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SPECIAL COVERAGE:
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This premier edition of *Insights on Law & Society* marks the beginning of the ABA Division for Public Education’s renewed commitment to furnish you with the most timely, effective, accurate—and now most accessible—law-related educational supplement available to the school community.

Replacing *Update on Law-Related Education*, our flagship secondary product since 1977, *Insights* supports instruction in both print and electronic media. Whether you are a high-school teacher, a university professor, an LRE program director, or a lawyer working with your local school, you will find many useful tools in the analyses, perspectives, debates, lessons, activities, surveys, and other teacher-friendly components of this brand-new product.

For example, we continue our tradition of furnishing you with up-to-date, curriculum-related information by choosing Amending the Constitution as the subject of our Fall 2000 edition. Top names in constitutional law have contributed the feature articles and “voices” opening the print edition, which carry over onto our Web site with additional online information, resources, related primary documents and articles, plus activities for review and downloading. “Students in Action,” a section designed especially for you to share with students, explores amendment issues that will be argued in their generation and offers print and online tools to help them develop the knowledge and skills they’ll need to participate in these important debates with confidence—and results. Following is “Learning Gateways,” with lessons and activities related to the edition’s theme, again with online handouts, backgrounders, resources, glossary, and other tools to ensure seamless and easy introduction of materials into your classroom day.

Deeply committed to helping the classroom educator address the most burning, and sometimes most elusive, issues of the day, *Insights* has three print and online departments dedicated to analyzing—and clarifying—the latest happenings at the Supreme Court, in Congress, and in the news. Visit these *Insights* departments as you get ready this year to discuss the latest High Court decisions, key bills, new laws, and the “hottest” law-related events from around the nation—and the world. Add to this our beautiful new design and graphic enhancements, and we think you’ll agree with us that *Insights on Law & Society* is a must-have for your classroom.

Seva Johnson
Editorial Director
Towards a “More Perfect Union”

Amending the Constitution is a difficult process—and that’s as it should be.

by Thomas E. Baker

Article V of the Constitution represents the Framers’ best effort to reconcile the need for change with the desire for stability in government structures. In the words of James Madison, the amending procedures are designed to “guard equally against that extreme facility, which would render the Constitution too mutable; and that extreme difficulty, which might perpetuate its discovered faults.” Federalist Paper No. 43. There are two procedural steps to amend the Constitution and two alternatives for each step, arranged in what Madison described as a process that is “partly federal, partly national.” Federalist Paper No. 39. First, amendments may be proposed either by a two-thirds majority in both houses of Congress or by a special convention called at the request of two-thirds of the state legislatures. Second, amendments are ratified by three-fourths of the states, either by the existing state legislatures or by special state conventions, depending on which forum Congress designates.

Intent of the Framers

The amendment procedure was a deliberate compromise between those who feared that Congress would seek to increase its powers at the expense of the states and those who feared that the states would seek to truncate the powers of the federal government. Like so many other compromises at the Convention, the delegates resolved to align those competing jealousies to check and balance each other. Thus, amending the Constitution was made difficult, but not impossible, in contrast to the predecessor constitution, the Articles of Confederation, which had required the unanimous consent of all the states for amendments. The Framers did not anticipate frequent or detailed amendments, however. Rather, regular lawmaking in the form of statutes would respond to economic, political, cultural, and moral developments in American society. They understood the Constitution to be a permanent and higher law intended to last for the ages.

Power & Responsibility

Amending the Constitution is very much an exercise in representative self-government. The whole responsibility for amendments is given over to the elected representatives of the people: the Congress in conjunction with the state legislatures. Thirty-four senators, or 146 representatives, or any combination of 13 state legislative chambers is enough opposition to keep an amendment from passing. "There is a reason that there have been only 27 amendments over more than 200 years."
amendment from becoming part of the Constitution. There is no explicit role for the executive branch in Article V; a president need not sign and cannot veto a congressional proposal. Of course, there is nothing to prevent the president from initiating or participating in the formation of public opinion supporting or opposing a proposal to amend the Constitution.

In numerous decisions, the Supreme Court has consistently ruled that Article V places the primary responsibility for amending the Constitution within the province of the Congress. The High Court has refused to play any role in the process of considering amendments, either substantively or procedurally. There have been six amendments ratified to reverse Supreme Court case holdings: Eleventh Amendment (1795); Thirteenth Amendment (1865); Fourteenth Amendment (1868); Fifteenth Amendment (1870); Sixteenth Amendment (1913); and Twenty-sixth Amendment (1971).

History & Tradition
By some estimates there have been more than 10,000 bills introduced in Congress to amend the Constitution. Of these, only 33 garnered the necessary two-thirds vote in both houses and proceeded to the states, and only 27 have received the necessary ratifications of three-fourths of the states.

There has never been a convention for proposing amendments. All 27 amendments have been proposed by Congress, although in the 1980s as many as 32 states had at one time or another issued a variety of calls for a constitutional convention to consider an amendment to require a balanced budget for the federal government. All but one of the amendments have been ratified by the state legislatures. Only the Twenty-first Amendment—which repealed the Eighteenth Amendment's failed experiment with Prohibition—was ratified by state conventions upon the stipulation of Congress.

Amendments have been ratified in constellations shaped by the political issues and national priorities of four distinct eras in American history. Between 1789 and 1804, the “Anti-federalist” or “Jeffersonian” amendments were adopted. The first ten amendments, popularly known as the Bill of Rights (1791), secure the fundamental rights of the individual against the national government. The Eleventh Amendment (1795) prevents federal courts from entertaining lawsuits against the states. The Twelfth Amendment (1804) sought to solve the problems that occurred in the 1800 election between Thomas Jefferson and Aaron Burr. The “Civil War Amendments,” the Thirteenth, Fourteenth, and Fifteenth Amendments, were ratified during Reconstruction, in the years 1865, 1868, and 1870, respectively. Ratified in the aftermath of a cataclysm that shook the constitutional structure to its foundations, those mighty provisions ended slavery, enforced due process and equal protection against the states, and guaranteed the recently freedmen the right to vote.

The populist and progressive movements in the early part of the twentieth century led to four ratifications: federal income tax in the Sixteenth Amendment (1913), direct election of senators in the Seventeenth Amendment (1913), national Prohibition in the Eighteenth Amendment (1919), and women's suffrage in the Nineteenth Amendment (1920). The most recent spate of amendment ratifications revolved around federal elections: the Twenty-second Amendment (1951) limited the president to two terms in office; the Twenty-third Amendment (1961) awarded the District of Columbia three electoral votes in presidential elections; the Twenty-fourth Amendment (1964) abolished the poll tax; the Twenty-fifth Amendment (1967) established rules for presidential succession and disability; the Twenty-sixth Amendment (1971) lowered the voting age to 18.

This patterning is not perfect, and a few amendments cannot be drawn into these four groupings: the Twentieth Amendment (1933) limited the lame duck session of Congress, and the Twenty-first Amendment (1933) repealed Prohibition. The Twenty-seventh Amendment (1992) requires that any pay increase for members of Congress can go into effect only after an election. It was proposed by the first

**Amendments are proposed by**

A two-thirds vote of both houses of Congress

or

A national convention called by Congress

**Amendments are ratified by**

Approval of three-fourths of the state legislatures

or

Special ratifying conventions in three-fourths of the states

Traditional method

Used once for the Twenty-first Amendment

Not yet used
Congress as part of the original Bill of Rights and was all but forgotten for more than 200 years before it was dusted off and ratified by the requisite number of states—something that is not likely to happen again because the modern practice is for Congress to include a time limit, usually seven years, in proposed amendments.

**Failure to Ratify the ERA**

Congress has voted to propose six amendments that have failed to be ratified by the requisite three-fourths of the states. The most important recent showdown over a proposed amendment was the 10 years of debate over whether to add an amendment for sex or gender equality, the Equal Rights Amendment. Congress proposed the ERA in 1972 with the usual seven-year deadline for ratifications, then extended the period for three more years. After some early momentum, however, in the end 35 states ratified the measure—only three short of the number needed—and some states that had ratified the proposal went back to try to rescind their earlier ratifications.

The proposal galvanized opponents to warn of dire consequences like co-ed bathrooms, women in combat, and the elimination of alimony laws. Even though the measure failed ratification, today unisex bathrooms are found on every college campus and in Ally McBeal’s law firm, women serve with honor in combat situations, and no-fault divorce laws in the states have all but done away with alimony.

Over the years since, seven states have added an equal rights amendment to their state constitutions, and each year other states take up similar measures. Today, more women than ever serve at all levels of government. Still, women’s rights organizations continue to press Congress to resubmit the ERA to the states to preserve political gains and to serve as an important symbol to the nation. But opponents continue to resist and worry that the measure could lead to a unisex society and gay marriages.

**Pending Amendments**

The amendments being debated at any given time represent the most divisive issues of the day. Consider some of the amendments currently before Congress. One would allow state government officials to display the Ten Commandments in state buildings. Another that has passed the House but not the Senate with the requisite two-thirds majority would have given the Congress the power to prohibit and punish flag burning. Other bills currently before Congress include a proposal to authorize a line-item veto for the president, a proposal to abolish the electoral college to provide for the direct election of the president, various versions of term limits for members of Congress, and an amendment to guarantee rights to victims of crimes.

Some amendments go out of fashion while they are under consideration. For example, the balanced budget amendment was in the headlines and looked close to passing Congress just a few years ago, but when the burgeoning economy began to yield consistent federal surpluses, the measure all but disappeared. The bills reintroduced over the last several years to propose amendments to permit prayer in public schools or to outlaw school busing or to ban abortions have become mostly symbolic.

