Lesson Goals

SECTION 1
Students will . . .
- identify a key problem facing the Framers, as expressed from different viewpoints in two primary source quotes.
- define the six basic principles around which the Constitution is built.
- read the Constitution and identify where in the document the basic principles are reflected.

SECTION 2
Students will . . .
- compare the process of ratification of amendments by studying a chart.
- examine the meaning of several amendments by creating and performing a skit.
- debate the merits of three unsuccessful amendments, using primary sources.

SECTION 3
Students will . . .
- identify the informal methods of change used in example scenarios.
- apply the informal methods of change by writing example scenarios.

Pressed for Time

To cover this chapter quickly, explain the six basic principles of the Constitution, and have students work through the Section 1 Reading Comprehension Worksheet. Use the chart in Section 2 of the textbook to describe the methods of formal amendment. Then have students work through the Section 2 Bellringer Worksheet and the Section 2 Core Worksheet. Finally, distribute the Section 3 Core Worksheet to students, and work through it with them to identify the methods of change by other means.

DIFFERENTIATED INSTRUCTION KEY
Look for these symbols to help you adjust steps in each lesson to meet your students’ needs.

- Special Needs
- Basic
- ELL English Language Learners
- LPR Less Proficient Readers
- All Students
- Advanced Students
**GUIDING QUESTION**

What are the six main principles on which the Constitution is based?

**Get Started**

**LESSON GOALS**

Students will . . .

- identify a key problem facing the Framers, as expressed from different viewpoints in two primary source quotes.
- define the six basic principles around which the Constitution is built.
- read the Constitution and identify where in the document the basic principles are reflected.

**BEFORE CLASS**

Assign the section, the graphic organizer in the text, and the Reading Comprehension Worksheet (Unit 1 All-in-One, p. 133) before class.

**L2 Differentiate** Reading Comprehension Worksheet (Unit 1 All-in-One, p. 135)

**SKILLS DEVELOPMENT**

**PROBLEM SOLVING**

Before students do the Bellringer activity, you may want to review tips on problem solving in the Skills Handbook, p. 517.

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**SECTION 1**

**Basic Principles**

**Guiding Question**

What are the six main principles on which the Constitution is based? Use a concept web like the one below to take notes on the six basic principles of the Constitution.

**Political Dictionary**

- popular sovereignty
- limited government
- constitutionalism
- rule of law
- separation of powers
- checks and balances
- veto
- constitutional review
- unconstitutional
- federalism

**Objectives**

1. Understand the basic outline of the Constitution.
2. Understand the six basic principles of the Constitution: popular sovereignty, limited government, separation of powers, checks and balances, judicial review, and federalism.

**Image Above:** Voters express their will to the government. This concept is called popular sovereignty.

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**Focus on the Basics**

**FACTS:**
- The Constitution is the supreme law of the land.
- It sets the framework of government.
- The people are sovereign and government is limited.
- The Constitution distributes powers among three branches of government.
- Each branch has the power to check the other branches.

**CONCEPTS:** separation of powers, popular sovereignty, federalism, limited government, judicial review, checks and balances, constitutionalism, rule of law

**ENDURING UNDERSTANDINGS:**
- The Constitution has guided American government for more than 200 years.
- The Constitution is based on six principles: limited government, popular sovereignty, separation of powers, checks and balances, judicial review, and federalism.
sections called articles. The first three articles deal with the three branches of the National Government: Congress, the presidency, and the federal court system. These articles outline the basic organization and powers of each branch, and the methods by which the members of Congress, the President and Vice President, and federal judges are chosen. Article IV deals mostly with the place of the States in the American Union and their relationships with the National Government and with one another. Article V indicates how formal amendments may be added to the document. Article VI declares that the Constitution is the nation’s supreme law; Article VII provided for the ratification of the Constitution.

The seven articles of the original document are followed by 27 amendments, printed in the order in which each provision was adopted.

The Constitution is built around six basic principles. They are popular sovereignty, limited government, separation of powers, checks and balances, judicial review, and federalism.

**Popular Sovereignty**
In the United States, all political power resides in the people, a concept known as popular sovereignty. The people are the only source for any and all governmental power. Government can govern only with the consent of the governed.

The principle of popular sovereignty is woven throughout the Constitution. In its opening words—the Preamble—that document declares: “We the People of the United States . . . do ordain and establish this Constitution for the United States of America.”

The people have given the United States Government whatever powers it has, through the Constitution. That government exercises those powers through popularly elected leaders who are chosen by the people to represent them in the exercise of the people’s power.

**Limited Government**
The principle of limited government holds that no government is all-powerful. That government may do only those things that the people have given it the power to do.

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**The Seven Articles**

**Outline of Government**
The body of the Constitution is made up of seven articles. These articles set out the basic shape of the Federal Government. What is the purpose of the first three articles?

**Articles of the Constitution**

<table>
<thead>
<tr>
<th>Section</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preamble</td>
<td>States the purpose of the Constitution</td>
</tr>
<tr>
<td>Article I</td>
<td>Creates the Legislative branch</td>
</tr>
<tr>
<td>Article II</td>
<td>Creates the Executive branch</td>
</tr>
<tr>
<td>Article III</td>
<td>Creates the Judicial branch</td>
</tr>
<tr>
<td>Article IV</td>
<td>Relations among the States</td>
</tr>
<tr>
<td>Article V</td>
<td>Amending the Constitution</td>
</tr>
<tr>
<td>Article VI</td>
<td>National debts, supremacy of national law, and oaths of office</td>
</tr>
<tr>
<td>Article VII</td>
<td>Ratifying the Constitution</td>
</tr>
</tbody>
</table>

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**Differentiated Resources**
The following resources are located in the All-in-One, Unit 1, Chapter 3, Section 1:

- L2 Prereading and Vocabulary Worksheet (p. 129)
- L3 Reading Comprehension Worksheet (p. 133)
- L2 Reading Comprehension Worksheet (p. 135)
- Core Worksheet (p. 137)
- L4 Extend Worksheet (p. 139)
- Quiz A (p. 141)
- Quiz B (p. 142)

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**Bellringer**
Display Transparency 3A, A Question of Power, showing quotations from both a Federalist and an Anti-Federalist perspective. Write on the board:

1. What problem do both of these quotations address? (2) Which of the six principles help to solve this problem? Answer in your notebook.

**ELL Differentiate** Define these words on the board to help students understand the quotes: denied (declared untrue), encroaching (intruding), effectually (effectively), restrained (limited), assigned (given), discriminating (noting differences in), invasion (intrusion), vested in (given to), annihilate (destroy), absorb (swallow up), consolidated (combined), iron-handed (powerful), despotism (tyranny), and supremacy (domination).

**Teach**
To present this topic using online resources, use the lesson presentations at PearsonSuccessNet.com.

**Introduce the Topic**
Tell students that today they will discuss the six important ideas upon which the Constitution is based. You will return to their Bellringer answers later in the lesson.

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**Answers**

**Checkpoint** to state the Constitution’s purpose

**The Seven Articles** to lay out the powers of the three branches: legislative, executive, and judicial
Distribute Core Worksheet

Distribute the Chapter 3 Section 1 Core Worksheet (Unit 1 All-in-One, p. 137), which lists the six principles. Display Transparencies 3C, Popular Sovereignty and Limited Government, 3D, Separation of Powers and Checks and Balances, and 3E, Judicial Review and Federalism, and ask students to interpret each cartoon. Have students offer definitions of the principles in a brainstorming session. Write down a definition next to each principle and have students record these on the Core Worksheet. (Possible definitions are shown in the Core Worksheet solutions.)

**Basic Principles of the Constitution**

These cartoons illustrate the six principles of government, some of which are explained on the following pages. **According to the cartoons, what is the role of the judicial branch? What are the roles of citizens?**

**Popular Sovereignty**

In effect, the principle of limited government is the other side of the coin of popular sovereignty. It is that principle stated the other way around: The people are the only source of any and all of government’s authority, and government has only that authority the people have given to it. The concept of limited government can be put another way: Government must obey the law. Stated this way, the principle is often called **constitutionalism** — that is, government must be conducted according to constitutional principles. The concept of limited government is also frequently described as the **rule of law**, which holds that government and its officers, in all that they do, are always subject to — never above — the law.

