



CELEBRATE THE CONSTITUTION!

The United States Constitution was signed on September 17, 1787. It is the supreme law of the land, providing the framework for the organization of the U.S. government and its relationships with the states, citizens and all people within the U.S. The Constitution defines our responsibilities and rights as individuals and the responsibilities of the government. It provides legal protections to citizens and non-citizens. It explains how our government works so that we can participate effectively in its processes.

In 2004, Congress established "Constitution Day" to commemorate the signing of this important founding document. All public schools are required to provide educational programming about the Constitution on or near its September 17 anniversary.

The first seven articles of the Constitution set forth how the U.S. (federal) government interacts with its populace and states.

Article 1 spells out the duties and responsibilities of the Legislative Branch. Congress is bicameral, that is, made up of two houses: the House of Representatives and the Senate.

Article 2 describes the Executive Branch's power to enforce laws and to make sure that the laws are being carried out as intended.

Article 3 explains the Judicial Branch's power - the power to judge - given to the U.S. Supreme Court and lower courts.

Article 4 governs relations between the states, and declares that states must respect one another's court decisions and laws even when they disagree with them.

Article 5 describes how the Constitution can be changed. The only way it can be changed is by adding an amendment. At least two-thirds of both houses of Congress must call for a proposed amendment. Once it is proposed, it must be ratified (approved) by at least three-quarters of the states. The president's signature is not required. Only 27 amendments have been added to the Constitution since 1787.

Article 6 declares that the Constitution is "the supreme law of the land." The laws and treaties within the Constitution are binding on every judge in every state - though at the same time, they protect many state powers. Our system of government is known as "federalist," in which the national and state governments share power. This is a key feature of American government.

Article 7 explains how many states were required to approve the Constitution as the supreme law of the land.

BILL OF RIGHTS

The **Bill of Rights** is the name for the first ten amendments of the U.S. Constitution. These measures serve to limit the power of the federal government from infringing on individuals' "unalienable" rights.

1 Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to assemble, and petition the government for a redress of grievances.

Though the early colonies were founded by people who fled religious persecution, when they arrived, they did not extend freedom of worship to others. By the time the Constitution was adopted, people believed that religious liberty could only be preserved if the government had nothing to do with promoting religion.

The freedom of speech, press, assembly and ability to criticize the government grew out of a centuries-long struggle in England against censorship of the press. By the end of the 17th century, it was possible to publish without government approval, but an author or publisher could still be tortured and even executed for "seditious libel" (being critical of the king, church or other government officials). The American Revolution was made possible through the exercise of the freedoms of expression and assembly later preserved in the First Amendment.

SUPREME COURT CASES:

FREEDOM OF RELIGION: In 1962, in *Engel v. Vitale*, the U.S. Supreme Court ("Court") ruled that organized prayer in public schools violated the First Amendment's **separation of church and state**.

FREEDOM OF SPEECH: In 1969, in *Brandenburg v. Ohio*, the Court ruled that even (or especially) unpopular speech is protected by the First Amendment, including speech that advocates for the use of force and violence

2 A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

During the colonial period, each colony had its own militia in which citizens were required to serve, and provide their own guns and ammunition. Many of the state militias fought in the American Revolution. Afterwards, independent state militias were seen as a way of protecting liberty if the new federal government became power hungry and used its national army against the states and the people.

SUPREME COURT CASE:

BEARING ARMS: The 2008 Court decision in *D.C. v. Heller* has been read by some to mean that for the first time, the Second Amendment protects an individual's right to keep and bear arms.

3 No soldier shall, in time of peace be quartered in any house, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.



4 The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Prior to the American Revolution, British soldiers carrying documents called "writs of assistance" could barge into any private home looking for smuggled goods, political troublemakers or documents critical of the government.

Colonial anger over this invasion of privacy was a major grievance in the Declaration of Independence. The Fourth Amendment states that "persons, houses, papers, and effects" can be searched only if there is a specific reason - backed by evidence ("probable cause") - for suspecting a particular person of criminal activity.

SUPREME COURT CASES:

SEARCHES AND WARRANTS: In 1928, in *Olmstead v. United States*, the Court ruled that police could wiretap a phone without a warrant. In 1967, in *Katz v. United States*, the *Olmstead* ruling was reversed. The Court declared that a warrant based on evidence of criminal behavior was needed for a wiretap, just as for a physical search. This was one of the first Court cases addressing the "right to privacy" and providing a concrete definition of a "search." In 2014, the Court held unanimously in *Riley v. California* that the warrantless search and seizure of digital content of a cell phone during an arrest is unconstitutional.

EXCLUSIONARY RULE: In 1961, in *Mapp v. Ohio*, the Court held that evidence illegally seized by local or state police could not be introduced in court because it violated the Fourth Amendment's protections against "unreasonable searches and seizures." *Mapp* was the first case in which the Warren Court (Chief Justice Earl Warren) reviewed nearly every aspect of the criminal justice system by using the Fourteenth Amendment to extend constitutional protections to all courts in all states. The process is known as the "incorporation of the Bill of Rights."

5 No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

This amendment establishes rules for how a person is to be treated if charged with a crime. It says people cannot be “compelled” to confess to a crime or testify against themselves. They can’t be arrested on little or no evidence and repeatedly tried by the government for the same offense. Fair procedures (“due process of law”) must be followed before a person can be found guilty and punished.