**Rarity of Amendments**

There is a reason that there have been only 27 amendments over more than 200 years: constitutional amendments must have the sustained and one-sided support of great majorities in the Congress and across the states. Most issues of public policy are too evanescent or too closely contested to achieve and sustain the required supermajorities. Instead, most issues in our constitutional democracy properly are left to ordinary politics—to simple and temporary majorities of the legislative branches to determine and to change through the ordinary legislative process.
The true genius in Article V, then, is found in its elegant difficulty. A measure that successfully runs the Article V gauntlet deserves to be in the Constitution. Our experience with amending the Constitution demonstrates that such measures are few and far between.

Bibliography


FOR DISCUSSION

*Article V of the U.S. Constitution outlines two ways amendments may be proposed and ratified. What are they?*

*Why did the Framers of the Constitution try to make the amendment process difficult, but not impossible?*

*Who has the primary responsibility for amendments? What is the judiciary’s role in amendment making?*

*Thousands of bills to amend the Constitution have been introduced in Congress. Very few actually become amendments. Do you think this is a good thing? Why or why not?*

Teaching Standards for This Issue

**Amending the Constitution**

Teachers of civics, government, history, and law all over the country are working toward attaining the educational standards set forth by their local communities. To assist in this effort, each edition of *Insights on Law & Society* is designed to support national standards of major educational organizations such as the National Council for the Social Studies (NCSS), the Center for Civic Education (CCE), the National Center for History in the Schools, and the American Library Association (ALA). Listed here are national standards supported by *Insights’s Amending the Constitution Edition*, as well as the organizations promoting them.

**National Standards for Social Studies Teachers (NCSS)**

**Power, Authority, and Governance**

Social studies programs should include experiences that provide for the study of how people create and change structures of power, authority, and governance, so that the learner can:

- explain the purpose of government and analyze how its powers are acquired, used, and justified.
- analyze and explain ideas and mechanisms to meet needs and wants of citizens, regulate territory, manage conflict, establish order and security, and balance competing conceptions of a just society.

**National Standards for Civics and Government (CCE)**

*Purpose and uses of constitutions*

- Students should be able to explain how constitutions can be vehicles for change and for resolving social issues.
- Students should be able to explain how constitutions can be devices for preserving core values and principles of a society.

**National Standards for History**

*3A The student understands the issues involved in the creation and ratification of the United States Constitution and the new government it established.*
Consistent with the Article V amending provision, the last three constitutional amendments, like those before them, have been proposed by two-thirds majorities of Congress and ratified by three-fourths of the states. These amendments deal respectively with presidential succession and disability, voting rights for young people, and congressional pay raises.

Twenty-fifth Amendment
The problem of orderly succession for chief executives has long threatened stable governments. Monarchies typically convey leadership through the principle of hereditary succession whereby the ruler’s eldest son is usually first in line to the throne.

Rejecting both monarchy and hereditary succession, the Framers of the U.S. Constitution specified that the president would be indirectly elected through an electoral college under which each state chose a number of electors equal to that state’s total number of representatives and senators in Congress. These electors cast two votes for president, at least one of which was to be for an individual from another state. The individual with the highest number of votes became president. The person with the second highest number of votes became the vice-president.

This system encountered a number of problems, including the selection of presidents and vice-presidents from different political parties. These resulted in adoption of the Twelfth Amendment, under which individual electors cast separate votes for president and vice-president.

This selection system presented three other problems. First, the Constitution did not specify whether a vice-president who assumed the presidency in the case of a presidential death would complete the term or be only an “acting president” until a new president could be selected. Second, the Constitution did not outline what would happen when a president became disabled. Third, although allowing Congress to establish a line of succession, the Constitution did not provide for vice-presidential replacements.

Beginning with George Washington, whose health twice threatened his life during his presidency, the wisdom of having a designated successor became evident. In 1792, Congress designated the line of succession from the vice-presidency to the president pro tempore of the Senate and the Speaker of the U.S. House of Representatives. Congress modified this law in 1886 so that succession would devolve through cabinet offices in the order of their creation. Congress altered this law again in 1947, designating the Speaker of the House, the president pro tempore...
Assassination and illnesses have killed or incapacitated several presidents. Such incapacities became especially troublesome with the advent of nuclear weapons. President Truman was a target of an unsuccessful assassination, President Eisenhower suffered a heart attack and a stroke, President Kennedy was killed, and President Johnson, who had previously suffered a heart attack, had major surgery.

Eisenhower's attorney general, Herbert Brownell, began work on an amendment to resolve this problem, the urgency of which was highlighted by Kennedy's assassination in 1963. After extensive hearings and compromises, Congress proposed the Twenty-fifth Amendment in July 1965, and the required number of states ratified in February 1967.

Section 1 affirms the precedent John Tyler established by declaring that the vice-president becomes president (and not just “acting president”) upon the death of the president. Section 2 provides for filling vice-presidential vacancies through presidential nomination and confirmation by majority vote of both houses of Congress. Section 3 establishes a means for a disabled president temporarily to transfer powers to the vice-president. Section 4 creates a procedure whereby the vice-president, with cabinet approval, can assume powers from a disabled president by sending written notice of this disability to Congress. It also provides for Congress to resolve disputes about the president's competency.

The Twenty-fifth Amendment is an imperfect solution to a set of near-insoluble problems. Under Section 2 of the amendment, Gerald Ford and Nelson Rockefeller replaced vice-presidents Spiro Agnew and Ford, and Ford replaced Nixon as president. Section 3 has proved more problematic. Although it establishes a clear mechanism for presidents temporarily to transfer power to their vice-presidents, presidents (including Ronald Reagan, when he was shot by John Hinckley, and Bill Clinton, when he was scheduled for knee surgery) have resisted using this procedure, lest they appear weak. The mechanism for transferring power from a disabled president unable or unwilling to certify his own disability remains untested.

**Twenty-sixth Amendment**

The Twenty-sixth amendment is one of many amendments that expanded voting rights. Because some delegates at the Constitutional Convention of 1787 favored property qualifications and others did not, they left such matters to state discretion. Most states restricted voting to white male property owners. States liberalized property qualifications in the nineteenth century, and constitutional amendments extended national guarantees to groups that had been previously disenfranchised. These include African American men, whose voting rights were guaranteed in 1870 by the Fifteenth Amendment, and women, who obtained the right to vote by the Nineteenth Amendment in 1920. In addition, the Seventeenth Amendment (1913) provided for direct election of U.S. senators, the Twenty-third (1961) extended electoral votes to the District of Columbia, and the Twenty-fourth (1964) eliminated poll taxes in national elections.

Democracies properly restrict voting to adults, but the designation of the age of adulthood is necessarily somewhat arbitrary, and Section 2 of the Fourteenth Amendment indirectly recognized 21 as such an age. Voting is often linked to other citizenship rights. As individuals below the age of 21 have served in America's wars, calls were made for lowering the voting age. The state of Georgia lowered its voting age to 18 in 1943, and Kentucky followed suit in 1954. Little changed until 1969, when five states approved lowering the voting age to 19 or 20 years. Indiana Senator Birch Bayh led the push for constitutional change. Perhaps because
only males could then be drafted, Bayh focused less on the tie between voting and military service than on the increased educational levels of modern 18-year-olds. At a time of intense civil unrest involving the war in Vietnam and other issues, witnesses testified that youth might be less likely to pursue violent means of political change if they felt they had a real voice. Ultimately, Congress attempted to lower the voting age through the Voting Rights Act of 1965.

In Oregon v. Mitchell, 400 U.S. 112 (1970), the U.S. Supreme Court divided sharply over this law. Four justices voted to uphold the law in its entirety, and four voted to invalidate it. A ninth justice, Hugo Black, carried the day by approving the law as applied to national, but not to state, elections. Fearing that this ruling could throw the next election into chaos by requiring states to keep separate voting lists for state and national elections, Congress quickly responded in 1971 by proposing the Twenty-sixth Amendment. The states approved the amendment within a record 107 days.

Twenty-sixth Amendment
Whereas ratification of the Twenty-sixth Amendment proved to be the shortest, ratification of the Twenty-seventh took the longest. The amendment’s strange odyssey began when leading Federalists, including James Madison, agreed to work for the adoption of a bill of rights if the Constitution were ratified. Madison distilled scores of suggestions into 12 proposals introduced in 1789, the last 10 of which were adopted as the Bill of Rights. Unlike the last 10 amendments, the first two dealt not with matters of individual rights, but with the mechanics of the new government. The first dealt with the size of the House of Representatives and the second with congressional pay raises. Only six states ratified this latter amendment, prohibiting congressional pay raises from going into effect until after an intervening election. Members of the first Congress voted themselves six dollars per day. Subsequent congressional pay raises proved controversial. In 1818 Congress repealed an unpopular change to annual salaries approved the previous year and did not again authorize annual salaries until 1855. Congress raised its salary again in 1866 and in 1873. The later “Salary Grab” Act proved so unpopular that, prior to its repeal in 1874, Ohio ratified Madison’s original amendment. Congress continued to raise its salaries. A 1978 pay hike prompted Wyoming to add its ratification to the Madison Amendment.

Although most observers assumed that such ratifications were little more than symbolic, Gregory Watson, an undergraduate at the University of Texas at Austin, thought otherwise. After receiving a “C” on a term paper he wrote in 1982 arguing that states could still approve the amendment, Watson became a state legislative aide and actively worked for ratification of the amendment. By 1992, Watson had mustered the necessary state votes. The National Archivist certified adoption of the amendment, and Congress, fearful of appearing insensitive to public opinion, concurred with lopsided votes.