In large part, the Constitution is a statement of limited government. Much of it reads as **prohibitions** of power to government. For example, notice the Constitution’s guarantees of freedom of expression. Those great guarantees — of freedom of religion, of speech, of the press, of assembly, and of petition — are vital to democratic government. They are **enshrined** in the 1st Amendment, which begins with the words: “Congress shall make no law . . .”

**Separation of Powers**

Recall from Chapter 1 that in a parliamentary system, the legislative, executive, and judicial powers of government are all gathered in the hands of a single agency. British government is a leading example of the form. In a presidential system, these basic powers are distributed — separated — among three distinct and independent branches of the government.

This concept is known as **separation of powers**. The idea had been written into each of the State constitutions adopted during the Revolution. A classic expression of the doctrine can be found in the Massachusetts constitution written in 1780 (Part the First, Article XXX):

“In the government of this commonwealth, the legislative department shall never . . .”

**Myths and Misconceptions**

**Popular Sovereignty** Not every Framer enthusiastically embraced the great principle of popular sovereignty set forth in the Constitution. In fact, the idea of granting the people as a whole too much say in government frightened many of them. Alexander Hamilton, for example, wrote that the “turbulent and changing” opinions of the masses “seldom judge or determine right,” and referred to the “imprudence of democracy.” Thomas Jefferson held a different opinion, however. “I know no safe depository of the ultimate powers of the society but the people themselves,” he wrote in 1820, “and if we think them not enlightened enough to exercise their control with a wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education. This is the true corrective of abuses of constitutional power.”

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**Answers**

**Basic Principles of the Constitution**

judicial branch: to act as a check on the other branches and to be the referees who determine when the government has overstepped the bounds of the Constitution; citizens: to communicate their will to the government and to keep the government in check.
Constitutional Principles

**GOVERNMENT BY THE PEOPLE** Our representative government arises from the principle of popular sovereignty. The people exercise their sovereignty by electing representatives to carry out their will. However, the Constitution left the decision of who could vote up to the States. The Constitution says only that those entitled to vote for the “most numerous Branch of the State Legislature” can also vote for members of the House of Representatives (Article I, Section 2, Clause 1). At first, our government represented only some of the people, for the States allowed only white male property owners to vote. Hard times in the early nineteenth century led men to demand an end to the property requirement. Over time, immigrants, African Americans, Native Americans, and women gained voting rights, creating a government more truly “by the people.”

**MAKE CONNECTIONS**
Ask students to review the list of six basic principles and identify patterns. Ask: What issues do the principles address, as a group? (Possible answer: All six principles are concerned with the power of government, with limiting that power, with protecting individual rights and States’ rights, and with preventing abuse and corruption of power.) Then ask them to think back to what they know about the causes of the Revolutionary War and the weaknesses of the Articles of Confederation. Ask: What experiences made the Framers build these six principles into the Constitution? (Possible answer: King George undermined the colonial judiciary and suspended their legislatures; he imposed taxes without representation, abolished laws arbitrarily, and deprived colonists of jury trials; under the Articles of Confederation, Congress was the sole body created; there was no executive or judicial branch; the Congress itself was hobbled by restrictions on its power.) Finish by asking students to read their Bellringer answers aloud. (1. Both quotes address the problem of preventing the central government from becoming too powerful. 2. limited government, separation of powers, checks and balances, federalism)

**ANALYZE THE CONSTITUTION**
Explain that students will be using the Constitution itself as a primary source to find where in the document the major principles are reflected. Remind them that the principle of judicial review does not appear specifically in the Constitution. However, Federalist writings suggest that the Framers intended for the federal courts to have this power. Direct students to the Constitution reproduced in the textbook. Have them work in pairs to find statements in the Constitution that relate to each principle, and record the locations in the Core Worksheet. Then call on partners to share their responses for each section.

**L1** L2 Differentiate Have students work in small groups. Assign each group one principle to locate in the Constitution. Call on groups to present information about their principle to the class.

**L4** Differentiate Have students work individually to find as many places as possible where each principle is addressed.

Tell students to go to the Interactivity for an interactive version of Basic Principles of the Constitution.

**Answers**
Checkpoint by preventing the concentration of legislative, executive, and judicial powers in one group
EXTEND THE LESSON

**Differentiate** Use these questions to continue students’ search of and discussion about the Constitution.

1. Which section and clause of Article I contains the Three-Fifths Compromise? (Section 2, Clause 3) What other compromise related to slavery appears in Article I? In what Section and Clause is it located? (Section 9, Clause 1: Congress may not interfere with the importation of enslaved people until 1808.) Why did the Framers include these compromises in Article I? (The Three-Fifths Compromise relates to representation in the House of Representatives, the subject of Article I. The agreement that Congress would not interfere with the slave trade helped to win the South’s agreement to the Three-Fifths Compromise.)

2. What military power does Article II grant the President? (Commander in Chief)

3. According to Article III, how long is the term for a federal judge? (for life) Why do you think the Framers saw fit to make the terms of judges different from those of other offices? (probably to allow judges to make objective decisions, free of the influence of politics and public opinion)

4. Which section of Article IV deals with the formation of new States? (Section 3)

5. According to Article V, what fraction of the States must approve an amendment before it becomes part of the Constitution? (two thirds)

6. What is the purpose of Article VI, Section 2? (to establish the Constitution as the supreme law of the land)

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**Checkpoint** Name one of the ways in which the President can check the powers of Congress.

**Checks and Balances**

The National Government is organized around three separate branches. As you have just seen, the Constitution gives to each branch its own field of governmental authority: legislative, executive, and judicial. These three branches are not entirely separated nor completely independent of one another. Rather, they are tied together by a complex system of checks and balances. This means that each branch is subject to a number of constitutional checks, or restraints, by the other branches. In other words, each branch has certain powers with which it can check the operations of the other two.

Congress has the power to make laws, but the President may veto (reject) any act of Congress. In turn, Congress can override a presidential veto by a two-thirds vote in each house. Congress can refuse to provide funds requested by the President, or the Senate may refuse to approve a treaty or an appointment made by the President. The chief executive is the commander in chief of the armed forces, but Congress provides that military force; and so on.

The system of checks and balances links the judicial branch to the legislative and the executive branches. The President has the power to name all federal judges. Each appointment, however, must be approved by a majority vote in the Senate. At the same time, the courts have the power to determine the constitutionality of acts of Congress and of presidential actions, and to strike down those they find unconstitutitional.

Head-on clashes between the branches of government do not often happen. The check-and-balance system operates all the time, however, and in routine fashion. The very fact that it exists affects much of what happens in Washington, D.C.

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**Political Cartoon Mini-Lesson**

Display Transparency 3F, Road to Nowhere, when you discuss the system of checks and balances. The cartoon shows that the system is intended to force the branches to work together toward compromise. Ask: In this cartoon, which branch of government is being checked? (legislative branch) Which branch is doing the checking? (executive branch) How? (by veto) What does the cartoon suggest must happen for the government to get its work done? (Branches must work together toward compromise.) At the time this cartoon was created, do you think the presidency and Congress were controlled by the same party? How do you know? (No. The direct confrontation between the branches depicted in this cartoon suggests that the President’s agenda differs significantly from that of the congressional majority, suggesting that they are from different parties.)
environment in which one party occupies the White House and the other controls one or both houses of Congress.

Most recently, Republican President George W. Bush faced an opposing Congress in the last two years of his eight-year presidency. In 2008, Barack Obama recaptured the White House for the Democrats, and the Democratic party strengthened their slim majorities in both houses on Capitol Hill.

Judicial Review

One aspect of the principle of checks and balances is of such importance in the American constitutional system that it stands by itself, as one of that system’s basic principles. The power of judicial review may be defined as the power of a court to determine the constitutionality of a governmental action.

In part, then, judicial review is the power to declare unconstitutional—to declare illegal, null and void, of no force and effect—a governmental action found to violate some provision in the Constitution. The power of judicial review is held by all federal courts and by most State courts, as well.1

1 Generally, the power is held by all courts of record. These are courts that keep a record of their proceedings and have the power to punish for contempt. Usually, only the lowest courts in a State—justice of the peace courts—are not courts of record.

Interpreting Diagrams: Under the system of checks and balances, each branch of government can check the actions of the others. In what ways can the power of the executive be checked by the other two branches?

Differentiate

What might happen if the system of checks and balances did not exist? Have students work together to develop a scenario in which this principle was not a part of American government. Ask them to create a short radio broadcast describing the situation. Alternatively, students might base their scenario on one of the other six principles.