SUPREME COURT CASE:

RIGHT TO REMAIN SILENT: In 1966, in *Miranda v. Arizona*, the Court ruled that a person being held in police custody must be informed of their rights before being questioned.

6 In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

British officials would often arrest, detain, try and convict Colonial Americans of a crime without informing them of the charges. The additional due process of the law procedures laid down in this amendment - including the right to a speedy criminal trial, to examine witnesses and to be represented by an attorney - were intended to ensure that the new federal government would not act in the same way.

SUPREME COURT CASES:

RIGHT TO COUNSEL: In 1963, in *Gideon v. Wainwright*, the Court guaranteed the right to a lawyer when being tried for a serious crime in a state court. In 1967, the Court ruled that these protections extend to minors in a case involving 15-year-old Gerald Gault who was sentenced to state reform school for six years after being accused of making an obscene phone call. Prior to sentencing, he had been given no opportunity to have a lawyer nor was he informed of the exact charges. The Court decided that minors, like adults, have the right to remain silent, to be represented by an attorney, to know what the charges are and to cross-examine witnesses who testify against them.

7 In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.

This amendment guarantees a jury trial for civil cases in the federal courts.

8 Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Gruesome forms of physical torture were used to punish people and to force confessions until the early 18th century when these methods began to be regarded as barbaric. This amendment was added to put an end to torture. It also was meant to prevent the government from keeping people in prison indefinitely by making bail or fines impossibly high. In *Trop v. Dulles* in 1958, Chief Justice Earl Warren invoked the notion of using “evolving standards of decency” to apply to what forms of punishment could be considered “cruel and unusual.”

SUPREME COURT CASES:

RIGHT TO COUNSEL: In 1972, the Court held in *Furman v. Georgia* that capital punishment, as it was being applied, was not a credible deterrent to crime and that it can constitute cruel and unusual punishment.

But in 1976, in *Gregg v. Georgia*, the Court said that states could reintroduce capital punishment if they rewrote their death penalty statutes to end arbitrary and racially-biased sentencing. The Court created two guidelines for state legislatures to follow in order to remain constitutional: 1) sentencing guidelines must provide objective criteria to direct and limit death sentencing discretion and 2) they must allow the judge or jury to take into account the character and record of the defendant. Today, 20 states and the District of Columbia have abolished the death penalty.

9 The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

This amendment protects people’s and states’ rights not explicitly specified in the Constitution.

10 The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

This amendment was meant to guard against the new national government getting so much power that it overwhelms the authority of the states and personal liberty. It means that all powers not given to the federal government are reserved to the states or people.

SUPREME COURT CASE:

STATES’ RIGHTS: In 2013, the Court cited the Tenth Amendment to support its controversial decision in *Shelby County v. Holder*. It struck down key provisions of the Voting Rights Act requiring certain jurisdictions with a history of discriminatory voting practices to secure advance approval from the federal government before changing their election laws.



CONSTITUTIONAL AMENDMENTS: Expanding Rights & Freedoms

When the U.S. Constitution was signed on September 17, 1787, it did not guarantee equal rights to Black people, Native Americans, women and others - it only applied to white men.

Additional amendments and numerous Supreme Court decisions were required to extend rights to all U.S. citizens and, to a certain extent, to non-citizens as well. These amendments include the:

- **13th Amendment** - abolishing slavery;
- **14th Amendment** - guaranteeing Black people (and others) the right to due process and equal protection;
- **15th Amendment** - extending voting rights to Black men; and
- **19th Amendment** - extending voting rights to women.

The 14th Amendment is one of the most broadly applied amendments in the Constitution. It's "equal protection" clause requires that states guarantee the same rights, privileges and protections to all citizens.

Read more about the 14th Amendment in the next column.

14 No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This important "Reconstruction Amendment," provides a broad definition of citizenship, superseding the Court's decision in *Dred Scott v. Sanford* that Black people did not have full citizenship rights. With the Fourteenth Amendment, all states are theoretically required to provide equal protection to all persons. In the mid-20th century, this was used to dismantle legal segregation, and its due process clause has been the basis of many important cases regarding privacy rights.

The Fourteenth Amendment is often considered part of the Bill of Rights because it allowed for many of the rights of the first ten amendments to be applied to state and local governments, though this did not happen until the 1960s. Originally, these rights were intended to apply only to actions of the federal government. It says that no state can take away "the privileges and immunities of citizens" or deprive "any person of life, liberty or property, without due process of law" or deny citizens "the equal protection of the laws." For most of a century, though, the Court refused to take these words at face value. Under pressure from the civil rights movement of the 1950s and 1960s, the Court at last acted to fulfill the original promise of the Fourteenth Amendment.

SUPREME COURT CASES:

EQUAL PROTECTION: The Court ruled in *Loving v. Virginia* that a law banning interracial marriage was unconstitutional under the "equal protection" clause. In 1973, in *Roe v. Wade*, the Court ruled that the Fourteenth Amendment's protection of privacy extended to a woman's right to choose whether to terminate her pregnancy. In 2015, in *Obergefell v. Hodges*, the Court ruled that fundamental rights and equal protection applied to same-sex couples seeking to marry and have their marriages recognized in every state.



TAKE A STAND
FOR YOUR RIGHTS