Putative ratification of the Twenty-seventh Amendment raises questions as to the status of the six other amendments proposed by Congress but not ratified by the states. A number have come with internal and presumably self-enforcing time limits. Congress proposed the Equal Rights Amendment, designed to guarantee equal rights to women, in 1972, with a seven-year limit in its authorizing resolution. After Congress extended this deadline for another three years, it still fell three states shy of the 38 ratifications required. Some ERA proponents now argue that this amendment would, like the Twenty-seventh, become law, if an additional three states ratified.

References

FOR DISCUSSION

Why was the Twenty-fifth Amendment proposed and ratified? What problems does it address that the Constitution did not?

How did the Twenty-sixth Amendment expand voting rights? Why was the amendment proposed and ratified in record time?

When was the Twenty-seventh Amendment originally proposed? What questions about the amending process are raised by the ratification of this amendment?
What are the chances of success for the current constitutional amendment proposals? Let’s evaluate four of the proposals in terms of their timeliness, their support base, and the strength of their opposition.

**Political Status**

**Flag Protection Amendment.** This amendment is the likeliest to pass relative to the other amendment proposals; however, its chances of passage are stalled in the Senate where its supporters need to pick up at least one more vote. This is most likely to happen if Republicans gain one or more Senate seats in the fall 2000 elections. Flag protection has no opposition within the ranks of Republicans, organized veteran groups, and conservatives, save for libertarians.

The flag proposal has wider support among Democrats than any other proposal before Congress. It also has strong public opinion support on its side along with a whopping 49 state legislatures (minus Vermont) that have urged Congress to approve it. (Unclear is how many of these states would ratify if the ball were in their court.)

The amendment language is simple: The Congress shall have the power to prohibit the physical desecration of the flag of the United States. Opponents ask: “What about impressions of the flag on clothing and elsewhere?” They also focus on the infrequency of flag burning and the enormity of the solution relative to the act. Supporters retort that flag burning should be illegal not so much because of its frequency as its reprehensibility. Opponents ask: “Why punch a flag-shaped hole in the Bill of Rights?”

The underlying issue of flag protection is profound. As Alan Brinkley has observed, “Battles over the flag have almost always been battles over how to define patriotism and, by implication, how to define America” (*The New York Times* 1990). The following statements—each by a Vietnam veteran serving in Congress—represent clear positions as to whether defacing the flag should be a federal crime or protected speech:

“The American people understand the difference between freedom of speech and ‘anything goes,’” said Chuck Hagel, R-Neb. “Let them protest, let them write to their newspaper, let them organize, let them march, let them shout to the rooftops—but we should not let them burn the flag. Too many have died defending the flag for us to allow it to be used in any way that does not honor their sacrifice.”

But Charles S. Robb, D-Va., opposes the amendment: “It is precisely because the act of flag burning sends a message that elicits such a visceral and powerful response that

**“Prospects of passage are not likely...for any of the current crop of amendment proposals.”**

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it is undeniably speech. Vulgar, crude, infantile, repulsive, ungrateful speech, but undeniably speech. ... And when we seek to punish those who express views we don’t share, then we—not the flag burners—we begin to erode the very values, the very freedoms that make America the greatest democracy the world has ever known” (Palmer 2000).

**School Prayer Amendment.** This amendment rests on a very different political calculation, which may require a name change to the religious expression amendment. While virtually every veterans’ and patriotic group supports the flag amendment, religious groups are deeply divided on the school prayer issue. Most mainstream groups oppose the proposal, albeit for different reasons, while most fundamentalist groups support the proposal. That leaves little room for a supermajority to form. Furthermore, the Supreme Court has continued to narrow the bounds of acceptable legislation in the broad area of religious exercise in public schools.

In 1995, House Republicans divided over two opposing proposals. Ernest Jim Istook, Jr., R-Okla., introduced a bill that focused exclusively on allowing prayer in school, but it collapsed partly because it was opposed by key Christian groups like the Southern Baptist Convention and the National Association of Evangelicals. Veteran Congressman Henry J. Hyde of Illinois introduced a proposal that would prevent discrimination against the expression of religious views but was silent on the issue of school prayer. Two years later, there seemed to be Republican consensus around a compromise measure introduced by Rep. Istook that would secure “the people’s right to pray and to recognize their religious ... traditions on public property, including schools.” It would also allow government funding for religious schools and social service organizations. This was the first proposal on this issue to reach a House vote since 1971, but it fell well short of the two-thirds majority needed and was not considered in the Senate.

Supporters maintain that an amendment is needed not because of a flaw in the establishment and religious freedom clauses of the Constitution, but because of their misinterpretation by the Court. According to supporters, the Court has secularized American public institutions and denied personal religious expression on school grounds when the Constitution sought a religiously neutral government and a plurality of sects. Opponents argue that this amendment would be the first alteration of the language in the Bill of Rights, that it would needlessly complicate future attempts to interpret the religion clauses. Moreover, they insist that the Framers did envision a clear separation of church and state—in large part because they feared conflict of religious factions for control of the government. Finally, opponents argue, any breach in that wall of separation will widen—especially with respect to public schools and public aid to religious institutions.

Chances of passage in the immediate future are slim. At the same time, this is a bedrock issue that conservative supporters outside Congress are not likely to concede and, hence, one that their representatives inside Congress are not likely to forget.

**Balanced-Budget Amendment.** This amendment, like school prayer, begins as an issue that divides its support base. The balanced-budget issue is like the school prayer issue in two other respects. First, they are older amendment proposals from another time, and, hence, they carry extra baggage and a variety of supporters and opponents. Second, because they have been around so long and passed through so many changing contexts, they have gone through a number of variations.

The current balanced-budget proposal is something of a misnomer. It does not require a balanced budget but rather a three-fifths majority of the total membership of both houses “to approve a specific excess of outlays over [expected] receipts.” The current proposal sits in committee, largely because the federal government now operates on the basis of a balanced budget.

Meanwhile, a newer budget-control proposal has surfaced under the name “tax limitation constitutional amendment proposal.” This is also something of a misnomer, since it would not limit taxes but require a two-thirds majority of those present and voting “to increase the internal revenue by more than a de minimis amount.” The House version has many sponsors but was defeated in April 1999.

The main argument for both measures centers on political representation as a double-edged sword. Elected supporters are reluctant to articulate this point because it is based on the notion that (1) voters lack the fiscal responsibility to control budget excesses, and (2) elected federal officials lack the political will to resist electoral pressure to keep sacred budget items.

Opponents draw on a variety of arguments in defeating both proposals year after year. Who will define “specific excess” and “de minimis”? What if there is a national emergency other than those such as wars that are provided for in the amendment? What if unforeseen circumstances make an
unbalanced budget good economic sense? Who will protect entitlements? How would it look if exceptions crept into a constitutional amendment until it lost its meaning? How will it be enforced? Who will enforce it?

All of these are tough questions, but the toughest appears to center on the timeliness factor. Do we still need a balanced-budget amendment when Congress and the president have already balanced the budget? This question has taken the wind out of the balanced-budget amendment’s sails, and it seems unlikely to recover momentum. Instead, the House keeps introducing and falling short of a two-thirds vote on the so-called tax limitation amendment. Has the tax limitation effort become an alternative to or a kind of stalking horse for the balanced-budget amendment?

**Victim Rights Amendment.** This is the newest in the crop of current proposals. The proposed resolution in the Senate draws on a hybrid coalition of Republican and Democratic sponsors. It amounts to a mini-bill of rights for “the victim of a crime of violence.” The proposal would include the rights to reasonable notice of, and not to be excluded from, public proceedings relating to the crime and concerning any proposed pardon or commutation of a sentence; be heard at such proceedings and at parole hearings; reasonable notice of a release or escape relating to the crime; be free from unreasonable delay in the trial; an order of restitution from the convicted offender; consideration in determinations of the conditional release relating to the crime; and reasonable notice of the aforesaid rights. In a nod to federalism, one provision would allow state legislatures to create certain exceptions to these rights if they found a compelling interest in doing so.

A major argument advanced by chief Republican sponsor Senator Kyl is as follows: “Until crime victims are protected by the United States Constitution, the rights of victims will be subordinate to the rights of the defendant” (Fagan 1999). Opponents and undecideds are concerned about the curtailment of the rights of defendants, the discretion of trial judges in managing proceedings, the discretion of prosecutors in charging crimes and plea bargaining, the possibility that violations of the amendment could create a cause of action against the government, and the need for and source of adequate resources to implement the amendment (ABA Journal 1996).

**Immediate Prospects**

Unless the support base in Congress changes, prospects of passage are not likely in the immediate future for any of the current crop of amendment proposals. The proposals with the brightest prospects are the flag protection amendment and perhaps the victim rights amendment, but only in the sense that they have the least opposition. They are still a long way from securing the required number of supporters in Congress, and most forecasts for the 2000 congressional elections do not call for Republicans to increase their numbers in either house.

However, if congressional incumbents feel one of these proposals (or a new trial balloon around gun control) to be a potentially significant and positive campaign issue, they will be more inclined to act on it in ways that best position themselves and their presidential candidate for the elections. If they feel that such an issue could create harm or uncertainty, they might back off of it. This is not to speak ill of incumbents; it is simply a calculation that any rational elected official needs to make.

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**FOR DISCUSSION**

Of the current amendment proposals, which one does the author feel is most likely to eventually pass? What condition must change for that to happen?

According to the author, who do supporters of the school prayer amendment say created the need for the amendment? What has that institution done?

What is the main problem for the balanced-budget amendment? What do you think can be done to solve that problem?