Differentiate

The Preamble to the Constitution is an eloquent statement of the purpose and ideals of the United States government. Have small groups work together to set the Preamble to music. Encourage them to consider carefully their choice of musical style, keeping in mind the subject matter and significance of the document. The words might serve as lyrics; or they might be read, with music as background. Allow time for students to perform their creations for the class.

Differentiate

To what extent do the six basic principles address weaknesses of the Articles of Confederation? Have students create a poster or write a brief essay to answer this question.

Differentiate

Distribute the Chapter 3 Section 1 Extend Worksheet (Unit 1 All-in-One, p. 139), which asks students to read excerpts from The Federalist and decide which basic principles are the subject of each excerpt.

Tell students to go to the Audio Tour for a guided audio tour of Checks and Balances.

How Government Works

CHECKS AND BALANCES After students have compiled their lists of checks and balances on their Core Worksheet, begin a flow chart on the board. Write “Executive Branch,” “Legislative Branch,” and “Judicial Branch” on the board in a triangular pattern, in the same positions as they appear in the textbook diagram. Have students read each description of a check from their Core Worksheet and identify the branch that holds this power. For example, Article I, Section 2, Clause 5, assigns the power to impeach to the House of Representatives. Write the description under that branch on the board. Then have students identify the branch(es) being checked. Draw an arrow from each description to the affected branch(es). In the impeachment example, draw arrows to both the executive and judicial branches, since the House may impeach judges as well as members of the executive branch.

Answers

Interpreting Diagrams The judicial branch may declare executive acts constitutional. The legislative branch may override the President’s veto, may impeach the President, approves appointments, and approves treaties.
Assess and Remediate

- Display Transparency 3G, Who Has the Power? Have students draw conclusions about why this diagram represents the principle of federalism. Students should then present their conclusions to the class. (The powers show a division among a central government and several regional [State] governments.)
- Collect the Core Worksheets and assess students’ work.
- Assign the Section 1 Assessment questions.
- Section Quiz A (Unit 1 All-in-One, p. 141)
- Section Quiz B (Unit 1 All-in-One, p. 142)

Have students complete the review activities in the digital lesson presentation and continue their work in the Essential Questions Journal.

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Federalism

Who Has the Power?

**FEDERAL POWERS**
- To maintain an army and a navy
- To declare war
- To coin money
- To regulate trade between States and foreign nations
- To make treaties with foreign nations

**SHARED POWERS**
- To enforce laws
- To establish courts
- To borrow money
- To secure the population
- To build an infrastructure
- To collect taxes
- To make laws

**STATE POWERS**
- To conduct elections
- To establish schools
- To regulate business within a State
- To establish local government
- To regulate marriages
- To assume other powers not given to the Federal government by the Constitution, nor denied to the States

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Interpreting Diagrams

The Constitution divides power among the State and Federal governments. Why might the Constitution give the power to regulate trade among the States to the Federal Government?

Auxiliary: adj; extra; supportive; supplemental

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Clear that the Framers intended that the federal courts, and in particular the Supreme Court, should have that power. In *The Federalist* No. 51, James Madison described the judicial power as one of the “auxiliary precautions” against the possible domination of one branch of the government over another.

In *The Federalist* No. 78, Alexander Hamilton wrote:

“The interpretation of the laws is the proper and peculiar province of the courts. A constitution is, in fact, and must be regarded by the judges as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute. . . .”

In practice, the Supreme Court established the power of judicial review in the landmark case of *Marbury v. Madison* in 1803. Since *Marbury* the Supreme Court and other federal and State courts have used the power in thousands of cases. For the most part, those courts have upheld challenged governmental actions. That is, in most cases in which the power of judicial review is exercised, the actions of government are found to be constitutional.

That is not always the case, however. To date, the Supreme Court has decided some 150 cases in which it has found an act or some part of an act of Congress to be unconstitutional. It has struck down several presidential and other executive branch actions as well. The Court has also voided hundreds of actions of the States and their local governments, including some 1,200 State laws and local ordinances.

**Federalism**

As you know, the American governmental system is federal in form. The powers held by government are distributed on a territorial basis. The National Government holds some of those powers. Others belong to the 50 States.
The principle of federalism—the division of power among a central government and several regional governments—came to the Constitution out of both experience and necessity. At Philadelphia, the Framers faced a number of difficult problems, not the least of them: How to build a new, stronger, more effective National Government while preserving the existing States and the concept of local self-government.

The colonists had rebelled against the harsh rule of a powerful and distant central government. They had fought for the right to manage their own local affairs without the meddling and dictation of the king and his ministers in far-off London. Surely, the colonists would not now agree to another such government.

The Framers found their solution in federalism. In short, they constructed the federal arrangement, with its division of powers, as a compromise. It was an alternative to both the system of nearly independent States, loosely tied to one another in the weak Articles of Confederation, and to a much feared, too powerful central government.

We shall explore the federal system at length in the next chapter. For now, keep in mind that among so many other reasons, federalism is an important part of the Constitution's web of protections of individual freedom. Remember, the Framers were dedicated to the concept of limited government. They were convinced (1) that governmental power poses a threat to individual liberty, (2) that, therefore, the exercise of governmental power must be restrained, and (3) that to divide governmental power, as federalism does, is to curb it and to prevent its abuse. Alexander Hamilton addressed this in his Federalist Papers:

"PRIMARY SOURCE

In the compound republic of America, the power surrendered by the people is first divided between two distinct governments, and then the portion allotted to each is subdivided among distinct and separate departments. Hence a double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.

—The Federalist No. 51

Assessment Answers

1. popular sovereignty, limited government, separation of powers, checks and balances, judicial review, federalism
2. The first three articles are the only ones that deal specifically with the organization of the Federal Government.
3. (a) executive, judicial, and legislative (b) judicial: may declare a law or presidential action unconstitutional; executive: appoints judges, may veto a law, may call special sessions of Congress; legislative: may override a veto, may impeach a president or a judge, approves treaties and appointments of judges, creates lower courts
4. (a) The government and its officers are always subject to the law. (b) The Framers wanted to avoid absolute rule similar to that exercised by the British government over the colonists. (c) Government would have unlimited power. It could act arbitrarily and for its own interests.
5. (a) the power of the judicial branch to declare acts of Congress or the President unconstitutional (b) Although intended by the Framers, the concept became official when the Supreme Court decided Marbury v. Madison in 1803.
6. Possible response: Conflict between party agendas would make checks and balances more apparent, with more frequent vetoes and battles over judicial appointees. The legislative process could become gridlocked as confrontations between the branches prevent legislation on politically charged issues from passing into law.

QUICK WRITE Sample main idea: Constitutional change by other means has allowed branches of government to work around checks and balances.
What is judicial review?

The Supreme Court holds the power of judicial review, which it first asserted when it decided Marbury v. Madison in 1803. What began as a dispute over a small provision of federal law became, arguably, the most important decision in the history of the Supreme Court.

“It is emphatically the province and duty of the Judicial Department to say what the law is. . . .

“If, then, the Courts are to regard the Constitution, and the Constitution is superior to any ordinary act of the Legislature, the Constitution, and not such ordinary act, must govern the case to which they both apply.”

—Chief Justice John Marshall

Outgoing President John Adams and his Federalist Party were defeated by Democratic-Republican Thomas Jefferson in 1801. Before he left office, President Adams and the Federalists tried to ensure their continuing influence on the government by packing the judiciary with loyal party members. To this end, Congress created several new federal judgeships; President Adams quickly filled those posts with Federalists.

One of those party members, William Marbury, was appointed a justice of the peace for the District of Columbia. The Senate had confirmed his appointment, and, late on the night before he left office, President Adams signed the commission for Marbury. Then secretary of state John Marshall affixed the Great Seal of the United States to the commission, but never delivered it to Marbury.

When the new President learned of the last-minute appointments, he angrily directed James Madison, the new secretary of state, not to deliver those commissions to the “midnight justices.” President Jefferson saw his worst fears about the judicial branch realized in those appointments; with their life tenure, he believed that judicial appointees possessed far too much influence.

