



# CONSOURCE

*The Constitutional Sources Project*

## THE CONSTITUTION IN ACTION: THE EARLY REPUBLIC

### Origin of the Bill of Rights: Madison's Amendments

#### TIME AND GRADE LEVEL

**One** 45 or 50 minute class period in a **Grade 9-12** US history, civics, or government course.

#### PURPOSE AND CRITICAL ENGAGEMENT QUESTIONS

History is the chronicle of choices made by actors/agents/protagonists in specific contexts. This lesson places students at the First Federal Congress and asks them to respond to the amendments James Madison proposed on June 8, 1789. Which of Madison's proposals should they amend to the Constitution? Should they consider amendments proposed at state ratifying conventions as well? Whatever they decide on these matters, should amendments be placed at the end of the Constitution or woven into the body of the text, as Madison preferred? By engaging in this process, students will view the twelve amendments that emerged from the First Federal Congress, ten of which became the Bill of Rights, not as foregone conclusions but as the consequence of considered deliberations.

#### LESSON OBJECTIVES

\* Students will be able to explain the actual process by which the first ten amendments were added to the Constitution.

\*Students will be able to explain the problematic politics of the moment: A. Many Federalist members of Congress felt pressed to create an infrastructure for the new government and saw no need to protect against powers the government had not been granted. B. Several Anti-Federalist members pushed for more sweeping measures than Madison proposed.

\*Students will be able to argue for or against each of Madison's proposed amendments on its merits.

\*Students will be able present both sides of the argument over where to place amendments—at the end or within the body of the Constitution.

## OVERVIEW OF THE LESSON

### Prefatory homework:

Handout A: Madison's Proposed Amendments

### In class:

1. Homework review: 5-10 minutes
2. Congress's response to Madison's amendments: 5-10 minutes
3. Discussion and debate groups respond to Madison's amendments: 20-25 minutes
4. Should amendments be woven into the body of the Constitution or placed at the end? — 5-10 minutes
5. Presentation of the historical Outcome: 5-10 minutes

Summary homework / Extended activities

## MATERIALS

*Homework and class handouts*

- A. Madison's Proposed Amendments
- B. Congress's Response to Madison's Amendments
- C. Should Amendments Be Woven into the Body of the Constitution or Placed at the End?
- D. Historical Outcome: Congress's Twelve Amendments and the Bill of Rights
- E. Vocabulary List

## PREFATORY HOMEWORK

Students read and respond to questions in Handout A: "**Madison's Proposed Amendments.**"

## CLASS ACTIVITY: 45-50 MINUTES

### 1. Homework Review: 5-10 minutes

Discuss questions Handout A: "**Madison's Proposed Amendments.**"

*Which of Madison's proposed amendments is a restatement of the principles embodied in the preamble of the Declaration of Independence?*

Response: Madison's first amendment.

*Do you recall any of the state amendments including a variation of this?*

Response: It topped the list for both Virginia and New York.

*Why do you think Madison wanted to make this an amendment to the Constitution?*

Answers will vary, but the general idea is that the Constitution should include a full statement of the principle of popular sovereignty—government must rest on the will of the people.

OPTIONAL: *The Declaration of Independence stated, “Whenever any Form of Government becomes destructive of these ends, it is the Right of the People **to alter or to abolish it**, and to institute new Government.” Compare this to Madison’s wording of this principle: “The people have an indubitable, unalienable, and indefeasible right **to reform or change** their Government, whenever it be found adverse or inadequate to the purposes of its institution.” Why do you think Madison avoided the word “**abolish**”?*

Response: In 1776, Americans were intent on abolishing British rule, but the Constitution was homegrown—Americans were ruling themselves. Madison did not want people to abolish the form of government he and the other framers had just created, and the people of America had approved. If they didn’t like certain features, the Constitution gave them the authority to change those features while leaving the rest intact.

*Which of Madison’s proposed amendments addressed issues that are covered in what we know as the Bill of Rights?*

Response: Madison’s fourth, fifth, seventh, and the last part of the eighth. Rather than go over each one at this juncture, perhaps just note the one or two phrases that were incorporated into the Bill of Rights, and also one or two changes in wording. Tell students they will have the opportunity to discuss these changes when they examine certain amendments in depth in upcoming lessons.

