locke. The majority of the people accordingly are limited in their ability to vote away or otherwise abridge or restrict the natural rights of political, ethnic, or religious minorities.

The Framers had great respect for the will of the majority, but also understood, as James Madison wrote in Federalist No. 10, that "the great danger in republics is that the majority will not respect the rights of minority." President Thomas Jefferson proclaimed in his First Inaugural Address: "All, too, will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will, to be rightful, must be reasonable; that the minority possess their equal rights, which equal laws must protect, and to violate which would be oppression." An early example of legislation designed to protect religious minorities was the Virginia Statute For Religious Freedom, and a modern example of legislation intended to protect the political and civil rights of women and ethnic minorities was the Civil rights Act of 1964.

An independent judiciary composed of judges who are appointed and serve for life is an important way to help ensure justice and the protection of minorities. Throughout American history, what minorities cannot accomplish by action of the elected branches of government, they can often accomplish through the judiciary. A prime example of this is the U. S. Supreme Court's ending racial segregation in the nation's public schools by the Court's decision in *Brown v Board of Education*. At the same time, ordinary citizens can help insure minority rights by believing in and practicing such civic values as toleration and respect in their daily lives.

Republicanism
Their study of the Ancient Republics and great philosophers such as Aristotle, Locke, Hobbes, Rousseau, and others led the framers of the U. S. Constitution to their belief that republican government, also called representative government, mixed government, or indirect democracy, was most conducive to a good way of life. The people are the source of government power. Since they are too numerous to govern themselves directly, they elect representatives who make and enforce laws to serve the peoples' interests and the common good. James Madison, the so-called Father of the U. S. Constitution, explained: "We may define a republic to be…a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure for a limited period, or during good behavior."

Further evidence of the Framers' belief in the value of republican government is that portion of Article IV of the Constitution which provides that the national government will guarantee each state a republican form of government.

Nullification
The doctrine of nullification refers to the claimed power of a state to refuse to enforce a national government law the state deems unconstitutional.

In the Kentucky Resolution, Thomas Jefferson argued that when the national government passes a law a state considers unconstitutional, the rightful response is for a state to nullify, or refuse to enforce it. Jefferson argued that "several states who formed that instrument [the Constitution], being sovereign and independent, have the unquestionable right to judge of its infraction; and that a nullification, by those sovereignties, of all unauthorized … is the rightful remedy."

In the period before the American Civil War, the foremost champion of the doctrine of nullification was John C. Calhoun of South Carolina who was met with strong opposition to his advocacy of nullification by President Andrew Jackson. The debate over a state's ability to nullify a national law was ultimately resolved by the Union victory in the Civil War.

Delegated, Implied, Denied, Concurrent, and Reserved Powers

The American system of government provided by the U. S. Constitution provides for a variety of different types of powers. Some powers of the national government are delegated or enumerated in the Constitution. The Supreme Court has ruled that the national government also has what are called "implied powers." These are powers which are not specifically listed in the Constitution but can be traced to certain key parts of the document such as the "necessary and proper clause" of Article I, Section 8, the "Commander in Chief" clause of Article II, Section 2, and the "take care that the laws be faithfully executed" clause of Article II, Section 3. Powers denied the national government are listed in Article I, Section 9. Powers denied state governments are listed in Article I, Section 10. Several amendments to the Constitution also deny power to both the national and state governments. Concurrent powers are those which are held by both the national and the state governments. A good example of a concurrent power is the power to tax. Reserved powers are those of the states or the people as indicated by the Tenth Amendment which provides that "the powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."