Supreme Court Notes

FLETCHER V. PECK, 1810 In Marbury v. Madison, the Supreme Court first asserted its power to strike down a federal law. Seven years later, the Court extended the power of judicial review to State laws. In 1795, the Georgia State legislature passed a law granting land to four companies but later repealed the law. John Peck acquired some land under the original grant. He later sold the land to Robert Fletcher. Fletcher sued, arguing that Peck had no legal right to sell the land. The case reached the Supreme Court. Noting that the Constitution does not allow ex post facto (after the fact) laws, the Court ruled that the Georgia legislature could not void grants made by the previous law. Thus Georgia’s repeal of its law was unconstitutional. By asserting the power of judicial review over both federal and State laws, the Supreme Court secured its authority as chief interpreter of the Constitution.
When Marbury went to the Supreme Court seeking a writ of mandamus—a court order directing a public official to perform his or her duty—to force delivery of the commission, Chief Justice John Marshall faced a dilemma. If he granted the writ to force Madison to deliver the commission, the President would likely ignore it. This would create a precedent under which the authority of the judicial branch would suffer. On the other hand, a refusal to issue the writ would deny Marbury his commission, which was legally his. Rather than choose either option, Marshall devised a brilliant maneuver.

In a unanimous opinion written by the Chief Justice, the Court refused Marbury’s request. It did so, however, not because Marbury was not entitled to his commission, but rather because it found the section of the Judiciary Act on which Marbury had based his case to be in conflict with the Constitution and, therefore, void. Specifically, the Court found the statute, which allowed cases to be heard by the Supreme Court without moving through the lower courts, in conflict with Article III, Section 2, Clause 2 of the Constitution, which stated that cases such as Marbury’s must come to the Supreme Court only by way of the lower courts.

Marshall’s powerful opinion asserted that: “The powers of the legislature are defined and limited; and that those limits may not be mistaken or forgotten, the Constitution is written.” With this ruling, the Court asserted its power to determine the constitutionality of government actions and placed itself on an equal footing with the executive and legislative branches. The power of judicial review established in Marbury has been used in hundreds of significant cases since 1803, including those concerned with segregation (Brown v. Topeka Board of Education, 1954), the rights of the accused (Miranda v. Arizona, 1966), and the right to privacy (Roe v. Wade, 1973).

Think Critically
1. Should the Supreme Court have the power to declare an act of Congress unconstitutional? Why or why not?
2. **Constitutional Principles** Explain why the power of judicial review is an important part of the system of checks and balances.

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**Supreme Court Notes**

**JUDICIARY ACT OF 1789** Article III, Section 1, of the new Constitution left to Congress the responsibility to “ordain and establish” a federal court system. Congress wasted little time. Senate Bill Number One of the First Session of the First Congress became the Judiciary Act of 1789. This act established the federal district and circuit courts and the authority of judges and court officials. Section 13 of the act authorized the Supreme Court to issue writs of mandamus in original jurisdiction, rather than upon appeal from a lower court. In Marbury v. Madison, John Marshall pointed out that Article III, Section 2, of the Constitution lists specific situations in which the Court has original jurisdiction, and issuing writs of mandamus was not one of them. Therefore, he concluded, anything not listed in this section of the Constitution must go through the lower courts first. Section 13 of the Judiciary Act was unconstitutional.
GUIDING QUESTION
How has the Constitution been amended through the formal amendment process?

Get Started

LESSON GOALS
Students will . . .
• compare the process of ratification of amendments by studying a chart.
• examine the meaning of several amendments by creating and performing a skit.
• debate the merits of three unsuccessful amendments, using primary sources.

SKILLS DEVELOPMENT

ANALYZE SOURCES
To practice analyzing sources in this section, use the Chapter 3 Skills Worksheet (Unit 1 All-in-One, p. 149). You may teach the skill explicitly either before or after beginning the chapter. For L2 and L1 students, assign the adapted Skill Activity (Unit 1 All-in-One, p. 150).

Focus on the Basics

FACTS: • The formal amendment process established in Article V emphasizes federalism. • An amendment may be proposed by a two-thirds vote in both houses of Congress or by a national convention called by Congress at the request of two thirds of State legislatures. • An amendment may be ratified by three fourths of State legislatures or by conventions in three fourths of the States.

CONCEPTS: constitutional government, federalism, popular sovereignty

ENDURING UNDERSTANDINGS: • The amendment process enables constitutional modification as the nation changes. • The Bill of Rights guarantees freedom of belief and expression, security, and fair and equal treatment before the law.
Article V sets out two methods for the proposal and two methods for the ratification of amendments. So, there are four possible methods of formal amendment—changes or additions that become part of the written language of the Constitution itself. The diagram below sets out these two methods of proposal and two methods of ratification.

First, an amendment may be proposed by a two-thirds vote in each house of Congress and ratified by three fourths of the State legislatures. Today, at least 38 State legislatures must approve an amendment to make it a part of the Constitution. Of the Constitution’s 27 amendments, 26 were adopted in this manner.

Second, an amendment may be proposed by Congress and ratified by conventions, called for that purpose, in three fourths of the States. Only the 21st Amendment (1933) was adopted in this way.

When Congress proposes an amendment, it chooses the method of ratification. State conventions were used to ratify the 21st Amendment, largely because the law-makers felt that the conventions’ popularly elected delegates would be more likely to reflect public opinion on the question of the repeal of nationwide prohibition than would State legislatures.

Third, an amendment may be proposed by a national convention, called by Congress at the request of two thirds of the State legislatures—today, 34. As you can see in the diagram, it must then be ratified by three fourths of the State legislatures. To this point, Congress has not called such a convention.  

3 The calling of a convention was a near thing twice over the past 40 years or so. Between 1963 and 1969, 33 State legislatures, one short of the necessary two thirds, sought an amendment to erase the Supreme Court’s “one-person, one-vote” decisions; see Chapter 24. Also, between 1975 and 1983, 32 States asked for a convention to propose an amendment that would require that the federal budget be balanced each year, except in time of war or other national emergency.

**Differentiated Resources**

The following resources are located in the All-in-One, Unit 1, Chapter 3, Section 2:
- Reading Comprehension Worksheet (p. 143)
- Reading Comprehension Worksheet (p. 145)
- Bellringer Worksheet (p. 147)
- Core Worksheet (p. 148)
- Skills Worksheet (p. 149)
- Skill Activity (p. 150)
- Quiz A (p. 151)
- Quiz B (p. 152)
DISTRIBUTE THE CORE WORKSHEET
Distribute Chapter 3 Section 2 Core Worksheet (Unit 1 All-in-One, p. 148), and divide the class into teams. Assign each team one of the following amendments: 3rd, 11th, 14th, 15th, 16th, 19th, 22nd, 24th, 26th, or 27th. Instruct them not to reveal their amendment to other teams. Explain that each team will create a skit to act out the subject of their assigned amendment. The rest of the class will try to guess the amendment being depicted. Tell students that the skits may be set in the past or present and may depict a real event or realistic fictional event. Explain that when they serve as the audience, they will use their Core Worksheet to record the number of the amendment depicted in each skit and evidence from the skit that led them to that conclusion.

L1 L2 Differentiate Some amendments are easier to address than others. Assign less-skilled students one of these more concrete amendments: 14th, 15th, 19th, 24th, or 26th.

DISCUSS
Use these questions to continue the discussion of the amendments to the Constitution.

1. What changes in the United States made the 13th, 14th, and 15th Amendments necessary? (The Civil War ended slavery.) Do these amendments help to explain the Constitution’s durability? Give your reasons. (Possible response: Slavery was reflected in the original Constitution in the Three-Fifths Compromise. When slavery ended, the Constitution needed to be adjusted to guarantee full voting rights and citizenship for the newly freed African Americans.)

2. Did your skit, or another team’s skit, change the way you think about an amendment? Give your reasons.

3. How did the two world wars and the Vietnam War contribute to the passage of the 26th Amendment? (Many Americans felt that if 18-year-olds were old enough to fight, they should be old enough to vote.)

4. Which amendment affects you most today? Why?

5. Which amendment affects you least today? Why?

Answers
The Amendments Amendments provide a way to update the Constitution to conform to changes in American society.

ANDREW JACKSON

The 27 Amendments

1700s
1800s
1900s

1704 Amendment 12 Changes in electoral college procedures
1865 Amendment 13 Abolition of slavery
1868 Amendment 14 Citizenship, equal protection, and due process
1870 Amendment 15 No denial of vote because of race, color, or previous enslavement

1791 Amendments 1–10 Bill of Rights
1795 Amendment 11 States immune from certain lawsuits

The first ten amendments are known as the Bill of Rights.

The first women to vote in Brooklyn, New York.

The Amendments As the U.S. changed, amendments were added to the Constitution. How do the amendments keep the Constitution relevant to the times?