*Which of Madison’s proposed amendments is a formal statement of what we now call “separation of powers”?*

Response: Madison’s eighth amendment.

## **2. Congress’s response to Madison’s amendments: 5-10 minutes**

Tell students to imagine themselves as members of the First Federal Congress. Then instruct: *Madison has asked you, as a member of the First Federal Congress, to consider his amendments. You will discuss this shortly, but first read some brief passages from the historical debate in Congress.*

Distribute Handout B: “**Congress’s Response to Madison’s Amendments.**”

Instruct: *Read to yourself, and when you are finished, consider the questions posed at the end. Think these over while others complete the reading. If you wish, highlight passages or jot down notes as you prepare to discuss these questions in your D & D groups.*

## **3. Discussion and debate (D & D) groups respond to Madison’s amendments: 20-25 minutes**

Instruct students:

*This is your chance, as a member of Congress, to respond to Madison’s amendments. You will do so in three ways. First, is it appropriate to consider amendments before the Constitution has had “a fair trial”? Second,*

*assuming Congress will in fact consider amendments, should it consider the many amendments offered by state ratifying conventions as well as Madison's? Finally, you can open discussion on any particular amendment on Madison's list – or on the list from a state ratifying convention. We will not come to a decision on these at this time, however. We will be discussing specific amendments in greater depth later on.*

Class management: After a few minutes, stop the discussion on whether to take up amendments at this time. Take a vote. If the class has participated in the Constitutional Convention simulation, tell students that this time they will not be voting by state delegations; instead, each member of the House of Representatives has one vote.

If the class votes to take up the amendments, proceed. If not, also proceed but with a statement along this line: “Our class has just opted not to take up amendments—and that was the wish of many members of Congress, particularly Federalists who had opposed amendments all along. But historically, Congress finally agreed to consider amendments, so we will now consider them as well.”

Instruct students to move on to the next issue: whether to consider state amendments along with Madison's. Again, after a few minutes, take a vote. If the class votes not to, proceed to the next step. If the class votes to consider state amendments as well, you have two options:

1. You can acknowledge that although the class has decided to consider state amendments, the class will proceed by simulating the historical debates in the First Federal Congress and consider only Madison's.
2. You can use this as a teachable moment: Now that state amendments are fair game, which ones that were not on Madison's list do students wish to bring forth? Since the field will open considerably, go with it. In the end, this will highlight the meta-message of the lesson: the Bill of Rights resulted from decisions that might have gone otherwise.

Whatever the class decides on the two matters above, finish by allowing students to discuss individual amendments. Instruct: *Look at your list of Madison's amendments, on which you noted ones you think were essential. Put these forth now. Also, you can put forth an amendment of your own, or one presented by a state ratifying convention. We will not vote on these, but let's open the field. There was no “right” answer for what amendments Congress would approve. Which additions or changes to the Constitution do you think would be most important?*

#### **4. Should amendments be woven into the body of the Constitution or placed at the end? 5-10 minutes**

**[This is optional. If you want to focus more on student responses to Madison's amendments, this section can be omitted.]**

Instruct: Several state constitutions drafted during the Revolutionary War safeguarded specific rights. Some states wove these into the body of their constitutions, others attached a “declaration of rights” separately. Which method should Congress adopt? Read Handout C: **“Should Amendments Be Woven into the Body of the Constitution or Placed at the End?”** After allowing time for reading, engage the class in a short discussion/debate and then take a vote. Alternately, students can discuss the matter in their D & D groups before voting.

## 5. Presentation of the historical outcome: 5-10 minutes

Present Handout D, “**Historical Outcome: Congress’s Twelve Amendments and the Bill of Rights.**” Teachers can present this orally, or students can read it—or both (a brief presentation of the results of debates, then give the handout to students so they have the list of twelve amendments). Follow up questions and activities are listed below.

### SUMMARY HOMEWORK/EXTENDED ACTIVITIES

1. Compare Madison’s original list with the list that emerged from Congress, ten of which were ratified and are called the Bill of Rights. Comment on omissions, additions, or changes of wording you think are significant.
2. Are there any you would write differently, either to make them clearer or to alter their meaning?
3. Are there any amendments, either from Madison’s list or the lists prepared by state ratifying conventions, you think should have been added?
4. How might history have unfolded differently if any of your suggestions in #2 or #3 had been adopted?
5. Imagine Madison’s #1 had been approved. This stated that people form governments, in part, for the purpose of “pursuing and obtaining happiness and safety.” If “safety” had been enshrined in the Constitution, how might that have affected environmental regulations?

