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How Has the Constitution Expanded over Time?

> "The powers of the legislature are defined and limited; and that those limits may not be mistaken, or forgotten, the constitution is written.To what purpose are powers limited, and to what purpose is that limitation committed to writing, if these limits may, at any time, be passed by those intended to be restrained? The distinction between a government with limited and unlimited powers, is abolished, if those limits do not confine the persons on whom they are imposed, and if acts prohibited and acts allowed, are of equal obligation."
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> —Chief Justice John Marshall,
> majority opinion in
> Marbury v. Madison (1803)

A constitutional amendment to permit students to pray in school; an amendment to guarantee women equal rights; an amendment to prohibit abortion; an amendment to define marriage; an amendment to make the District of Columbia a state: these are just a few of the more than eleven thousand proposed amendments formally introduced in Congress that have not become part of the Constitution. Since the Bill of Rights—the first ten amendments to the Constitution—was adopted in 1791, Congress has passed an additional twenty-three amendments, of which the states have ratified only seventeen. Such statistics indicate the magnitude of difficulty in amending the U.S. Constitution.

The few amendments that have been adopted have generally come about because of a widely recognized problem or a sustained campaign for reform. After the Nineteenth Amendment gave women the right to vote in 1920, Carrie Chapman Catt, one of the leaders of the woman suffrage movement, reflected that: "To get the word 'male' in effect out of the Constitution cost the women of the country fifty-two years of pauseless campaign." Given the difficulty of amending the Constitution, therefore, it is not surprising that change has more often occurred through judicial interpretation than through formal amendment.

The framers of the Constitution realized that change and reform would be necessary over time, and in Article V they spelled out several processes for amending this core document of the republic. Most commonly, amendments are approved by a two-thirds vote in both houses of Congress and then ratified by the legislatures of three-quarters of the states. Instead of the state legislatures, amendments can be ratified by conventions in three-quarters of the states. Voters in each state would elect members of these conventions. If Congress fails to respond to an issue important to the states, the states can also elect delegates to a constitutional convention that can propose amendments

for the states to ratify. That procedure has not been used since the original Constitutional Convention in 1787.

The Articles of Confederation had required a unanimous vote of the states to approve any changes, which kept the Confederation Congress from fixing any of the weaknesses in the Articles. The Constitution's solution for cautious, well-considered revision was a vote in Congress and the states that was more than a majority but less than unanimity. The amendment process set high hurdles to clear, but still allowed the government to address new problems and adopt changes in the federal system peacefully, once a broad national consensus on the issue was achieved. The Constitution rests on the sovereign power of the people, who have the right to change aspects of their government when necessary. James Wilson, a delegate to the Constitutional Convention from Pennsylvania, explained in a lecture in 1791 that amendments were "not a principle of discord, rancor, or war," they were "a principle of melioration [reformation], contentment, and peace."

The first ten amendments satisfied complaints that the Constitution lacked specific guarantees of individual rights. After that, amendments were added individually to meet problems as they arose. The first added after the Bill of Rights was triggered by a lawsuit, filed by attorney Alexander Chisholm, who as executor of an estate for a South Carolina merchant, Robert Farquhar, sued the state of Georgia to secure payment for war supplies the state had purchased from Farquhar. The Supreme Court ruled in *Chisholm v. Georgia* (1793) that states could be sued. Georgia paid the claim, but called on its congressional delegation to support an amendment shielding the states from suits brought by citizens of another state or foreign country in federal court. Congress responded with what became the Eleventh Amendment, which the grateful states swiftly ratified. From then on, such claims could be filed only in state courts.

The unexpected outcome of the election of 1800 prompted the Twelfth Amendment. Thomas Jefferson and Aaron Burr ran as the Democratic-Republican candidates for President and Vice President. Although they defeated their Federalist rivals, Jefferson and Burr received an equal number of votes in the Electoral College. Because neither man had gotten a majority, the outcome of the election was left to the House of Representatives, which the opposition party controlled. Federalists who hated Jefferson voted for Burr for President. The House voted thirty-six times before it chose Jefferson for President, after the Federalist Party leader Alexander Hamilton threw his support to Jefferson, as the more able and honorable candidate. Jefferson became President and Burr became Vice President. (Burr later shot and killed Hamilton in a duel.) To prevent such a situation from happening again, the Twelfth Amendment, ratified in 1804, provided that the Electors vote separately for Presidential and Vice Presidential candidates. This meant that in the future, candidates for President would compete only against the other parties' Presidential candidates, not against their own Vice Presidential running mates.