Why do supporters feel that a victim rights amendment is needed? Do you agree? Why or why not?
Even Experts Disagree

Does the constitutional amendment process need an overhaul? Or does it function exactly right for the way it is? Even the experts disagree. Here, read what four experts have to say. Then get online for more from them, plus a fifth opinion—all available at www.insightsmagazine.org.

When in Doubt, Do Nothing

by R. B. Bernstein

In the 1980s and early 1990s, the nation seethed with demands to amend the Constitution. None of these amendments ever became part of the Constitution.

Now, some people argue that the trouble is with the amending process itself. They want to change Article V of the Constitution to make that process easier, or “more democratic.”

We haven’t had a constitutional amendment successfully clear the entire amending process since 1971. Does that mean that the amending process needs overhauling? Or does that mean that it’s working quite well?

Let’s not forget that we’re talking about changing the Constitution, not changing ordinary laws. The Constitution is the core of our form of government, and in many ways it is the core of our national identity. It enshrines general principles that bind together people of fundamentally differing views.

The history of the amending process teaches a few important things. No amendment becomes part of the Constitution unless it meets a serious need beyond the powers of the ordinary political process to solve, and unless its backers can muster the intellectual resources and political energy and will to get it through both houses of Congress and three-fourths of the states.

Citizens for the Constitution

by Erwin Chemerinsky

After the Republicans gained control of both the House and the Senate in the 1994 election, many proposals were introduced in Congress to amend the Constitution. Underlying all the proposals is a basic question: When should the Constitution be amended and when should it be left unchanged?

There is no consensus as to how these questions should be answered. In fact, rarely has anyone even attempted to provide criteria as to when amendments are appropriate or inappropriate. In August 1997, Citizens for the Constitution, a group of law professors and attorneys, released a report titled, “Great and Extraordinary Occasions: Developing Standards for Constitutional Change.”

The report proposes several principles in evaluating the need for amending the Constitution. It says that amendments should not be focused on issues that are likely
Such has been the fate of three amendment proposals put forth by the States’ Federalism Summit held in October 1995. The summit was organized by leading states’ organizations to recommend ways to rebalance the federal system.

The idea that received the most favorable attention was the proposal for state-initiated amendments, which would allow three-fourths of the state legislatures to propose an amendment to be ratified by two-thirds of both houses of Congress. Article V of the Constitution obligates Congress to call a convention to propose amendments upon application of two-thirds of the state legislatures. But this procedure has never been used. Congress has refused to recognize applications from the state legislatures, and fear of a constitutional convention is so deep that the possibility of Congress’s calling one is unthinkable.

The Federalism Summit’s proposal adds a second way for states to propose amendments. Because the proposal does not include a convention, it provides for balance by requiring congressional ratification of state-initiated amendments. This is consistent with the Constitution’s basic principle that the federal document cannot be amended unilaterally by either Congress or the states.

The summit’s proposals, however, have not yet found a partner. State leaders have not persuaded people of the need for such change, and fear of structural change is probably as deep as fear of a constitutional convention. In 1997, the National Conference of State Legislatures achieved strong majority support but not the three-fourths vote needed to adopt the proposals.

Although the Federalism Summit’s amendment proposals may never be wedded to the Constitution, they reflect our continuing debate about the nature and purposes of our federal system, a debate that reached another high point during the 1990s and has not yet peaked.

John Kincaid is the Robert B. and Helen S. Meyner Professor of Government and Public Service and director of the Meyner Center for the Study of State and Local Government at Lafayette College in Easton, Pennsylvania.
I Have a Better Way

by Gregory D. Watson

Long before I launched the movement to ratify what is today the Twenty-seventh Amendment to the U. S. Constitution, I knew that the manner in which the Constitution is changed was, and remains, in need of dramatic updating. It was obvious to me that the state legislatures were no longer the proper venue to judge the merits or flaws of proposed amendments in today’s “high-tech” society in which a citizen, as part of a sophisticated electorate with easy access to voluminous information, may likely vote on a variety of local or statewide referenda. And my work advancing the Twenty-seventh Amendment has only solidified my belief that national referenda would be a better means of handling proposed amendments.

I have a better way. First, require the proposal of a constitutional amendment by a two-thirds vote of the entire membership elected and serving in each house of Congress. Second, eliminate the state legislatures. Ratification should be accomplished via a national referendum in an election year, when voters are going to the polls anyway. A proposed amendment would have to receive the approval of a simple majority of all votes cast in not less than two-thirds of the geographic districts that comprise the U. S. House of Representatives.

I urge that only one proposed amendment be placed before the electorate on an election date and that the amendment be offered to the voters by Congress no later than a full calendar year prior to the election date so that there can be public discussion and debate on the matter. And only the Congress in existence at the time of the referendum should propose the amendment to be decided by the voters.

My proposals would streamline the process and eliminate many of the needless eccentricities of the current procedure, while not making it “easier” to amend the Constitution.

Gregory D. Watson is a legislative assistant in the Texas House of Representatives at the State Capitol Building in Austin.
Students in Action

Debating the “Mighty Opposites”

Ever since the Constitution and the Bill of Rights were adopted, Americans have struggled to make certain “mighty opposites” contained within them work together for the common good. For example, the First Amendment guarantees freedom of the press, protecting “society’s right to know” about the activities of individuals and groups in our midst. At the same time, the Fourth, Ninth, and Tenth Amendments all protect the individual’s right to privacy. What happens when freedom of the press and the right to privacy collide?

Often, the legal system struggles to strike a balance. How do you think your generation is going to find the proper balance between community and private interests in issues involving hate speech, guns, and privacy in the electronic age?

Learn here about three enduring constitutional debates that your generation will argue to formulate public policies affecting the nation’s future. Then explore the issues more fully by reading the articles that follow. You can begin to learn how you can participate in and influence the debates by completing the Take Action! activities at the end of each article.

Hate Speech Debate: The First Amendment guarantees freedom of speech, including insulting, offensive “hate speech”—but only to a point. For example, Americans are for the most part free to express their likes and dislikes, to openly and even to nastily criticize individuals, groups, institutions, and situations. But what about speech that attacks disability, race, or sexual preference—speech that undermines the guarantee to minority groups of equal rights and equal opportunities under the law? Does that type of speech violate the victim’s civil rights to the extent that it is unconstitutional? Do we need new laws to protect against hate speech? If so, how can hate speech laws be fashioned so as to protect the civil rights of minority communities without overly limiting an individual’s civil liberties?

Gun Debate: In part because of the startling rise in gun-related violence among youth, few issues have so captured American public discussions in recent years as guns and gun control. The Second Amendment guarantees the right to bear arms, yet the interpretation of this right is hotly debated. Does it mean that any ordinary person may possess firearms without limitation? Or does the right to bear arms apply only to the “well-regulated militia” referenced in the Second Amendment? Do we need to enact more gun laws to ensure the public safety? Would existing laws be enough, if only enforced? Are existing laws already too much? On further examination by the courts, might they be unconstitutional?

Privacy Debate: Today, specialized gadgets can pierce through the very walls of homes to gather information about the unsuspecting people living there. Is this type of “electronic investigation” unconstitutional? Or does it make a difference who the unsuspecting individual is—an ordinary person,” a convicted felon, or a celebrity, for example? The right to privacy, although protected by the Bill of Rights, cannot be absolute. This is true in situations involving both government investigators (such as police) and the press. Today, when the government and the press can electronically gather information about anyone from miles away, do we need new privacy laws to bolster existing constitutional and statutory protections? If so, what chunks—of whose lives—should be declared off limits?
policies that discourage bad behavior but do not punish bad beliefs. Another way of saying this is to create laws and policies that do not attempt to define hate speech as hate crimes, or “acts.” In two recent hate crime cases, the U.S. Supreme Court concluded that acts, but not speech, may be regulated by law. _R.A.V. v. City of St. Paul_, 505 U.S. 377 (1992), involved the juvenile court proceeding of a white 14-year-old who burned a cross on the front lawn of the only black family in a St. Paul, Minn., neighborhood. Burning a cross is a very hateful thing to do: it is one of the symbols of the Ku Klux Klan, an organization that has spread hatred and harm throughout this country. The burning cross clearly demonstrated to this family that at least this youth did not welcome them in the neighborhood. The family brought charges, and the boy was prosecuted under a Minnesota criminal law that made it illegal to place, on public or private property, a burning cross, swastika, or other symbol likely to arouse “anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender.” The case went all the way to the Supreme Court, which ruled that the Minnesota law was unconstitutional because it violated the youth’s First Amendment free speech rights.

Note that the Court did not rule that the act itself—burning a cross on the family’s front lawn—was legal. In fact, the youth could have been held criminally responsible for damaging property or for threatening or intimidating the family. Instead, the law was defective because it improperly focused on the motivation for—the thinking that results in—criminal behavior rather than on criminal behavior itself. It attempted to punish the youth for the content of his message, not for his actions.

In the second case, _Wisconsin v. Mitchell_, 508 U.S. 476 (1993), Mitchell and several black youth were outside a movie theater after viewing _Mississippi Burning_, in which several blacks are beaten. A white youth happened to walk by, and Mitchell yelled, “There goes a white boy; go get him!” Mitchell and the others attacked and beat the boy.

In criminal law, penalties are usually based on factors such as the seriousness of the act, whether it was accidental or intentional, and the harm it caused to the victim. It is also not unusual to have crimes treated more harshly depending upon who the victim is. For example, in most states battery (beating someone) is punished more harshly if the victim is a senior citizen, a young child, a police officer, or a teacher.

Under Wisconsin law, the penalty for battery is increased if the offender intentionally selects the victim “because of the race, religion, color, disability, sexual orientation and national origin or ancestry of that person.” The Supreme Court ruled in _Wisconsin v. Mitchell_ that this increased penalty did not violate the free speech rights of the accused. The Court reasoned that the penalty was increased because the act itself was directed at a particular victim, not because of Mitchell’s thoughts.

