

Texas v. Johnson / The Amendment Process

(●●●)—Answer Key

Directions:

1. Read the **Background** section below and answer the corresponding **Questions to Consider** (page 2).
 2. Complete the **Amendment Process** section (page 2) and answer the corresponding **Questions to Consider** (page 3).
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Background

In 1984, Gregory Lee Johnson was arrested for burning the U.S. flag at the Republican National Convention in Texas. He was charged with violating a Texas law that banned the desecration of the flag in an offensive manner. In 1989, the U.S. Supreme Court heard *Texas v. Johnson* and found that Johnson’s burning of the flag was a form of symbolic speech that is protected by the First Amendment. The Court mentioned the importance of protecting free speech, especially speech that is unpopular or offensive to others. It said, “If 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.”

People who felt strongly about protecting the flag convinced Congress to pass the Flag Protection Act of 1989. This federal law made it a crime to knowingly mutilate, deface, physically defile, burn, or trample a U.S. flag. In 1990, the U.S. Supreme Court declared this law unconstitutional in the case of *United States v. Eichman*.

Checks and Balances

The U.S. government has a system of checks and balances. This system allows various branches of government to “check” the actions of the other branches. For instance, when Congress passes a law, the president can veto the law, or the Supreme Court can declare the law unconstitutional. If the Supreme Court finds a law unconstitutional, but people agree with the law, the Constitution can be amended or changed so that the law becomes constitutional. However, this has only happened 27 times in U.S. history, and the Constitution has been amended to overturn a Supreme Court ruling only four times in history.

After the Supreme Court declared the law banning flag desecration unconstitutional, Congress proposed a Constitutional amendment. A version of this proposed amendment that was before Congress in 2019 reads: “The Congress shall have power to prohibit the physical desecration of the flag of the United States.”

Questions for Discussion

1. Define the term “amend.”

The term “amend” means to change.

2. Why did the Framers want people to be able to change the Constitution?

The Framers wanted people to be able to change the Constitution to adapt it to meet their needs so it would endure the test of time. The Articles of Confederation required a unanimous vote to be amended which was virtually impossible. The lack of ability to amend the Articles when necessary was one factor that led to the failure of the Articles of Confederation.

3. Do you think the process of adding amendments to the Constitution is a difficult or easy process? Explain your opinion.

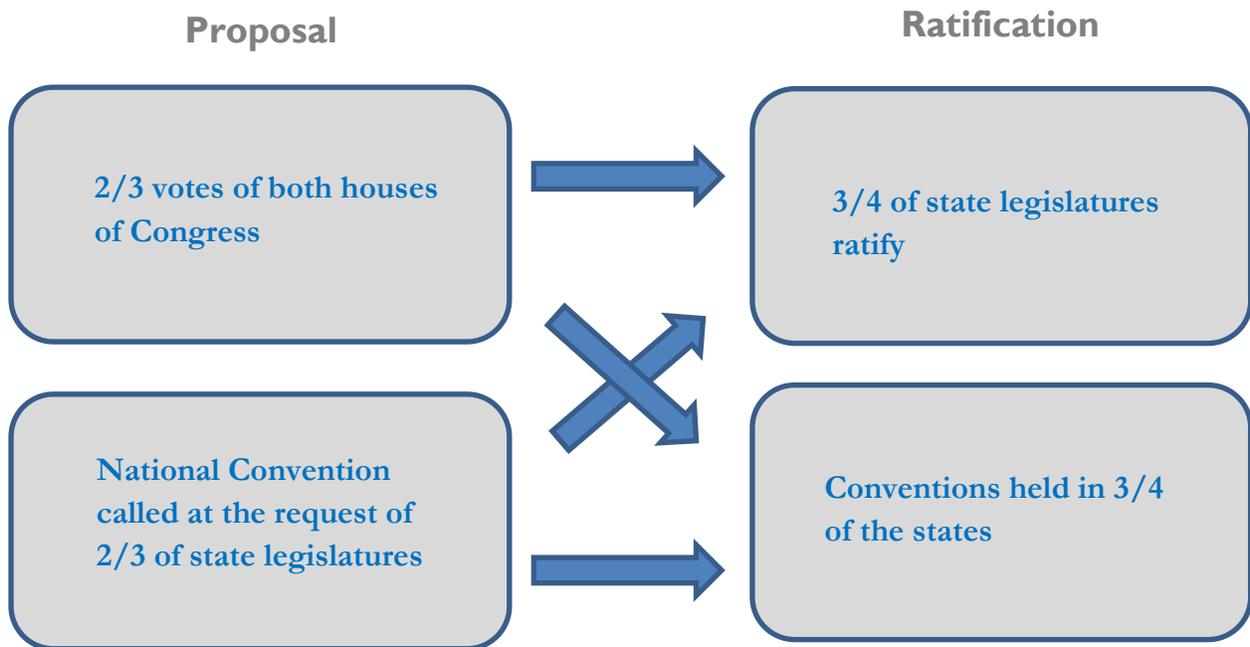
Student answers will vary but may include that getting an amendment added to the Constitution is a difficult process; it has been done only 27 times in over 200 years.