More than sixty years passed before another amendment was added to the Constitution. Political pressure for new amendments lessened because of the Supreme Court's assertiveness in deciding constitutional issues. Starting with the 1803 case of *Marbury v. Madison*, the Supreme Court justices claimed the right to declare acts of Congress unconstitutional. As Chief Justice John Marshall wrote for the Court: "It is, emphatically, the province and duty of the judicial department, to say what the law is." The Court based its authority for this

practice, known as judicial review, on Article III, section 2, which extended "judicial power" to all cases of law arising under the Constitution, along with the laws of the United States, and the treaties made with other nations. Also, state supreme courts had asserted the power of judicial review over state laws, establishing precedents for the national Supreme Court. Later, in *McCulloch v. Madison* (1819), the Supreme Court applied a broad interpretation of the federal government's right to take actions "necessary and proper" to meet the urgent needs of the nation. The Court's recognition of the flexibility and elasticity of the Constitution reduced the demand for new amendments.

"This great document is the unique American contribution to man's continuing search for a society in which individual liberty is secure against governmental oppression."

—Justice Hugo L. Black,
A Constitutional Faith (1968)

Not everyone agreed with Chief Justice Marshall's reasoning regarding the power of the federal government. President James Madison personally favored spending federal money on "internal improvements" in the states—building roads and canals, for instance, to improve transportation and commerce—but he did not believe the Constitution permitted it. Madison vetoed an internal improvements bill based on this belief, but called for a constitutional amendment to allow for it. Though Congress could not override Madison's veto, neither did it pass the amendment he desired, and the issue of the federal government's authority to find internal improvements remained a lingering controversy between those who favored either stricter or looser interpretations of the Constitution.

No new amendments were adopted until after the Civil War. In 1860, the election of the first Republican President, Abraham Lincoln, triggered the secession of the Southern states. During the months between the election and Lincoln's inauguration, Congress nervously passed a constitutional amendment that would have protected slavery where it already existed. This last-ditch effort to preserve the Union stipulated that: "No amendment shall be made to the Constitution which will authorize or give to Congress the power to abolish or interfere, within any State, with the domestic institutions thereof, including that of persons held to labor or service by the laws of said State." The effort failed because the seceded states no longer felt bound by the Constitution and the remaining states—where antislavery sentiments ran high—chose not to appease them.

Five years later the Civil War led to an amendment that did the just opposite. The Thirteenth Amendment permanently abolished slavery throughout the United States. President Lincoln had signed the Emancipation Proclamation in 1863, but that order affected only the states in rebellion, and did not end slavery in the states that remained in the Union.

The abolition of slavery was the first of three amendments resulting from the Civil War that shifted more power from the states to the federal government. Congress drafted the Fourteenth Amendment to ensure that African Americans were recognized as citizens of the United States—contrary to the Supreme Court's ruling in *Dred Scott v. Sandford* (1857). The amendment tried to ensure that the freedmen would have rights equal to those of all other citizens. In order to be readmitted to the Union and end Reconstruction rule, the Southern states were required to adopt the Fourteenth Amendment, which was ratified in 1868. Over the next century, however, Court rulings narrowed the amendment's application, and shifted it from protecting individuals to protecting corporations from certain government regulation, on the grounds that corporations were "persons" entitled to equal rights and due process of the law.

The Fifteenth Amendment, ratified in 1870, prohibited denying someone the right to vote because of race. It was the first of several amendments that broadened the franchise—the right to vote. This post–Civil War amendment was

intended to give the newly freed African Americans sufficient political power to protect their constitutional rights. It protected only men at the time, as no states then permitted women to vote. However, the Southern states soon undermined this amendment with a series of tactics, such as poll taxes and literacy requirements, that effectively disenfranchised their black citizens for another century.

After Reconstruction, there were no new amendments until the Progressive era early in the twentieth century, when reformers sought to improve the workings of the federal government, and to reform American society. Two amendments were ratified in 1913. The first permitted the government to collect income taxes. Article I had prohibited Congress from imposing a "direct tax," but had not defined what this meant. During the Civil War, the federal government imposed an income tax to pay for the war's enormous expenses. The tax, which was not challenged at the time, expired in 1872. Later, in the 1890s, reformers proposed a tax on individual and corporate income as an alternative to raising tariffs to produce revenue. (The federal government received most of its operating expenses from duties imposed on imported goods, but high tariffs increased the cost of consumer goods.) In the 1895 case of Pollock v. Farmer's Loan & Trust Co., the Supreme Court struck down the income tax as a direct tax. It took reformers another twenty years to gain the Sixteenth Amendment, which effectively reversed the court's ruling. At first, graduated income taxes were paid only by the people with the highest incomes. Not until World War II did average wage earners pay federal taxes that were withheld from payrolls.