And fourth, an amendment may be proposed by a national convention and ratified by conventions in three fourths of the States. Remember, the Constitution itself was adopted in much this same way.

Federalism and Popular Sovereignty
Note that the formal amendment process emphasizes the federal character of the governmental system. Proposal takes place at the national level and ratification is a State-by-State matter. Also note that when the Constitution is amended, that action represents the expression of the people’s sovereign will.

Some criticize the practice of sending proposed amendments to the State legislatures rather than to ratifying conventions, especially because it permits a constitutional change without a clear-cut expression by the people. The critics point out that State legislators, who do the ratifying, are elected to office for a mix of reasons: party membership; name familiarity; and their stands on certain issues. They are almost never chosen because of their stand on a proposed amendment. On the other hand, the delegates to a ratifying convention would be chosen by the people on the basis of only one factor: a yes-or-no stand on the proposed amendment.

The Supreme Court has held that a State cannot require an amendment proposed by Congress to be approved by a vote of the people of the State before it can be ratified by that State’s legislature. It made that ruling in Hawke v. Smith, in 1920. However, a State legislature can call for an advisory vote by the people before it acts, as the Court held in Kimble v. Swackhamer, in 1978.

Proposed Amendments
The Constitution places only one restriction on the subjects with which a proposed amendment may deal. Article V declares

Political Cartoon Mini-Lesson
Display Transparency 3H, Equal Rights Amendment, when you discuss the amendment ratification process. Point out that Congress may place time limits on the ratification of an amendment. The Equal Rights Amendment (ERA) was set to expire in 1979. Ask: Was the ERA close to ratification before the deadline expired? How do you know? (Yes. The runner representing the amendment is inches from the finish line.) According to the cartoon, would the ERA pass if the deadline is extended? (Probably not. Ratification had stalled for so long that the ERA runner in the cartoon grew roots.)
that “no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.”

When both houses of Congress pass a resolution proposing an amendment, Congress does not send it to the President to be signed or vetoed, though the Constitution would seem to require it—because when Congress proposes an amendment, it is not making law (not legislating). Although the chief executive has no formal role in the amendment process, his or her political influence can affect the success or failure of any attempt to amend the Constitution, of course.

If a State rejects a proposed amendment, it is not forever bound by that action. It may later reconsider and ratify the proposal. Most constitutional scholars agree that the reverse is not true, however. Once a State has approved an amendment, that action cannot be undone; and no governor’s veto power extends to the ratification of a proposed amendment.

Some 15,000 joint resolutions calling for amendments to the Constitution have been proposed in Congress since 1789. Only 33 of them have been sent on to the States. Of those, only 27 have been finally ratified. One of the unratified amendments had been offered by Congress in 1789—along with 10 other proposals that became the Bill of Rights in 1791, and another that became the 27th Amendment in 1992.

The unratified amendment of 1789 dealt with the distribution of seats in the House of Representatives. A second, proposed in 1810, would have voided the citizenship of anyone accepting any foreign title or other honor. Another, in 1861, would have prohibited any amendment relating to slavery. A fourth, in 1924, was intended to give Congress the power to regulate child labor. A fifth one, proclaiming the equal rights of women (ERA), was proposed in 1972; it fell three States short of ratification and died in 1982. An amendment to give the District of

Debate

In 2006, the Senate defeated a constitutional amendment, preventing it from passing to the States for a ratification vote. Known as the Flag Desecration Amendment, the measure would have banned the burning of the American flag. Supporters intended the amendment as a way to overrule the Supreme Court, who had twice struck down similar laws. In Texas v. Johnson (1989), the Court overturned a Texas law, arguing that burning a flag in protest is symbolic speech. “[I]f there is a bedrock principle underlying the First Amendment, it is that the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.” Today, the debate continues over whether flag burning is hate speech and should be banned, or is simply a distasteful exercise of free expression. Have students debate the issue. Ask: Should flag burning be banned?

Answers

Checkpoint In all four methods of amending the Constitution, proposals occur at the national level and ratification at the State level.
Assess and RemEDIATE

L3 Display Transparency 3J, Changing Views of Free Speech. Ask: What are some of the debates resulting from the guarantees of freedom of speech and press? (possible answer: debates over the right to criticize the government or over the right to wear protest armbands in school)

L3 Collect the Core Worksheets and assess the students’ class participation using the Rubric for Assessing Role Play (Unit 1 All-in-One, p. 220).

L3 Assign the Section 2 Assessment questions.

L2 Section Quiz A (Unit 1 All-in-One, p. 151)

L2 Section Quiz B (Unit 1 All-in-One, p. 152)

Have students complete the review activities in the digital lesson presentation and continue their work in the Essential Questions Journal.

The First Ten Amendments

<table>
<thead>
<tr>
<th>Amendment</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amendment 1</td>
<td>Freedom of religion, speech, and the press</td>
</tr>
<tr>
<td>Amendment 2</td>
<td>The right to petition the government</td>
</tr>
<tr>
<td>Amendment 3</td>
<td>The right to bear arms</td>
</tr>
<tr>
<td>Amendment 4</td>
<td>Protection against unreasonable searches and seizures without probable cause</td>
</tr>
<tr>
<td>Amendment 5</td>
<td>Protection from prosecution without an indictment</td>
</tr>
<tr>
<td>Amendment 6</td>
<td>The right to a speedy trial by an impartial jury</td>
</tr>
<tr>
<td>Amendment 7</td>
<td>The right to be informed of the charges, to cross-examine witnesses, and to present favorable witnesses</td>
</tr>
<tr>
<td>Amendment 8</td>
<td>The right to an attorney</td>
</tr>
<tr>
<td>Amendment 9</td>
<td>The fact that the Constitution spells out a number of civil rights does not mean that there are not other, unwritten, rights held by the people.</td>
</tr>
<tr>
<td>Amendment 10</td>
<td>The powers not delegated to the Federal Government may be exercised by the States, as long as they are not prohibited by the Constitution.</td>
</tr>
</tbody>
</table>

The first ten amendments protect many fundamental and basic rights held by the people. Why is it important to spell out these rights?

Checkpoint What is the purpose of the Bill of Rights?

Columbia seats in Congress was proposed in 1978; it died in 1983.

When Congress proposed the 18th Amendment in 1917, it set a seven-year deadline for its ratification. The Supreme Court held that Congress can place "a reasonable time limit" on the ratification process, in a case from California, Dillon v. Gloss, in 1921. Congress has set a similar limit on the ratification period for each of the amendments (except the 19th) that it has proposed since then. It also granted a three-year extension of the deadline for the Equal Rights Amendment in 1979.

The 27 Amendments

The Constitution’s 27 amendments are summarized on pages 80 and 81, and in the table above. As you review them, note this important fact: As significant as they are, those 27 amendments have not been responsible for the extraordinary vitality of the Constitution. That is to say, they have not been a major part of the process by which the Constitution has kept pace with more than two centuries of change.

The Bill of Rights The first ten amendments were added to the Constitution less than three years after it became effective. They were proposed by the first session of the First Congress in 1789 and were ratified by the States in late 1791. Each of these amendments arose out of the controversy surrounding the ratification of the Constitution itself. Many people, including Thomas Jefferson, had agreed to support the Constitution only if a listing of the basic rights held by the people were added to it, immediately.

Collectively, the first ten amendments are known as the Bill of Rights. The set out the great constitutional guarantees of freedom of belief and expression, of freedom and security of the person, and of fair and equal treatment before the law.

The first ten amendments were added to the Constitution so quickly that, for all intents and purposes, they might just as well be regarded as part of the original Constitution. In point of fact, they were not. We shall look at the 1st through the 9th amendments at some length in Chapters 19 and 20. The 10th Amendment does not deal with civil rights, as such. Rather, it spells out the concept of reserved powers in the federal system.

The Later Amendments Each of the other amendments that have been added to the Constitution over the past 200 years also grew out of some particular, and often interesting, set of circumstances. For example, the 11th Amendment declares that no State may be sued in the federal courts by a citizen of another State or by a citizen of any foreign state. It was proposed by Congress in 1794 and ratified in 1795, after the State of Georgia had lost a case in the United States Supreme Court. The case (Chisholm v. Georgia; decided by the Court in 1793) arose out of a dispute over the ownership of some land in Georgia.