_Hate speech_ is speech that offends, threatens, or insults groups, based on race, color, religion, national origin, sexual orientation, disability, or other traits. Should hate speech be discouraged? The answer is easy—of course! However, developing such policies runs the risk of limiting an individual’s ability to exercise free speech. When a conflict arises about which is more important—protecting community interests or safeguarding the rights of the individual—a balance must be found that protects the civil rights of all without limiting the civil liberties of the speaker.

In this country there is no right to speak _fighting words_—those words without social value, directed to a specific individual, that would provoke a reasonable member of the group about whom the words are spoken. For example, a person cannot utter a racial or ethnic epithet to another if those words are likely to cause the listener to react violently. However, under the First Amendment, individuals do have a right to speech that the listener disagrees with and to speech that is offensive and hateful.

Think about it. It’s always easier to defend someone’s right to say something with which you agree. But in a free society, you also have a duty to defend speech to which you may strongly object.

_Acts Speak Louder than Words_

One way to deal effectively with hate speech is to create laws and policies that discourage bad behavior but do not punish bad beliefs. Another way of saying this is to create laws and policies that do not attempt to define hate speech as hate crimes, or “acts.” In two recent hate crime cases, the U.S. Supreme Court concluded that acts, but not speech, may be regulated by law. _R.A.V. v. City of St. Paul_, 505 U.S. 377 (1992), involved the juvenile court proceeding of a white 14-year-old who burned a cross on the front lawn of the only black family in a St. Paul, Minn., neighborhood. Burning a cross is a very hateful thing to do: it is one of the symbols of the Ku Klux Klan, an organization that has spread hatred and harm throughout this country. The burning cross clearly demonstrated to this family that at least this youth did not welcome them in the neighborhood. The family brought charges, and the boy was prosecuted under a Minnesota criminal law that made it illegal to place, on public or private property, a burning cross, swastika, or other symbol likely to arouse “anger, alarm, or resentment in others on the basis of race, color, creed, religion, or gender.” The case went all the way to the Supreme Court, which ruled that the Minnesota law was unconstitutional because it violated the youth’s First Amendment free speech rights.

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an argue that this language should be collectively interpreted—that the Second Amendment refers to an organized group (militia) whose function is to protect the nation’s freedom, such as the National Guard. This theory’s supporters have pointed to the U.S. Supreme Court decision in United States v. Miller, 307 U.S. 174 (1939), which comments that the “obvious purpose” of the Second Amendment is “to assure the continuation and render possible the effectiveness of” state militia forces.

Gun control opponents are unpersuaded. They argue that this amendment, like others in the Bill of Rights, simply affirms a right that the people already have, one that the Bill of Rights expressly forbids the government to touch. Quotes from the Founders are used to reinforce this argument, including Thomas Jefferson’s statement, “No man shall ever be debarred the use of arms.” Many proponents of this interpretation of the Second Amendment fear that gun control is a step toward confiscating weapons, and that confiscating weapons is a step toward government tyranny.

Gun control opponents counter that statements such as Jefferson’s in no way prohibit gun regulation. If this argument is accepted, another is close behind: how far can regulation go before it starts to infringe on the right to bear arms?

Right to Bear Arms
The Second Amendment reads, “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.” Proponents of gun control legisla-

Crime & Injury
Does gun possession by ordinary individuals tend to produce a high percentage of otherwise preventable injury and death? On the other hand, are guns in the hands of private individuals an important crime deterrent?

The public has heard many arguments that guns at home are much less likely to defend against unknown intruders than they are to cause accidental, suicidal, and angry shootings of people belonging or known to the household. Tragic cases of shooting deaths among juveniles support this viewpoint, as do incidents of one adult shooting another over a disagreement. Recent examples involving juveniles include the planned murder of students by fellow students at Columbine High School in Colorado, as well as a case from Michigan in which one six-year-old pupil killed another with a gun from home. Gun control proponents use such tragedies to bolster many aspects of their arguments: If the guns hadn’t been available to the juveniles, they couldn’t have used them. In the case of the six-year-olds, if the gun had had a safety lock, the accident would have been much less likely to have occurred. Gun regulations with stern penalties for owners and sellers—as opposed to an outright ban on private gun ownership—would protect communities while not infringing on the individual’s basic right to bear arms, according to these arguments.

Gun control opponents offer their own statistics, using them to disagree with regulation proponents at different levels. For example, some opponents argue serious research has indicated that the “right to bear arms” stops criminal attacks approximately 2.5 million times a year. Of

Debating the Gun Issue, continued on page 21.
Many people are surprised to find out that the U.S. Constitution doesn’t have a provision specifically guaranteeing a right to privacy. We want to be protected from the government’s bothering us without proper justification. And we want the government to protect us from other individuals who wish to invade our private business in order to make money or satisfy their curiosity. It’s hard to imagine what our society would be like if we didn’t have the right to be left alone.

And we do, according to the Supreme Court. In *Katz v. U.S.*, 389 U.S. 347 (1967), the Court found that the right to privacy is implied in three amendments:

- The Fourth Amendment protects us from “unreasonable” search and seizure of our “persons, houses, and effects.”
- The Ninth Amendment tells us that the rights listed in the Constitution are not the only rights we have.
- The Tenth Amendment says that we, the people, keep powers we haven’t given to the government.

In addition, state constitutions protect us from having our privacy invaded unreasonably by government, and state and federal laws prohibit invasion of privacy by individuals. In civil court, we can sue someone who publicly discloses private information about us or who intrudes on our privacy without our permission. These types of suits usually seek damages to compensate the victim and ask the judge to order the defendant to stop invading the victim’s privacy.

**Government vs. Privacy**

The right to privacy cannot be absolute. Sometimes, people do things that endanger others. Government agents, such as police, have an interest in “invading” these people’s privacy. That’s why the Fourth Amendment protects us only from “unreasonable searches and seizures.”

We need rules that define when people’s actions justify searching their possessions and perhaps arresting them based on the evidence so gathered. The Fourth Amendment says that search or arrest is reasonable if the officials doing it have gotten a warrant from a judge. The Supreme Court has ruled that some searches are reasonable even without a warrant, such as when circumstances make it very difficult for the officials to stop what they are doing to get a warrant before continuing. These situations are called “exigent circumstances.”

Officials have to show the judge that there is probable cause before a warrant can be given. That means they have to convince the judge that a reasonable person would believe a crime has taken place and that the warrant is needed. To prove probable cause, the officials need to gather evidence, which can’t be obtained through unreasonable invasions of privacy.

In less technologically advanced times, it was easier to draw the line between acceptable means of gathering evidence and unreasonable invasions of privacy. If police officers sneaked onto a suspect’s property without a warrant to listen to a conversation at an open window, they were trespassing and the search was unreasonable. All evidence gathered was illegal and inadmissible in court. If the conversation was overheard through an open window just off a public sidewalk, without entering private property, a warrant wasn’t needed because the information was available to anyone passing by at the time.

Modern technology has made it difficult for the courts to decide exactly what government officials can do to gather evidence in a way that does not unreasonably invade an individual’s privacy. People no longer have to trespass in order to hear conversations going on inside buildings, for example, nor do they have to wiretap. Remote listening technology has made “virtual trespass” possible—for example, just pointing a microphone at a building to hear a conversation going on inside. If the police do so while investigating a suspect, is it an unreasonable invasion of the individual’s privacy?

The Supreme Court has said it is, with its new standard focusing not on how the official obtains the information, but rather on whether the person has a reasonable expectation of privacy. For example, expecting privacy while chatting with friends in a movie line isn’t reasonable, since such conversation is easily overheard by anyone. However, it’s reasonable to expect a conversation behind a closed and locked door to be private, no matter what surveillance technology exists.

*Debating the Right to Privacy,* continued on page 22
Libertarians & Communitarians

There is a range of approaches to when hate speech might be regulated. On one end is the libertarian perspective; on the other, the communitarian. In both *R.A.V.* and *Mitchell*, the Supreme Court took the libertarian approach.

Libertarians believe that individuals have the right to free speech and that government should be able to limit it only for the most compelling reasons. Most libertarians recognize fighting words as an example of a sufficiently compelling reason to limit free speech. Notwithstanding the libertarian viewpoint, the courts have been careful to interpret this exception narrowly.

Communitarians take a different approach. They believe that the community’s well-being is society’s most important goal and that an individual’s right to free speech may be limited in the interests of community harmony. They believe that treating people with fairness and dignity justifies at least some free-speech restrictions—that eliminating or reducing hate speech is a sufficiently compelling goal to justify government regulation. Communitarians would expand the fighting words doctrine to allow for increased government regulation.

Can a middle ground be found—a way to accommodate both the communitarian and libertarian perspectives? Perhaps so. Government has the obligation to protect speech by disallowing laws that are too restrictive, yet it can also encourage individuals to respect each other.

Success on Campus

Here’s how one community recently approached an incidence of hate speech by calling attention to it rather than attempting to suppress it—by encouraging speech that pointed out how out of place the hate speech was in a community that values the dignity of all.

Matt Hale, a notorious racist, was recently asked to speak at the University of Illinois at Springfield. Hale is the leader of the World of the Creator, a white supremacist group. His presence on campus was controversial. Several students, faculty, and community members thought that the university should cancel his appearance. Instead, he was allowed to speak. Hale’s audience was not impressed. He came across as having a confusing set of beliefs that were out of place in a democratic, multicultural society. Several faculty and students spoke out against his message of hatred.