Another Progressive-era reform, the Seventeenth Amendment, changed the way that senators were elected. The Constitution originally assigned the state legislatures to elect U.S. senators. Senators were seen as "ambassadors" from their states. The system produced some outstanding senators, including Henry Clay and Daniel Webster. Yet state legislatures sometimes deadlocked when choosing among candidates and were unable to fill Senate seats. Muckraking journalists—a term that Theodore Roosevelt applied to investigative journalists in 1906—raised the alarm that wealthy individuals were bribing legislatures to win Senate seats, where they protected special interests rather than the general public. In a series of magazine articles that ran under the title of "The Treason of the Senate," the muckraker David Graham Phillips denounced the senators as "perjurers," "bribers," and "thieves." Reformers proposed the amendment to allow citizens to elect their senators directly, and it was adopted in 1913. Unlike reformers in Britain at that time, who reduced the power of their House of Lords, the Seventeenth Amendment kept all the Senate's initial powers and responsibilities intact, leaving it one of the most powerful "upper houses" in any national legislature. (When parliamentary governments began, the aristocracy served in the "upper" chamber and the commoners in the "lower." The U.S. Congress makes no such class distinctions, but the Senate by virtue of being the smaller body with longer terms, and having the additional power of advice and consent over nominations and treaties, has often been called the "upper" body. Members of the House refer to it instead as the "other body.")

American participation in the First World War propelled two other reform amendments. The Eighteenth Amendment, ratified in 1919, was the culmination of a century-long crusade to ban the sale and consumption of alcohol. The amendment gained momentum during the war with successful efforts to ban the sale of intoxicating drinks in the vicinity of military bases. The Eighteenth Amendment was the first to set a time limit of seven years on its ratification.

Some "wet" members of Congress, torn between their personal distaste for Prohibition and the large numbers of "dry" voters in their states, observed that fewer than three-quarters of the states had adopted some form of prohibition, suggesting that the amendment might not be ratified by a sufficient number of states. The time limit enabled them to vote for the amendment with some hope that the states would not ratify it. To their surprise enough states had responded in a little more than a year to ratify the amendment.

The Eighteenth Amendment banned "intoxicating beverages," but left it to Congress to define exactly which beverages were included. Responding to public opinion, in 1919, Congress passed the Volstead Act, which banned beer and wine along with hard liquor. The sweeping nature of Prohibition encouraged massive violations of the law during the Roaring Twenties. The mobster Al Capone bragged to newspaper reporters that by selling illegal liquor he was a simply supplying a public demand: "Some call it bootlegging. Some call it racketeering. I call it a business. They say I violate the prohibition law. Who doesn't?" To end the lawlessness that Prohibition stimulated, the Eighteenth Amendment was repealed by the Twenty-first Amendment in 1933, making it the only amendment to the Constitution to be voided.

The repeal of Prohibition has been the only amendment to be ratified by state conventions rather than by the legislatures. Advocates of repeal accepted ratification by convention because many state legislatures did not meet every year and waiting for them to convene would have delayed repeal. As the people would vote for state convention delegates, the convention system would also give repeal a popular mandate. Forty-three states established conventions and achieved the needed three-quarters ratification within four months. The states, however, retained the right to set their own laws regarding the transportation, sale, and consumption of alcohol.

The Eighteenth Amendment's widely perceived failure made some people cynical about amendments. In 1930 the caustic journalist H. L. Mencken asserted in a magazine article that there was one generalization that could be made about constitutional amendments: "They never work." Since then it has often been argued that social attitudes cannot be changed by laws or constitutional amendments. Yet the Nineteenth Amendment, ratified just after Prohibition, was highly successful. It ended a century of struggle by women seeking the right to vote. Some western states had already given women both the vote and the right to run for office. The first woman elected to the U.S. House of Representatives, Jeannette Rankin of Montana, was elected in 1916, before the Nineteenth Amendment extended woman suffrage to all the states. Women's active roles in many capacities during the First World War helped erode opposition to their right to vote.