Background

27TH AMENDMENT The remarkable history of the 27th Amendment began during the debate over ratification of the Constitution. Pointing out that the Constitution was silent on congressional pay, James Madison proposed an amendment that forbade Congress from voting itself a pay raise during that term. It failed to win ratification. The amendment remained dormant until college student Gregory Watson made it the topic of his research paper in 1982. Watson began to lobby State legislatures to ratify this forgotten amendment. Eventually he succeeded, and the 27th Amendment took effect in 1992, nearly 203 years after it was proposed. In 1989, however, Congress passed a law that established automatic cost-of-living pay increases for Congress. Twice, in 1994 and 2001, federal courts ruled that the automatic raises did not violate the 27th Amendment. This finding has yet to be tested in the Supreme Court.
It had been brought to the brand new federal court system by a man who lived in South Carolina.

The 12th Amendment was added in 1804 after the electoral college had failed to produce a winner in the presidential election of 1800. Thomas Jefferson became the third President of the United States in 1801, but only after a long, bitter fight in the House of Representatives.

The 13th Amendment, added in 1865, provides another example. It abolished slavery in the United States and was a direct result of the Civil War. The 14th Amendment, with its definition of citizenship (in 1868), and the 15th Amendment on the right to vote (in 1870) also resulted from that conflict.

The 18th Amendment, establishing a nationwide prohibition of alcohol, was ratified in 1919. Known as “the noble experiment,” it lasted fewer than 14 years. The 18th Amendment was repealed by the 21st in 1933.

The 22nd Amendment (1951), limiting the number of terms in which a President may serve to two, was proposed in 1947, soon after the Republican Party had gained control of Congress for the first time in 16 years. Over that period, Franklin D. Roosevelt, a Democrat, had won the presidency four times.

The 26th Amendment was added in 1971. It lowered the voting age to 18 in all elections in the United States. Many who backed the amendment began to work for its passage during World War II, creating the slogan “Old enough to fight, old enough to vote.” Its ratification was spurred by the war in Vietnam.

The most recent amendment, the 27th, was written by James Madison and was among the first to be offered by Congress, in 1789. It forbids members of Congress from raising their own pay during that term. It finally became a part of the Constitution in 1992, when the 38th State, Michigan, ratified it.

**REMEDIATION**

<table>
<thead>
<tr>
<th>If Your Students Have Trouble With</th>
<th>Strategies For Remediation</th>
</tr>
</thead>
<tbody>
<tr>
<td>The 27 Amendments (Questions 2, 3)</td>
<td>Provide historical background to give each of the amendments context.</td>
</tr>
<tr>
<td>The Bill of Rights (Question 4)</td>
<td>Review Chapter 2 to give students a better understanding of the purpose of the Bill of Rights. Work through each amendment to simplify the wording.</td>
</tr>
<tr>
<td>The Formal Amendment Process (Question 5)</td>
<td>Create a “timeline” for each method of ratification. Have volunteers place the steps for each method on their respective timelines.</td>
</tr>
</tbody>
</table>

**SECTION 2 ASSESSMENT**

1. **Guiding Question** Use your completed outline to answer this question: How has the Constitution been amended through the formal amendment process?

2. **Key Terms and Comprehension**
   2. (a) Which method of formal amendment has been used only once?
   2. (b) For which amendment was it used?

3. Explain how the ratification process is an example of popular sovereignty.

4. **Predict Consequences** (a) Why was the Bill of Rights added to the Constitution? (b) What rights do these amendments protect? (c) How might news reports differ if freedom of speech and the press were not part of the Constitution?

5. **Identify Central Issues** Some people have criticized the ratification of amendments by State legislatures instead of by popularly elected delegates. (a) Why has this process been criticized? (b) Do you agree? Why or why not?

**Critical Thinking**

**Quick Write**

**Writing for Assessment: Gather Details** Reread the topic you chose in the previous section. What is the question asking for? For example, when you see the word effect in a question, you know you are looking for a cause-and-effect relationship. Gather details from the reading that specifically answer the question. Leave out unnecessary details.

**Answers**

**Analyzing Political Cartoons** The 4th Amendment prohibits searches without probable cause. In the cartoon, the warrant satisfies the requirement of probable cause, requiring the people to admit the bear into the tent.

**Assessment Answers**

1. **Method 1**: amendment proposed by a two-thirds vote in Congress and ratified by three quarters of State legislatures; **Method 2**: amendment proposed by two-thirds vote in Congress and ratified by conventions in three quarters of States; **Method 3**: amendment proposed by national convention called by Congress at request of two-thirds of State Legislatures and ratified by conventions in three quarters of the States

2. **(a)** amendment proposed by two-thirds vote in Congress and ratified by conventions in three quarters of States

3. Popularly elected Congressional representatives propose amendments, which are ratified by elected representatives in State legislatures or elected delegates to State conventions.

4. **(a)** to gain support from Anti-Federalists who wanted a list of basic rights **(b)** guarantees of freedom of belief and expression, of freedom and security of the person, and of fair and equal treatment before the law **(c)** The government could dictate to the media the stories to report.

5. **(a)** because people elect convention delegates based solely on the delegates’ views on the proposed amendment; the people elect State legislators for many other reasons **(b)** Sample response: I agree. Ratification by delegates chosen by the people for that purpose would better represent the people’s will.

**Quick Write** Details should support the topic.
**LESSON GOAL**

- Students will research an issue of interest and conduct an opinion poll.

---

**Teach**

**SURVEY**

Have students read the introduction to Citizenship 101. Ask students to rate each question in terms of its significance to their lives, giving the most significant issue three points and the least significant one point. Record their responses. Invite students to comment on why each issue was more or less significant to them as a group.

**RESEARCH**

Have students research in groups or on their own one of the issues. They should find information on both sides of the issue, as well as recent national opinion polls. Ask: **What do people in different parts of the country think about this issue?**

**How do different political parties react to this issue?** Ask them to create a chart of their findings, detailing the results of the opinion polls.

**CONDUCT A POLL**

Have students who conducted research on the same issue work together to create polling questions. Have students ask their questions of a sample of students in the school, and record responses. Allow time for groups to share the results of their polls. Did these results differ from or reflect national polls that they found in their research? Can they explain why?

---

**Assess and Remediate**

Have students write two or three paragraphs on what they learned about how political roots affect public opinion. Students should be able to extrapolate a response from their research and responses to their poll questions.

---

**Answers**

1. A strong answer will show an understanding of how family, friends, party affiliations, geography, or other sources influenced the student’s political attitudes.

2. A strong answer will show an understanding of how a family’s party affiliation or cultural background influenced the student’s political attitudes.

3. Interview questions should address the influence of family, friends, party affiliations, geography, and cultural background.

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**GOVERNMENT ONLINE**

Citizenship Activity Pack

For an activity on political roots and attitudes, go to PearsonSuccessNet.com

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**Citizenship Activity Pack**

If your students need extra support, use the Citizenship Activity Pack lesson Political Roots and Attitudes. It includes a lesson plan for you and materials to help students understand how political roots and attitudes are formed. First, students will take a self-test to identify their existing views on three important issues: public assistance, capital punishment, and immigration. You can tabulate the results and write them on a poster showing the spectrum of political views—from far left to far right. In the core activity, students will assess their views based on additional information about the issues provided on card handouts. Students may also access the Citizenship Activity Pack online for activities on Political Roots and Attitudes at PearsonSuccessNet.com.
**Change by Other Means**

**Guiding Question**
How have the day-to-day workings of government affected how we interpret the Constitution?

**Basic Legislation**
Congress has been a major agent of constitutional change in two important ways. First, it has passed a number of laws to clarify several of the Constitution's brief provisions. That is, Congress has added flesh to the bones of those sections of the Constitution that the Framers left purposely skeletal—provisions they left for Congress to detail as circumstances required.

Take the structure of the federal court system as an example. In Article III, Section 1, the Constitution provides for "one supreme Court, and ... such inferior Courts as the Congress may from time to time establish." Beginning with the Judiciary Act of 1789, all of the federal courts, except the Supreme Court, have been created by acts of Congress. Or, similarly, Article II creates only the offices of President and Vice President. The many departments, agencies, and offices in the now huge executive branch have been created by acts of Congress.

**Focus on the Basics**

**FACTS:** • Over time, change has occurred through interpretation and practice. • There are five informal means of change: basic legislation, executive action, court decisions, party practices, and custom and usage.