By allowing Hale to speak, the university recognized free speech rights but also provided a means for community members to respond. Communitarian and libertarian goals were both met.

Debating the Gun Issue, continued

These incidents, a large number do not involve firing the weapon—just showing it is enough to make the attacker retreat. Furthermore, regulation opponents claim that there is no research to substantiate the theory that private gun ownership turns differences of opinion into bloody shootouts. In fact, since the liberalization of the concealed carry laws, over one million Americans have obtained a license to carry a firearm, and the accidental death rate has not even slightly increased. Can regulation proponents back up their claims with statistics and research, rather than simply relying on what
regulation opponents call anecdotal information? Or are such data already available, but ignored, by the other side?

Take Action!

The gun control debate is a tortured one with no end in view. The questions of whether to ban private ownership of guns, and whether and how to regulate their use, will continue to be debated by your generation. Here are some ways you can prepare to join the debate.

• Reread the text of the Second Amendment. How do you interpret what the amendment says? Why can it be interpreted in more than one way? How are both gun control proponents and opponents able to use the Second Amendment as support for their arguments?

• Make a chart in which you list arguments for gun control on one side and arguments against gun control on the other. Which side do you think has the stronger position? Why? Use the chart to help you formulate your opinion on the gun control issue.

Debating the Right to Privacy, continued

Press vs. Privacy

Our right to be protected from other people’s curiosity is not absolute. It must be balanced with another constitutionally protected right: freedom of the press, which is historically linked to political democracy.

Democracy can’t function without the free flow of information. The First Amendment prohibits the government from making any law that abridges this freedom. However, freedom of the press can conflict with the individual’s right to privacy. Civilized society requires that we each respect one another’s privacy to some level. The courts have the difficult job of deciding cases that arise when freedom of the press and the right to privacy come into conflict.

As with government cases, the courts use the reasonable-expectation-of-privacy test to draw the line between the press’s right to gather information and the individual’s right to be left alone. Decisions depend on what the victim was doing and who the victim is.

For example, when people conduct private business in a place that they can’t reasonably expect to be private—like negotiating a contract in a restaurant—they can’t sue others for divulging overheard information. Who the individual is becomes important if the person seeks public attention. Stories abound about famous people being pursued by media hounds who are bent on scooping the latest celebrity news. Perhaps the most famous, and tragic, such story is about the death of Lady Diana Spencer, Princess of Wales, who was killed in an automobile accident while fleeing reporters.

Whoever works hard to become famous, such as a politician or movie star, voluntarily gives up some expectation of privacy. Ordinary people have a greater expectation of privacy because they have not sought to draw the public’s attention to themselves. That doesn’t mean the press can do anything to get private information about celebrities, but it does mean that the press may legally disclose information about them that it can’t about people who are not famous. It’s the court’s job to decide what is a celebrity’s reasonable expectation of privacy and how it might differ from that of the average person.

Take Action!

The privacy debate will only escalate as modern technology introduces increasingly sophisticated surveillance devices to those whose job it is to gather information in the interests of the community. The questions of how to balance the right to privacy with the government’s duty to protect and the press’s freedom to inform the public will continue to be debated by your generation. Here are some ways you can prepare to join the debate about “virtual trespass.”

• The California Privacy Protection Act of 1998 creates a civil liability if one person violates another’s privacy for a commercial purpose using new visual or auditory technology. Do you think this law is a good idea? Should it be made a federal law?

• Imagine that you want to propose a constitutional amendment that guarantees a person the right to privacy. How can you keep such an amendment from conflicting with the rights guaranteed in the First and Fourth Amendments? Try writing the amendment.
Learning Gateways

### Overview of the Lesson

#### Objectives

As a result of this lesson, students will

- Consider historical forces that have shaped the U.S. Constitution via the amendment process
- Examine the constitutional amending process, focusing on why the amendment process should be approached with particular deliberation and care
- Address whether any recently proposed amendment is appropriate for consideration as an amendment

#### Target Group: Secondary

Time Needed: 3-4 class periods plus time for research

Materials Needed: Copies of articles in this issue, access to historical research materials and other resources

#### Procedures

1. Introduce the lesson by establishing students’ background knowledge of the Constitution. Focus the discussion on these points:
   a. When and how was the Constitution drafted and implemented?
   b. What are the purposes of the Constitution?
   c. How well has the Constitution met its purposes?
   d. How can the Constitution be changed, or amended?

2. Give each student a copy of the article “Towards a ‘More Perfect Union’” by Thomas E. Baker on pages 4-7, and have students read the first three sections as well as the text of Article V on page 4. Discuss the two ways the Constitution can be amended. What do they have in common? How are they different? Which one has never been used?

3. Write the information from the chart on page 24 on the board. Assign each amendment to one student. Have students find out the text of their amendment and write its meaning in their own words in the appropriate place on the chart. Discuss the general types of amendments that have been passed.

4. Use the discussion of the chart as a lead-in to a discussion of what does or does not make a constitutionally appropriate amendment. That is, when should the Constitution be amended? What kinds of issues are important enough to require amendments? Encourage students to offer their opinions. Make a list of students’ suggestions on the board. (For a detailed discussion of reasons and methods for studying constitutional amendments, look for the full text of Stephen Schechter’s article “Amending the Constitution: Current Proposals” online at www.insightsmagazine.org.)

5. Point out that many people have given thought to the question of when to amend the Constitution. Some have offered standards that they feel must be met before an amendment is even proposed. (For other views on the amending process, see the articles in “Voices” on pages 14–16. You may wish to share these articles with students.)

6. Divide students into four groups according to their assigned amendments. The groups are to examine in detail the four periods of constitutional history reflected by the amendments as shown in the chart. Each group is to do the following:
   a. Research the intent of the amendments and the historical forces that impacted upon and/or resulted in...
I. Bill of Rights, 1791

Amendment 1 (1791): ______________________
Amendment 2 (1791): ______________________
Amendment 3 (1791): ______________________
Amendment 4 (1791): ______________________
Amendment 5 (1791): ______________________
Amendment 6 (1791): ______________________
Amendment 7 (1791): ______________________
Amendment 8 (1791): ______________________
Amendment 9 (1791): ______________________
Amendment 10 (1791): ____________________

II. Early Constitutional History, 1798–1870

Amendment 11 (1795; proclaimed 1798): ________________
Amendment 12 (1804): ________________
Amendment 13 (1865): ________________
Amendment 14 (1868): ________________
Amendment 15 (1870): ________________

III. Early Twentieth Century, 1913–33

Amendment 16 (1913): ________________
Amendment 17 (1913): ________________
Amendment 18 (1919): ________________
Amendment 19 (1920): ________________
Amendment 20 (1933): ________________
Amendment 21 (1933): ________________

IV. Modern Amendments, 1951–92

Amendment 22 (1951): ________________
Amendment 23 (1961): ________________
Amendment 24 (1964): ________________
Amendment 25 (1967): ________________
Amendment 26 (1971): ________________
Amendment 27 (1992): ________________

the passage of each. (For example, the Reconstruction amendments grew out of the need for the Constitution to address issues raised by the Civil War.) As part of their research, have students read the rest of the Baker article. Students in Group 4 should read the article “Up Close: Three Recent Amendments” by John Vile on pages 8–10.

b. Rate the amendments for each period. Ratings should enable analysis of whether amendments have been passed that should not have been and, if so, why.
c. Deliver a class presentation on the findings in (a) and (b).

7. Using www.thomas.loc.gov, as well as magazine and newspaper Web sites or printed materials, including the article “Amending the Constitution: Current Proposals” by Stephen Schechter on pages 11–13, have student groups research constitutional amendment proposals currently being considered by Congress. Ask each group to prepare a report on one of the proposed amendments. Groups will report in detail about the proposed amendments to the class. Copies of their reports should be made available to the class.

8. Have student teams pair off to build and present arguments for and against any of the proposed amendments. After the presentation of arguments, have the class vote on the proposed amendments. Which amendments do they think should be added to the Constitution? Which should not be added? What arguments influenced their decisions?

For more lessons, go to insightsmagazine.org
Coming November 1, 2000

The Case Schools in the Santa Fe Independent School District in Texas have had a long tradition of beginning football games with a prayer. Facing court challenges to that tradition, the district established the following policy:

1. Students could determine by secret ballot if they wanted a pregame student speaker at their football games.
2. If they decided they wanted one, they then had to decide, by a secret ballot, who that student speaker would be.
3. The speaker who was chosen by the second secret ballot would then decide what message and/or invocation to give. The student could say anything he or she wanted, as long as it was consistent with promoting good sportsmanship.
4. The school would not preapprove the content of the student’s remarks.

The Decision The question for the Supreme Court was this: Did this policy permitting “student-led and student-initiated” prayer violate the First Amendment? The court voted 6-3 that it did, saying that prayers delivered before high-school games are not private speech, and that the games are not a public forum at which students have an unbridled right to free expression.

The distinction between “public” (i.e., government-sponsored speech) and “private” speech was crucial to the majority’s analysis because, as the Court made clear in 1990, in a case called Board of Education v. Mergens, 496 U.S. 226 (1990), both the Free Speech and Free Exercise Clauses in the First Amendment protect private speech endorsing religion.

“There is a crucial distinction,” the Court said in Mergens, “between government speech endorsing religion, which the Establishment Clause forbids, and private speech endorsing religion, which the Free Speech Clause and Free Exercise Clause protect.”


The Case This highly controversial case began when the Boy Scouts refused to appoint a young gay man named James Dale to the position of assistant scoutmaster. Dale sued the Scouts under the New Jersey Law Against Discrimination, which forbids discrimination in public accommodations on the basis of race, creed, color, national origin, ancestry, marital status, sex, affectional or sexual orientation, or nationality.