Testifying in 1917, the woman suffrage lobbyist Maud Younger pointed out to a congressional committee the contradiction of fighting a war to "make the world safe for democracy," when so many American citizens were denied their democratic rights at home. "We thought, too, of the women of other nations, on the verge of enfranchisement [getting the vote] themselves," she said. "And we wondered how they would welcome the United States at the peace council to establish democracy for them—the United States which does not recognize its own women." In 1920, soon after the war ended, woman suffrage became part of the Constitution.

In 1933, the same year that Prohibition was repealed, the Twentieth Amend-

ment revised the government's calendar. Known as the "lame duck" amendment, it pushed the beginning of Congress from December (thirteen months after the elections) back to January (two months after the election). This reduced the need for congressional sessions to be held after the elections, where many members who had retired or had been defeated continued to vote in Congress. These "lame ducks" no longer owned allegiance to the voters and were more susceptible to special interests. The Twentieth Amendment also shifted the President's inauguration from March 4 to January 20. The long delays that had made sense in earlier centuries, when transportation was slow, no longer made sense in the twentieth century, especially as the need for government action seemed more pressing.

"Our country has deliberately undertaken a great social and economic experiment, noble in motive and far-reaching in purpose."

—President Herbert Hoover on Prohibition, in a letter to Senator W. H. Borah of February 23, 1928

Elected in November 1932, Franklin D. Roosevelt was the last President to have to wait until March for his inauguration. During the five-month interregnum before he took the oath of office, the national economy declined into the worst depression in American history. The government's inability to act vigorously during the transition made the need for constitutional change all the more obvious.

Once inaugurated, Roosevelt launched an ambitious New Deal program for economic relief and reform. The Democrats increased their majorities in Congress in 1934 and 1936, showing widespread popular support for Roosevelt's liberal program, but the Supreme Court remained dominated by Republican appointees. Conservative justices ruled unconstitutional such major New Deal initiatives as the National Industrial Recovery Act (aimed at improving business and labor conditions) and the Agricultural Adjustment Act (aimed at helping farmers). Having had no opportunity to appoint any justices to the Supreme Court during his first term, Roosevelt contemplated supporting a constitutional amendment that would require more than a simple majority vote on the Supreme Court to strike down an act of Congress. Instead, he decided to ask for legislation to enlarge the Court. His critics called this a "court packing" scheme and defeated it roundly. Within a few years, however, Roosevelt had appointed a majority of the Supreme Court justices. He appointed justices who generally favored a broad interpretation of the Constitution and were sympathetic to an active and innovative federal government.

Roosevelt's unprecedented election to four terms as President encouraged his opponents (after his death in 1945) to propose an amendment to limit Presidents to two terms. They worried that popular Presidents could use their incumbency to keep themselves in office for life, and potentially to evolve into dictators. Opponents of the amendment argued against limiting the people's right to choose their leader. After Republicans regained the majorities in the House and Senate, they proposed the Twenty-second Amendment, specifying a two-term limit. Strongly supported in state legislatures with Republican majorities, it was ratified in 1951. The Amendment exempted the incumbent President, Harry Truman, so that the first Presidents to feel this restriction, ironically, were popular Republicans, Dwight Eisenhower and Ronald Reagan. Not until Bill Clinton did a Democratic President serve two full terms and encounter the prohibition against running for a third term.

Ohio Republican senator John Bricker proposed another anti-Roosevelt amendment in 1953. Bricker's amendment would have required the Senate to vote on executive agreements as it did on treaties. Presidents negotiate executive agreements with other nations, as long as those agreements reflect the Pres-

"Constitutions should consist only of general provisions: The reason is, that they must necessarily be permanent, and that they cannot calculate for the possible changes of things."

—Alexander Hamilton, speech to the New York ratification convention, June 28, 1788

ident's constitutional powers. For instance, as commander in chief the President can sign an executive agreement with another nation to station American troops in that country. The Bricker Amendment was in large part a reaction to President Franklin Roosevelt's secret agreements with the Soviet Union made at Yalta, in the Ukraine, near the end of World War II. Supporters of the amendment felt that the Senate should have been able to vote to approve or reject that agreement, the same as it would have handled a treaty. When Congress considered the Bricker Amendment, Republican President Dwight Eisenhower vigorously opposed it as an unnecessary restriction on the President's ability to conduct foreign policy. To Eisenhower's relief, the amendment narrowly failed to pass.