**CONCEPTS:** judicial review, checks and balances, constitutional government, rule of law

**ENDURING UNDERSTANDINGS:** • The provisions of the Constitution are cast in almost outline-like form. • Over the years, the Constitution's brief provisions have been fleshed out and reshaped as a result of the day-to-day workings of government, without formal amendment.

**Get Started**

**LESSON GOALS**
Students will . . .
• identify the informal methods of change used in example scenarios.
• apply the informal methods of change by writing example scenarios.

**SKILLS DEVELOPMENT**

**DECISION MAKING**
Before students begin the Core Worksheet in this lesson, you may want to review tips on decision making in the Skills Handbook, p. S18.
**Answers**

**Constitutional Principles**  The constitutional requirement that the President report to Congress about the state of the Union establishes a check on executive power by the legislative branch.

**Checkpoint**  by passing laws that spell out brief provisions in the Constitution and by using its powers in ways that help define the meaning of the broad terms in the Constitution.
Congress. In fact, Presidents have used the armed forces abroad in combat without such a declaration on several hundred occasions in our history.

Take the use of executive agreements in the conduct of foreign affairs as another example. An executive agreement is a pact made by the President directly with the head of a foreign state. A treaty, on the other hand, is a formal agreement between two or more sovereign states. The principal difference between agreements and treaties is that executive agreements need not be approved by the Senate. They are as legally binding as treaties, however. Recent Presidents have often used them in our dealings with other countries, instead of the much more cumbersome treaty-making process outlined in Article II, Section 2 of the Constitution.

Additionally, most Presidents have insisted that the phrase "executive Power" in Section 1 of Article II includes much more than the particular presidential powers set out in that article. Thus, Thomas Jefferson engineered the Louisiana Purchase in 1803, doubling the size of the United States—even though the Constitution does not say that the President has the power to acquire territory.

**Court Decisions**

The nation’s courts, most tellingly the United States Supreme Court, interpret and apply the Constitution in many of the cases they hear. You have already encountered several of these instances of constitutional interpretation by the Court, most notably in *Marbury v. Madison*, 1803.

Recall that the Court established the power of judicial review—which is not specifically mentioned in the Constitution. You will find many more instances throughout the pages of this book—for the Supreme Court is, as Woodrow Wilson once put it, "a constitutional convention in continuous session."

**Party Practices**

The nation’s political parties have been a major agent of constitutional change over the course of our political history, despite the fact that the Constitution makes no mention of them. In fact, most of the Framers were opposed to political parties. In his Farewell Address in 1796, George Washington warned the people against what he called "the baneful effects of the spirit of party." He and many others feared the divisive effect of party politics on government. Yet, even as he spoke, parties were developing. They have had a major place in the shaping of government and its processes ever since. Illustrations of that point are almost endless.

Neither the Constitution nor any law provides for the nomination of candidates for the presidency. From the 1830s on, however, the major parties have held national conventions to do just that. The parties have converted the electoral college, the body that makes the formal selection of the nation’s President, from what the Framers intended into a "rubber stamp" for each State’s popular vote in presidential elections. Both houses of Congress are organized and conduct much of their business on the basis of party. The President makes appointments to office with an eye to party politics. In short, government in the United States is in many ways government through party.

**Custom and Usage**

Unwritten customs may be as strong as written law, and many of them have developed in our governmental system. Again, there are many examples. By custom, not because the Constitution says so, the heads of the 15 executive departments make up the Cabinet, an advisory body to the President.

On each of the eight occasions when a President died in office, the Vice President succeeded to that office—most recently Lyndon Johnson, following John Kennedy’s assassination in 1963. Yet, the written words of the Constitution did not provide for this practice until the adoption of the 25th Amendment in 1967. Until then, the Constitution said only that the powers and duties of the presidency—but not the office itself—should be transferred to the Vice President.\(^8\)

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**Background**

**Title IX** Display Transparency 3K. The role of women in American society has expanded dramatically, exposing the need to extend constitutional protections to the rights of women. Congress passed a landmark law that helped open to women the full range of educational opportunities. Title IX of the Higher Education Act (1972) states that “No person . . . shall, on the basis of sex, be excluded from participation in . . . any educational program or activity.” Now, more women are attending college and serving on faculties. Medical schools and law schools are accepting women on an equal basis with men. Support for the law remains strong. Before Title IX, only 300,000 high school girls participated in the few competitive sports available to them. By 2005, 2.95 million girls were playing sports of all kinds. Title IX has helped extend to women the constitutional protections against discrimination.

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**Checkpoint** How have political parties changed the way we interpret the Constitution?

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**Distribute Core Worksheet**

Distribute the Chapter 3 Section 3 Core Worksheet (Unit 1 All-in-One, p. 158), which asks students to consider scenarios involving informal change. Students can work individually to identify the informal method of change used in each scenario in Part 1. Then have partners work together to complete Part 2. Encourage them to come up with examples not given in the text. Have students read their scenarios aloud to the class.

**Differentiate** Distribute the adapted Chapter 3 Section 3 Core Worksheet (Unit 1 All-in-One, p. 159) to these students.

**Differentiate** Have students do research to come up with specific, real examples of change for each informal method.

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**Extend the Lesson**

Remind students that Woodrow Wilson once described the Supreme Court as “a constitutional convention in continuous session.” Call on volunteers to explain his meaning. Then direct students to the Supreme Court Glossary at the back of the textbook. Have them read the brief descriptions of these First Amendment cases: *Dennis v. United States*, 1951; *Schenck v. United States*, 1919; and *United States v. Eichman*, 1990. After they read each case description, ask: In what way does this decision reflect Wilson’s description?

**Differentiate** Have a student read the description of the Court’s ruling in *Schenck v. United States*, 1919, aloud. Then ask students to explain how this decision interpreted the Constitution.

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**Answers**

**Checkpoint** Political parties have determined the system for nominating candidates, changed the original intent of the electoral college, and influenced the way the government operates.
Assess and Remediate

L3 Collect the Core Worksheets and assess the students’ class participation, using the Rubric for Assessing a Writing Assignment (Unit 1 All-in-One, p. 221).
L3 Assign the Section 3 Assessment questions.
L3 Section Quiz A (Unit 1 All-in-One, p. 161)
L3 Section Quiz B (Unit 1 All-in-One, p. 162)

Have students complete the review activities in the digital lesson presentation and continue their work in the Essential Questions Journal.

REMEDIATION

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<tr>
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</thead>
<tbody>
<tr>
<td>Change by other means (Questions 2, 3, 4, 5)</td>
<td>Review each subhead with students. Write each method on the board. Create scenarios for each method and read them aloud to students. Have students match each scenario with the method under which it falls.</td>
</tr>
</tbody>
</table>

It is a long-established custom that the Senate will approve only those presidential appointees, such as a federal judge or a United States marshal, who are acceptable to the senator or senators of the President’s party from the State involved. This practice is known as senatorial courtesy, and it amounts to an unwritten rule that is closely followed in the Senate. Notice that its practical effect is to shift a portion of the appointing power from the President, where the formal wording of the Constitution puts it, to certain members of the Senate.

Both the strength and the importance of unwritten customs can be seen in the reaction to the rare circumstances in which one of them has not been observed. For nearly 150 years, the “no-third-term tradition” was a closely followed rule in presidential politics. The tradition began in 1796, when George Washington refused to seek a third term as President, and several later Presidents followed that lead. In 1940, and again in 1944, however, Franklin Roosevelt broke the no-third-term custom. He sought and won a third and then a fourth term in the White House. As a direct result, the 22nd Amendment was added to the Constitution in 1951, limiting the President to two terms. What had been an unwritten custom, an informal rule, became part of the written Constitution itself.

**Critical Thinking**

4. Predict Consequences Several Presidents have deployed troops to various conflicts without asking Congress for a declaration of war. What might be the consequences of setting aside this check (a) on the executive branch? (b) on Congress? (c) How might it change the interpretation of the Constitution?

5. Draw Conclusions (a) Name two examples of customs that have endured despite their absence in the Constitution. (b) How important is custom in the workings of the Federal Government? Why?

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**SECTION 3 ASSESSMENT**

1. **Guiding Question** Use your completed cause-and-effect chart to answer this question: How have the day-to-day workings of government affected how we interpret the Constitution?

2. **Key Terms and Comprehension**
   2. (a) Did the Framers lay out the provisions of the Constitution in a general or specific manner? (b) In what way has the Framers’ plan eased change throughout the last two centuries?
   3. In what two ways has Congress “added flesh to the bones” of the Constitution? Give an example of each.