The New Jersey Supreme Court ruled that the Scouts’ refusal to appoint a gay person to this position violated the New Jersey Law Against Discrimination, and it ordered them to give Dale the leadership position, which the Scouts did not want to do.

The Scouts frankly conceded that the only reason they opposed the appointment was that Dale had publicly described—in newspaper interviews—how he had become active in the gay rights movement and why he believed there was a need for more role models for gay and lesbian teenagers. They acknowledged that Dale had been an outstanding Scout—that he was in fact an Eagle Scout who had won numerous other Scouting awards before going away to college. But they argued that when deciding whom to appoint to leadership positions, they had a First Amendment right—a freedom of association—to decline to appoint openly gay people if making such appointments would run counter to their moral beliefs and organizational principles. And they argued that homosexual conduct is in fact inconsistent with the Scout Oath to be “morally straight” and contrary to...
the Scout Law, which requires Scouts to be “clean” in word and deed.

The Scouts maintained that freedom to associate—and not associate—with others is an unwritten constitutional right, a necessary corollary to their First Amendment right to peaceably assemble, petition the government, and exercise free speech and religion. They argued that the case should be decided in the same way the Court had decided Hurley v. Irish-American Gay, Lesbian and Bisexual Group of Boston, Inc., 515 U.S. 557, a 1995 case in which the Court ruled that the Boston’s St. Patrick Day parade had the right to exclude a gay rights contingent because the participation of that group would have interfered with the parade organizers’ right to propound one view (respect for St. Patrick and allegiance to the teachings of the Roman Catholic Church) and not to propound a different view (of support for gay rights).

Dale and his supporters, on the other hand, argued that the case should be decided along the lines of gender discrimination cases such as Roberts v. United States Jaycees, 468 U.S. 609, a 1984 case in which the Court held that the Jaycees did not have a First Amendment right to exclude women.

The Decision By a 5-4 vote, the Court held that the Scouts’ First Amendment right to freedom of association was strong enough to act as a shield against the New Jersey discrimination law, with five of the justices finding that Dale’s case more closely resembled the St. Patrick’s Day case than the Jaycees’ case.

Computers in Religious Schools: Mitchell v. Helms

(No. 98-1648) (June 28, 2000)

The Case Mitchell v. Helms considered whether Chapter 2 of the 1965 Elementary and Secondary Education Act was unconstitutional because it authorizes the government to lend computers, software, and library books to students who are enrolled in religious as well as public schools. The law works by channeling federal grants for special services and equipment through public school districts, with the requirement that the items acquired with the money must be shared equally, on a “secular, neutral and nonideological” basis, with students attending any accredited public or private (including religious) schools within the district’s boundaries.

What Congress had in mind when it passed this law in 1965 was equipment such as overhead and reel-to-reel film projectors. But recently a major goal of the program has been to make computers available to as many students as possible.

For years, the question of whether this sort of aid violates the Establishment Clause when it makes its way into religious schools has been addressed by the so-called “Lemon test,” named after Lemon v. Kurtzman, 403 U.S. 602 (1971), the case in which it was announced. This test provides that to withstand an Establishment Clause challenge, a government policy must be shown to have a secular purpose to have a principal effect that neither advances nor inhibits religion not to foster excessive government entanglement with religion These are called the “three prongs” of the Lemon test.

Critics have long complained that the Lemon test has led to absurd results, with the Court in a case called Board of Education v. Allen, 392 U.S. 236 (1968), saying it was OK for the government to give parochial schools textbooks, but saying in two other cases—Meek v. Pittenger, 421 U.S. 349 (1975), and Wolman v. Walter, 433 U.S. 229 (1977)—that it could not provide them with other materials, such as world maps—a circumstance that led Senator Daniel Patrick Moynihan to wonder what the Court would do with an atlas. See Cong. Rec. 25661 (1978).

The Decision Writing for the Supreme Court, Justice Thomas agreed with the critics, saying that while the first two prongs of the Lemon test still needed to be answered affirmatively in these sorts of cases, under Agostini v. Felton, 521 U.S. 203 (1997), a post-Lemon case, Lemon’s third prong—the excessive entanglement inquiry—was now just one of the criteria relevant to determining a statute’s “principal effect.” Analyzing the law under Agostini’s modified “purpose and effect” test, then, he overruled Meek and Wolman and concluded that because Chapter 2 “neither results in religious indoctrination by the government nor defines its recipients by reference to religion,” the law is not a “law respecting an establishment of religion” and should be upheld.
News from Capitol Hill

Review of Issues Facing Congress

The clock is ticking in the legislative arena, and time is running out, again. The 106th Congress is looking at its usual abbreviated election-year session, having already had the traditional August recess and facing a scheduled adjournment in early October in order to prepare for the November elections.

A number of bills before the Congress this year are of special interest to youth and the school community. Of these, one became law, one (although approved by both houses) is in a hopeless state of deadlock in a conference committee, and the others have received little attention.

PUBLIC LAW 106-71 (S.249/S.249.ENR)

This new law authorizes funding for studies on

• Marketing practices of the motion picture, recording, and computer game industries as to the extent they distribute materials unsuitable for minors
• Incidents of school-based violence
• Cultural influences on the development of character in America’s youth
• Marketing practices of the firearms industry as to its impact on juveniles

The bill was passed by both the House and the Senate and ended up deadlocked in a conference committee that could not agree on some gun control measures in the Senate version. With little time left in the congressional session before sine die adjournment, and little chance of a lame duck session after the election (with a Democratic president and a Republican Congress), the legislation appears dead. But that a bill would make it so far suggests the likelihood of a future resurrection.

See These Senate Bills

The proposals summarized below originated in the Senate and are likely to receive continuing attention in both houses of Congress.

• Violence Prevention Training for Early Childhood Educators Act (S.981) This bill would support programs to prepare preschool and elementary instructors to teach children nonviolent ways to resolve conflict.

• America After School Act (S.316) Juvenile delinquency peaks between 3 and 8 P.M. each day. This proposal supports offering students after-school tutoring, mentoring, and recreational and cultural activities as a logical means of reducing youth crime while at the same time helping them strengthen computer skills, explore career options, learn about the arts, increase physical fitness, and develop new interests.

State News

Florida Is Tough on Teens

Florida Governor Jeb Bush recently signed a package of bills into what is probably the nation’s toughest set of juvenile crime laws. Calling the five new laws a “tough-love” approach, Bush said they will result in a dramatic reduction in the state’s youth crime. One provision requires 16- and 17-year-olds who commit gun crimes and have prior felony records to be jailed for at least 10 years in an adult prison. If a gun is fired, the sentence is raised to 20 years, and if someone is killed as a result of being shot, the time is life. Another provision requires 16- and 17-year-olds who commit a fourth violent felony—crimes such as murder, rape, armed robbery, carjacking, or aggravated assault—to be prosecuted and punished as adults. Florida, with a projected teen population of some 3.7 million by the year 2007, is the only state that applies mandatory sentencing to juveniles. For more information, see www.spokane.net/news
• **Juvenile Crime Control and Community Protection Act (S.838)**  This bill would authorize a grant program for states that adopt juvenile delinquency prevention programs that encourage schools to enforce tough truancy rules, offer character training courses, and provide mentoring for students at risk of delinquency. The bill would also provide for public access to juvenile proceedings, mandatory victim restitution, and parental responsibility for acts committed by juveniles released into parental custody.

• **Juvenile Justice and Delinquency Prevention Act (S.993)**  Another proposal that stresses prevention over punishment, S.993 would reduce juvenile delinquency by providing federal funds to local law enforcement prosecutors, juvenile courts, and schools to develop creative, community-tailored strategies for youth crime deterrence. Supporters say the legislation is needed because there are 39 million children about to enter their teen years, when they will be most at risk of turning to drugs and crime. Even if the rate of capital crimes by youth does not rise, by 2005 there will be a 20 percent increase in murders committed by juveniles.

• **Youth Violence Prevention Act (S.991)**  This proposal would prevent juveniles from illegally obtaining weapons and punish those who assist them in doing so, prohibit juveniles who commit acts of gun-related violence from buying guns in the future, and punish juveniles who carry or use handguns in schools.

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**Learn More**

**At thomas.loc.gov**

To see the full text of Congressional bills as sent to the president, enter the bill number (e.g., S.249, H.R.1501) at thomas.loc.gov.

For useful, related information to help you better understand the bill, select “References to bill in Congressional Record.”

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**Start at the Senate …**

There are many ideas that make it into, but not through, the legislative process. In fact, only about 3 percent of bills introduced in Congress become law during any given two-year term. (Even appropriation bills, which are essential for running the government effectively, sometimes fall by the wayside and must be supplanted by what is called a continuing resolution, which permits federal agencies to operate at the funding level of the previous year, or at a higher level approved by the House, if applicable.) Some of these bills will eventually be argued in both houses of Congress and perhaps passed. As a part of this process, there may be several versions of each bill introduced by different sponsors in each house. Unlike the House, the Senate permits sponsors to include a statement at the time of introduction. These statements are a good starting point for researchers and others who wish to understand the bills.
Amending the Constitution

Teaching with the News

by Wendy Bay Lewis and Charles F. Williams

Learn About the Initiative Process—a “hot” election-year topic that you and your students will be hearing and reading about in all the media this fall. Identify the issues in this article, and then consider the additional information and frequently asked questions on the Web at insightsmagazine.org, as well as ways to weave this timely constitutional issue into your fall curriculum.

Is the initiative process a healthy check on government or a dangerous shortcut?