Judicial review continued to resolve conflict and uncertainty about the Constitution. Generally, the Supreme Court operated on precedent, honoring rulings made by previous judges. But the Court was not bound by precedent and could overturn earlier decisions when circumstances and opinion had shifted. The Court's decision in the 1954 case of *Brown v. Board of Education*, for instance, declared racial segregation in public schools unconstitutional. It reversed the earlier ruling in *Plessy v. Ferguson* (1896), which had upheld the notion that "separate but equal" facilities were acceptable Following the Brown decision, two constitutional amendments further chipped away at racial inequalities.

The Twenty-third Amendment, ratified in 1961, gave the right to vote in Presidential elections to residents of the District of Columbia, where African Americans constituted a majority of the population. As the seat of the federal government, the district is not a state and has no senators, only a nonvoting delegate to the U.S. House of Representatives. The Twenty-fourth Amendment, ratified in 1964, abolished the poll taxes that some states had required citizens to pay in order to vote. Although poll taxes worked against poor people in general, they fell especially hard on African Americans in the South.

The shock of President John F. Kennedy's assassination in 1963 made Americans focus on the problem of Presidential succession. After Vice President Lyndon Johnson became President, the Vice Presidency remained vacant until the next election. Next in line of succession for the Presidency came the Speaker of the House and the president pro tempore of the Senate, both elderly men. People also wondered what might have occurred had President Kennedy been seriously wounded rather than killed. The Twenty-fifth Amendment, ratified in 1965, set up mechanisms to enable the Vice President to assume the Presidency if the President was incapable of functioning in office. When the Vice Presidency fell vacant, the President could nominate a replacement, with the consent of the Senate and House. Within a decade of the Twentyfifth Amendment's ratification, it was activated to appoint two Vice Presidents: the first following the resignations of Vice President Spiro Agnew and then of President Richard Nixon.

The Vietnam War prompted ratification of the Twenty-sixth Amendment in 1971. Reformers pointed out that young men were subject to the military draft at the age of eighteen, and should therefore be able to vote for the leaders who were sending them into combat. A few states already allowed voters younger than twenty-one. The Twenty-sixth Amendment lowered the voting age to eighteen nationwide. However, younger Americans have often failed to take advantage of this right.

Under Chief Justice Earl Warren, who served from 1953 to 1969, the Supreme Court became more liberal and activist. It struck down school desegregation, school-sponsored prayer, and state legislatures that gave more seats to sparsely populated rural areas than to heavily populated cities. Noting that

CHIEF JUSTICE EARL WARREN: PROMOTING SOCIAL REFORM FROM THE COURT

When he appointed California governor Earl Warren to be chief justice of the United States in 1953, President Dwight D. Eisenhower had little idea of what a powerful champion of change Warren would become. The new chief justice took over leadership of a Court sharply divided between those who believed in judicial restraint and judicial activism.Warren proved adept at forging new majorities among the justices, and he unexpectedly became an advocate of individual rights and liberties. In his first major case, dealing with school desegregation,Warren argued strongly that segregation violated the Constitution's guarantee of equal protection of the laws. He convinced the other justices to join in a unanimous decision in *Brown v. Board of Education* (1954), which declared school segregation unconstitutional.

Warren was also proud of his leadership in striking down the old system of apportionment in state legislatures that gave more representation to sparsely populated rural districts than to large cities. "A citizen, a qualified voter," Warren asserted, "is no more or less so because he lives in the city or on a farm." In *Baker v. Carr* (1962), the Court ruled that all legislative districts must be equal in population. The Warren Court never shied from controversy. In *Engel v. Vitale* (1962), it struck down school-sponsored prayer. In *Gideon v. Wainwright* (1963) it ruled that a poor defendant must be provided with a lawyer. In *Miranda v. Arizona* (1966) it declared that criminal suspects must be informed of their constitutional rights. Eisenhower shook his head and called appointing Warren the biggest mistake of his Presidency, but others applauded the Warren Court's vigorous defense of civil liberty and social reform.

the Ninth Amendment did not limit people's rights to those enumerated in the Constitution, the Court ruled that citizens have a right to privacy, by which it overturned state laws banning contraceptives. Outraged opponents called for constitutional amendments to overturn the Court's rulings. In none of these efforts, however, could they muster sufficient support to attain the two-thirds votes needed in Congress for an amendment.

In 1972, Congress passed the Equal Rights Amendment, prohibiting discrimination on account of gender. While a majority of states ratified the proposed amendment, a vocal anti-feminist group called STOP ERA launched a counter-offensive that convinced enough states not to ratify it, killing the amendment. Congress then extended the deadline for ratifying the ERA, but the amendment again failed to win enough support from state legislatures. Opponents argued that the amendment was unnecessary because federal laws already protected equal rights for women.