Amendment Process

Read the text of Article V of the U.S. Constitution below. Using two different colored highlighters or notations (e.g., underline, circle, star) note the two methods of proposing an amendment to the Constitution and two methods of ratification. Using that information, complete the graphic organizer below.

Article V of the U.S. Constitution

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress.



Questions to Consider

1. Note that there are two methods of initiating amendments and two methods of ratifying them, for a total of four possible routes. Is one method preferable to others? Why?

One method would be preferable to others because it is easier. In this case, it is easier to get Congress to convene and vote than to convene a National Convention. The same is true for state legislatures and conventions in the states. (Note: That method that appears in the top row of the diagram above (2/3 votes of both houses of Congress to propose and 3/4 of state legislatures to ratify) is the way that most amendments were added. Congress proposed all amendments except the 21st, which repealed prohibition. Amendments were ratified by state legislatures rather than state conventions.)

2. What are some ways in which citizens can be involved in various parts the process?

Among other methods, citizens can be involved by writing letters to Congress or their state legislatures, testifying before a committee in either of those bodies, getting elected to the conventions, and campaigning for lawmakers who are for or against the amendment.

3. At which level are there the greatest opportunities for citizen involvement? Explain.

The greatest opportunity for citizen involvement would be with their state legislatures.

4. Identify the advantages and disadvantages of the amendment process by completing the following table:

Process Components	Advantages	Disadvantages
Two-part process	Preserves system of checks and balances Prevents “frivolous” amendments from being passed	Is complicated and time-consuming which makes it difficult to get any amendments passed
Role of citizens	Can influence legislators at various stages of the process	Cannot directly propose or ratify amendments
Role of national government	2/3 of both houses of Congress in favor of an amendment in order for it to be proposed and sent to the states; this insures widespread support	The level of bi-partisan support needed to propose an amendment makes it difficult to get any amendments proposed.
Role of states	38 of 50 states must vote in favor of an amendment in order for it to be ratified and added to the Constitution; this insures widespread support	Each state counts the same in ratification process; a few states with small populations could prevent ratification, despite widespread approval
Role of federalism (i.e., division of powers/duties between the national and state governments)	Because the federal government and state governments must both approve the amendment with a super majority vote, widespread support at both levels in guaranteed	Obtaining 3/4 of state legislatures is extremely difficult and just over 1/4 of the states could defeat an amendment that has the support of the federal government and most of the states

5. Should there be changes to the amendment process to make it easier to amend the Constitution? Why or why not?

Student answers will vary. Students could argue that there should be no changes to the process because the Framers did not intend for it to happen frequently, and there is a balance in that it is difficult, but possible to amend the Constitution. Others may feel that the process should be changed to proposing and/or ratifying amendments easier.