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**Assessment Answers**

1. Legislation, executive action, court decisions, political parties, and customs can influence our interpretation of the Constitution. Laws passed by Congress flesh out and define broad provisions in the Constitution. The President’s use of executive agreements, power as commander in chief, and other interpretations of powers granted under the Constitution can expand executive power. By interpreting and applying the Constitution to cases, the courts clarify what actions are and are not permissible. Parties nominate candidates and influence much of the work of government. Government follows unwritten customs that take on the force of written law.

2. (a) General (b) This enabled the flexibility to change through interpretation and practice.

3. First, Congress has passed laws to spell out the provisions of the Constitution. For example, the Judiciary Act of 1789 set up the federal court system. Second, Congress has added to the Constitution by the way it has used its powers. For example, Congress has defined what commerce it has the power to regulate by the way it exercises its commerce power in laws.

4. (a) Broadens the President’s powers as commander in chief (b) Reduces Congress’s ability to control use of troops (c) It could negate the constitutional power Congress holds to declare war.

5. (a) Sample response: the makeup of the Cabinet and senatorial courtesy (b) Very important. Custom provides rules that were not laid down in the Constitution but are still important to a smoothly-running government.

**Quick Write**

Writing for Assessment: Outline and Answer Once you have gathered the details you need for the topic you selected in Section 1, write an outline to organize the information. Remember, you may not have much time. Make your outline brief and to the point. Use the outline as a framework to write your response.

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The Constitution
For More Information

To learn more about the Constitution, refer to these sources or assign them to students:


Have students download the digital resources available at Government on the Go for review and remediation.

**STUDY TIPS**

**Test-Taking Skills** A few simple strategies should help most students improve their performance on tests. A positive attitude toward the test and their own abilities is top priority. Beyond that, students should scan the entire test before beginning to work. Using this approach, they should answer the easiest questions first, and then focus on the more difficult ones. This strategy boosts confidence, and the simpler questions may contain information that helps with the more difficult ones. When answering questions, students should be sure to read the entire question before answering and to read any instructions thoroughly. If they find a question confusing, they should ask the teacher for clarification. Focusing on one question at a time can help with concentration. Finally, if students find themselves getting anxious, they should stop working and take a few deep breaths to help them relax.

**ASSESSMENT AT A GLANCE**

**Tests and Quizzes**

Section Assessments
Section Quizzes A and B, Unit 1 All-in-One
Chapter Assessment
Chapter Tests A and B, Unit 1 All-in-One
Document-Based Assessment
Progress Monitoring Online
ExamView Test Bank

**Performance Assessment**

Essential Questions Journal
Debate, p. 81
Assessment Rubrics, All-in-One
Chapter Assessment

COMPREHENSION AND CRITICAL THINKING

SECTION 1

1. (a) The executive branch may veto legislation and call special sessions of Congress. The legislative branch may override a President’s veto, impeach a President, and approve appointments and treaties. (b) The Framers feared that one branch would gain too much power, or that the presidency would become a monarchy. These checks protect against such abuses of power.

2. (a) The Massachusetts constitution restricts each branch of government from performing the duties of the other two branches. (b) By preventing the concentration of power in any one group, this separation of powers will require government officials to operate within the law.

3. (a) The Framers wanted to make sure that the people would be the source of government power and that government would remain under the rule of law. (b) judicial branch (c) through presidential power to name federal judges and the Senate’s right to approve those appointments.

4. (a) It suggests the judicial branch’s ability to declare laws made by Congress as unconstitutional. (b) The members of Congress are not above the law of the Constitution when they create legislation.

SECTION 2

5. (a) through proposal by a two-thirds vote in each house of Congress and ratification by three fourths of the State legislators (b) Both national and State levels are involved in the amendment process.

6. (a) the Civil War (b) election of Franklin D. Roosevelt to four terms as President

7. (a) When Congress proposes an amendment, it is not making law, so the proposal need not go to the President to sign or veto. (b) Possible response: I agree. Ratification of an amendment requires popular support. A veto is a check by the President on the power of Congress. It was not intended as a check on the will of the people.

8. The Framers provided an amendment process to give the Constitution flexibility to meet future needs. They promoted federalism by including both the national and State levels in the amendment process. Their goal of popular sovereignty is reflected in the fact that an amendment requires broad popular support to win ratification by 38 of the 50 States.

SECTION 3

9. (a) Political parties have determined the system for nominating candidates, changed the original intent of the electoral college, and influenced the way the government operates. (b) The Framers were against political parties. (c) Possible response: I agree. Political parties influence the government without having a constitutional check on their power.

10. (a) Possible response: The president’s cabinet was established; presidents choose only those appointees that the Senate will approve. (b) Possible response: Custom is very important to our government. Though it doesn’t really affect the processes of government, it has affected the way in which the government carries out its processes.

WRITING ABOUT GOVERNMENT

11. Students should follow their outline to answer their chosen essay question.

APPLY WHAT YOU’VE LEARNED

12. Students should clearly describe the intent of their amendment and choose one of the formal amendment methods. They should present persuasive arguments for adopting...
Amendments for a Growing City

In 1790, Congress chose a site along the Potomac River for the nation’s capital. The map illustrates the plan for the new city. This site would belong to no State. It would be under the authority of Congress. The image reflects the city’s small population at its beginnings. In 1950, Washington, D.C., was home to over 800,000 residents, who could not vote for their President. Document 1 shows the amendment that changed that situation.

Document 1

Section 1. The District constituting the seat of Government of the United States shall appoint in such manner as the Congress may direct:

A number of electors of President and Vice President equal to the whole number of Senators and Representatives in Congress to which the District would be entitled if it were a State, but in no event more than the least populous State; they shall be in addition to those appointed by the States, they shall be considered, for the purposes of the election of President and Vice President, to be electors appointed by a State; and they shall meet in the District and perform such duties as provided by the twelfth article of Amendment.

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

—23rd Amendment

Use your knowledge of the Constitution, the amendment process, and Documents 1 and 2 to answer Questions 1–3.

1. What was the purpose of the 23rd Amendment to the Constitution?
   A. to include voters of Washington, D.C., in all elections
   B. to include voters of Washington, D.C., in presidential elections
   C. to include members of Congress, living in Washington, D.C., in presidential elections
   D. to include members of Congress, living in Washington, D.C., in all elections

2. Why did the Constitution not address the issue of voters in the national capital?

3. Pull It Together: How does the example of Washington, D.C., help to explain why the Constitution has endured through changing times?

Go Online to PearsonSuccessNet.com for a student rubric and extra documents.
Introduce the Chapter

**Essential Questions:**

**UNIT 1**
What should be the goals of government?

**CHAPTER 4**
Is the federal system the best way to govern the United States?

**ACTIVATE PRIOR KNOWLEDGE**
Have students examine the image and quotation on these pages. Ask: *What governments in our country make laws that you must obey?* (National and State) *How do these different governments know which responsibilities belong to them? (The Constitution divides powers between the National and State governments.)* In this chapter, students will learn about our nation’s dual system of government called federalism. Then tell students to begin to further explore federalism by completing the Chapter 4 Essential Question Warmup Activity in their Essential Questions Journal. Discuss their responses as a class.

**BEFORE READING**

**ELL Differentiate** Chapter 4 Prereading and Vocabulary Worksheet (Unit 1 All-in-One, p. 180)

**SUCCESSNET STUDENT AND TEACHER CENTER**
Visit PearsonSuccessNet.com for downloadable resources that allow students and teachers to connect with government “on the go.”

**DIGITAL LESSON PRESENTATION**
The digital lesson presentation supports the print lesson with activities and summaries of key concepts.

**SKILLS DEVELOPMENT**

**PROBLEM SOLVING**
You may wish to teach problem solving as a distinct skill within Section 1 of this chapter. Use the Chapter 4 Skills Worksheet (Unit 1 All-in-One, p. 186) to help students learn how to solve a problem. The worksheet asks students to read information about the Framers of the Constitution, determine the main problem they had to solve at the Philadelphia Convention of 1787, and choose possible solutions to the problem. For L2 and L1 students, assign the adapted Skill Activity (Unit 1 All-in-One, p. 187).

The chapter WebQuest challenges students to answer the chapter Essential Question by asking them about federalism.

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**Block Scheduling**

**BLOCK 1:** Teach Section 1, omitting the debate.

**BLOCK 2:** Teach Sections 2 and 3, and choose one Extend the Lesson feature.