Another failed amendment proposed in the 1970s would have made the District of Columbia a state, giving it two senators and at least one representaive. Although the district had a population comparable to that of several states, it was geographically tiny by comparison to the smallest state. Statehood raised questions about federal control of governmental areas within the district. Republicans also recognized that their party would have little chance of winning any of the congressional seats from the heavily Democratic District of Columbia. Only sixteen states had ratified the amendment when its time limit expired in 1985.

By contrast with the failure of these two amendments, after members of Congress raised their own salaries several times between 1987 and 1991, angry public opinion caused the states to belatedly ratify one of James Madison's original twelve amendments. What became the Twenty-seventh Amendment in 1992 stipulated that raises in congressional salaries would not go into effect until after the next election, giving the voters a chance to register their disapproval. Gregory Watson, a student at the University of Texas, had started the campaign to encourage the states to approve this long-forgotten amendment, for which Congress had set no time limit for ratification. Its cause was taken up by radio talk shows that appealed to a growing public disaffection with government. The states finally ratified the amendment more than two hundred years after Con-

JUSTICE SANDRA DAY O'CONNOR: THE MAKING OF A PRAGMATIST

When President Reagan nominated Sandra Day O'Connor in 1981, she became the first woman justice on the U.S. Supreme Court. Raised on an Arizona ranch, she had graduated third in her class at Stanford Law School in 1952, but, as she recalled in her commencement address at Stanford University on June 13, 2004, her academic brilliance did not lead directly to a post in private practice.

I was unable to obtain employment in a private law firm. I did receive one contingent offer of employment—as a legal secretary. But the gender walls that blocked me out of the private sector were more easily hurdled in the public sector, and I first found employment as a deputy county attorney of San Mateo County, California.While I was brought to the position by something short of choice, I came to realize almost immediately what a wonderful path I had taken. I was having a better time at my job than were those of my peers who had opted for private practice. Life as a public servant was more interesting. The work was more challenging. The encouragement and guidance from good mentors was more genuine. And the opportunities to take initiative and to see real results were more frequent. Ultimately, these forays into the exciting area of public service led me to the privilege of serving as an assistant attorney general in my state, a state senator, a state judge and a United States Supreme Court Justice.

Her prior career in public service made Justice O'Connor a pragmatist, and she adopted a middle-of-the-road, problem-solvingapproach to the law.With the Supreme Court's liberal and conservative wings closely balanced, she provided the critical swing vote on many five-to-four decisions, ranging widely from abortion rights to affirmative action. Although she was not chief justice, her critical swing votes shaped the outcome of so many decisions during her tenure that upon her retirement in 2005 many commentators called it the O'Connor Court.

"We do not consecrate the flag by punishing its desecration, for in doing so we dilute the freedom that this cherished emblem represents."

—Justice William J. Brennan Jr., Texas v. Johnson (1989)

gress had passed it.

In 1994, for the first time in forty years, Republicans won the majority in the House of Representatives. They campaigned under the banner of a Contract with America, which advocated a Balanced Budget Amendment. With the United States running record high deficits, a mandatory balanced budget had gained many supporters in both parties. The House swiftly passed the amendment, but the Senate failed to achieve a two-thirds margin by a single vote. Oregon senator Mark Hatfield, the Republican chairman of the Senate Appropriations Committee, refused to follow his party's lead on an amendment that he feared would hinder future government policy and cause more confusion than clarity. The drive for the amendment then lost steam when government balanced its budget without the constitutional mandate.

Conservatives also endorsed a host of other amendments concerning social issues. They sought to prohibit abortion, outlaw flag burning, and ban same-sex marriages. Some liberals also called for an amendment changing the Electoral College, after Al Gore, the Democratic Presidential candidate in 2000, won the popular vote but lost the electoral vote and the Presidency. Such amendments provided rallying cries during campaigns, motivating both supporters and opponents, but they lacked broad enough support for enactment in Congress. These failures led to calls from angry citizens for a new constitutional convention to propose amendments. Given the uncertain outcome of a convention, however, there was no groundswell for such a risky tactic.

Combined, all the amendments to the constitution do not equal the number of words in the original document, as concise as it was. Amending the Constitution has been difficult enough to discourage all but a tiny number of proposals from being adopted. Broad bipartisan national support is essential to alter the nation's fundamental charter. Yet the courts, together with the President and Congress, have steadily widened the scope of government and addressed new issues by reinterpreting the Constitution without always amending it.