The U.S. Constitution provides that our elected Congress will make our laws, our courts will interpret them, and our president will enforce them. Every state constitution shares this vision of government—that we are a republic rather than a direct democracy.

What, then, are we to make of referendum and voter initiatives that bypass the legislative process altogether and empower citizens to “enact” laws or amend their state constitutions directly by voting yes or no on measures ranging from the death penalty to taxes?

In a May 17 interview with state-line.org, David S. Broder, a Washington Post correspondent and the author of Democracy Derailed: Initiative Campaigns and the Power of Money, explained his concern that the initiative bandwagon at the state level has “developed critical mass and momentum, so that it becomes almost an alternative form of government.”

“I think,” said Broder, “it’s now simply a question of whether we want to have as a substitute for representative government the kind of direct democracy, plebiscitary, majority rule that the founders, in their wisdom, thought represented a danger, one, of political instability and, two, of regular threats to individual freedom and minority rights.”

Among his concerns are the increasing popularity “among interest groups and wealthy individuals in using the initiative process to short-cut all of the checks and balances of the legislative process,” the worry that voters will have difficulty in making informed judgments when confronted with a large number of initiatives all at once, and the belief that the “distortion and misrepresentation that take place sometimes in initiative campaigns go well beyond what most consultants think they could get away with safely under the press scrutiny that goes to candidate races.”

Supporters of the initiative process, on the other hand, such as the Washington, D.C.-based Initiative and Referendum Institute, argue that the process has never been recommended as “a replacement to our representative democracy—it is simply an additional check and balance on those that are in power.” Pointing out that initiatives have been “supported and proposed by people like Thomas Jefferson, Theodore Roosevelt, Woodrow Wilson, and William Jennings Bryan,” the Institute denies that the initiative process is either a form of “direct democracy” or used as a “day-to-day lawmaking mechanism.” Instead, the Institute contends that “it has been used when elected officials have been unable or unwilling to deal with the issues supported by the people—like term limits, tax limits, campaign finance reform, etc.”

The Institute argues that the initiative process is not a tool of special interests but rather that it increases voter turnout while actually being successfully used by individuals of all political persuasions.

The Initiative and Referenda Process gives voters the opportunity to enact new laws and change existing laws at the ballot box. In recent elections, ballot measures have been passed at the state level to allow physician-assisted suicide, end affirmative-action programs in state hiring and education, and establish state lotteries. Many proposed initiatives never qualify to be placed on the ballot. However, of those that do, approximately half become law. Therefore, ballot measures make it possible for voters to determine public policy on a wide variety of issues.

Wendy Bay Lewis is the founder of CivicMind.com.
Meanwhile, even as state legislatures wrestle with those arguments about the wisdom of allowing an initiative and referendum process at all, the U.S. Supreme Court has been asked to rule on the legality of governmental restrictions on it. And, in most instances, the Court has not hesitated to disallow any regulations that could impinge on the First Amendment political speech rights of initiative supporters.

Quiz

It’s History!

Which state has used the initiative and referenda process most often since 1902? Circle one.

- California
- Florida
- New York
- Oregon
- Texas

It’s a Fact!

Which state has the most ballot measures—26—on its ballot this election year? Circle one.

- California
- Florida
- New York
- Oregon
- Texas

Research Pointers on Ballot Initiatives

Searching for news stories about initiatives that will be on the November ballot? Stateline.org provides a daily news roundup, profiles of each state, and guides to important issues. www.stateline.org

For each state, the Initiative and Referendum Institute provides a brief history of the initiative process, including the personalities who popularized ballot measures, and the basic steps for qualifying a measure for the ballot. This site loads very slowly unless you have a fast Internet connection. www.iandrinstitute.org

The Institute tracks ballot initiatives on a separate site that includes a searchable database. You will need to provide your e-mail address and receive a special password before you can use the database. www.ballotwatch.com

The Ballot Initiative Strategy Center profiles initiatives supported by progressives, such as gun control, environmental protection, and civil liberties. www.ballot.org

Each secretary of state posts the status of petitions that are circulating or have qualified for the next election. Go to the member page of the National Association of Secretaries of State to find your secretary of state. www.nass.org/members/members.htm

Many initiative proponents and opponents have their own Web sites and list talking points. The California Voter Foundation, which promotes digital democracy as well as voter education, has links to sites on California propositions. www.calvoter.org/2000preview/measures.html

For example, there are pro and con sites for the California school voucher initiative known as Proposition 38. www.38yes.com and www.NoVouchers2000.com

Now come online to ...

... Answer These Questions

1. What are the three types of ballot measures?
2. What are the rules for circulating the petition required before placing an initiative on the ballot?
3. What are the steps for placing an initiative on the ballot?
4. Are there any related costs?
5. Which states use the ballot initiative process?
6. Can an initiative still be challenged — even after voter approval?
7. Why are initiatives so controversial?
8. What initiatives will be on the November 2000 ballot?

... Review These Decisions

- Buckley v. American Constitutional Law Foundation, supct.law.cornell.edu/supct/html/97-930.ZS.html, in which the Supreme Court affirmed the Tenth Circuit Court of Appeals’ decision to strike down three of the many requirements Colorado placed on the initiative-petition process
- Meyer v. Grant, laws.findlaw.com/us/486/414.html, in which the Court struck down a statutory prohibition against the use of paid circulators in Colorado as an unconstitutional abridgment of the First and Fourteenth Amendments’ right to engage in political speech
SAFE Colorado successfully petitioned to put a gun-control question on that state’s November ballot. Colorado requires the valid signatures of about 62,500 voters. A Columbine-inspired measure, SAFE (Sane Alternatives to the Firearms Epidemic) supports a key piece of Republican Governor Bill Owens’s gun-control package, requiring a telephone background check of anyone seeking to purchase a firearm at a gun show. In July, gun-rights groups lost court challenge to SAFE. A full report on Colorado’s SAFE ballot initiative, as well as details about other Election 2000 initiatives in Colorado and all the other states, is available at www.ballotwatch.org.

**Answers—Pages 30 and 31**

**Match States with Initiatives**

Match States with Initiatives to be included on their November ballots. Have your class follow the news to see which initiatives succeed in these and other states.

<table>
<thead>
<tr>
<th>State</th>
<th>Voting on Whether to ...</th>
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<tbody>
<tr>
<td>1. Alaska</td>
<td>a. ban discrimination based on sexual orientation</td>
</tr>
<tr>
<td>2. Arizona</td>
<td>b. prohibit any dog racing</td>
</tr>
<tr>
<td>3. Maine</td>
<td>c. use state bingo revenues for its residents’ property tax relief</td>
</tr>
<tr>
<td>4. Massachusetts</td>
<td>d. prohibit initiatives dealing with wildlife and hunting</td>
</tr>
<tr>
<td>5. Nevada</td>
<td>e. prohibit video lottery</td>
</tr>
<tr>
<td>6. South Dakota</td>
<td>f. earmark millions in tobacco settlements for health care for poor working families</td>
</tr>
<tr>
<td>7. Wisconsin</td>
<td>g. ban same-sex marriages</td>
</tr>
</tbody>
</table>

**It’s a Fact!**

Oregon; with 26... Use These Links

- www.civicmind.com—for more annotated links on the ballot measure controversy
- www.iandrinstitute.org—for the Initiative and Referendum Institute
- www.stateline.org—for the full text of the interview with David Broder as well as state-specific initiative and referendum news

**It’s History!**

Oregon; 300 since 1992

**Here’s a Look at SAFE Colorado**

SAFE Colorado successfully petitioned to put a gun-control question on that state’s November ballot. Colorado requires the valid signatures of about 62,500 voters. A Columbine-inspired measure, SAFE (Sane Alternatives to the Firearms Epidemic) supports a key piece of Republican Governor Bill Owens’s gun-control package, requiring a telephone background check of anyone seeking to purchase a firearm at a gun show. In July, gun-rights groups lost court challenge to SAFE. A full report on Colorado’s SAFE ballot initiative, as well as details about other Election 2000 initiatives in Colorado and all the other states, is available at www.ballotwatch.org.

**Select Activity Ideas**

1. **Taking action**: Have students practice the initiative process by using it to change a school policy. Ask them to identify an issue such as recycling or school uniforms, then draft a petition to change the current policy or create a new one, write talking points, and collect student signatures.

2. **Current events discussion**: There are hundreds of initiatives and referenda on the ballot at the state and local levels. Ask students to research actual initiatives on issues such as health care, gambling, and school vouchers. They can use print and electronic media to track the measures, see how they fare on election day, and watch for possible challenges in court.

3. **Classroom debate**: Students can debate/discuss the benefits of the legislative process vs. the initiative process. Are there benefits to both? Are there problems with both? Do citizens have equal access to both? Do special interests influence both?
For Your Information . . .

- **Insights Winter 2001 Edition**
  Has First Amendment jurisprudence changed as America’s religious landscape has diversified? How do today’s controversies about separation of church and state echo debates of the Founders? In what ways are the school prayer and school voucher issues affecting today’s classroom? You’ll find out in *Insights* Winter 2001 Religion in America Edition.

- **Election 2000**
  Want your class to take a close look at the importance of voting, its history in America, the nature and effects of polling, and voter registration during this campaign season? Download our instructional features on these topics, with independent student activities, at www.lawday.org

- **Photo Competition**
  Start getting ready for Law Day 2001 by entering your students in the Images of Freedom Student Photography Competition. Each year, the ABA invites students ages 12–18 to submit a photo that best captures an aspect of law in their community. First-prize winner receives a $1,000 U.S. Savings Bond and national coverage, plus a free trip to Washington, D.C., with his or her teacher to receive the award. Visit www.lawday.org for rules, entry forms, and more about Law Day 2001!