## Madison's Amendments Handout A: [Madison's Amendments](#)

On [June 8, 1789](#), James Madison, a representative from Virginia, asked the House of Representatives to consider a number of amendments to the Constitution. Here is his list. When Madison mentions an article, section, and clause, he is referring to the Constitution that had been ratified the previous year. Note that several of his amendments contain several distinct proposals.

**First**, That there be prefixed to the Constitution a declaration, that all power is originally vested in, and consequently derived from, the people.

That Government is instituted and ought to be exercised for the benefit of the people; which consists in the enjoyment of life and liberty, with the right of acquiring and using property, and generally of pursuing and obtaining happiness and safety.

That the people have an indubitable, unalienable, and indefeasible right to reform or change their Government, whenever it be found adverse or inadequate to the purposes of its institution.

**Secondly**. That in article 1st, section 2, clause 3, these words be struck out, to wit: "The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such enumeration shall be made;" and that in place thereof be inserted these words, to wit: "After the first actual enumeration, there shall be one Representative for every thirty thousand, until the number amounts to \_\_\_\_, after which the proportion shall be so regulated by Congress, that the number shall never be less than \_\_\_\_, nor more than \_\_\_\_, but each State shall, after the first enumeration, have at least two Representatives; and prior thereto."

**Thirdly**. That in article 1st, section 6, clause 1, there be added to the end of the first sentence, these words, to wit: "But no law varying the compensation last ascertained shall operate before the next ensuing election of Representatives."

**Fourthly**. That in article 1st, section 9, between clauses 3 and 4, be inserted these clauses, to wit: The civil rights of none shall be abridged on account of religious belief or worship, nor shall any national religion be established, nor shall the full and equal rights of conscience be in any manner, or on any pretext, infringed.

The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable.

The people shall not be restrained from peaceably assembling and consulting for their common good; nor from applying to the Legislature by petitions, or remonstrances, for redress of their grievances.

The right of the people to keep and bear arms shall not be infringed; a well armed and well regulated militia being the best security of a free country: but no person religiously scrupulous of bearing arms shall be compelled to render military service in person.

No soldier shall in time of peace be quartered in any house without the consent of the owner; nor at any time, but in a manner warranted by law.

No person shall be subject, except in cases of impeachment, to more than one punishment or one trial for the same offence; nor shall be compelled to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor be obliged to relinquish his property, where it may be necessary for public use, without a just compensation.

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

The rights of the people to be secured in their persons; their houses, their papers, and their other property, from all unreasonable searches and seizures, shall not be violated by warrants issued without probable cause, supported by oath or affirmation, or not particularly describing the places to be searched, or the persons or things to be seized. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, to be informed of the cause and nature of the accusation, to be confronted with his accusers, and the witnesses against him; to have a compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence.

The exceptions here or elsewhere in the Constitution, made in favor of particular rights, shall not be so construed as to diminish the just importance of other rights retained by the people, or as to enlarge the powers delegated by the Constitution; but either as actual limitations of such powers, or as inserted merely for greater caution.

**Fifthly.** That in article 1st, section 10, between clauses 1 and 2, be inserted this clause, to wit: No State shall violate the equal rights of conscience, or the freedom of the press, or the trial by jury in criminal cases.

**Sixthly.** That, in article 3d, section 2, be annexed to the end of clause 2d, these words, to wit: But no appeal to such court shall be allowed where the value in controversy shall not amount to \_\_\_ dollars: nor shall any fact triable by jury, according to the course of common law, be otherwise re-examinable than may consist with the principles of common law.

**Seventhly.** That in article 3d, section 2, the third clause be struck out, and in its place be inserted the clauses following, to wit: The trial of all crimes (except in cases of impeachments, and cases arising in the land or naval forces, or the militia when on actual service, in time of war or public danger) shall be by an impartial jury of freeholders of the vicinage, with the requisite of unanimity for conviction, of the right of challenge, and other accustomed requisites; and in all crimes punishable with loss of life or member, presentment or indictment by a grand jury shall be an essential preliminary, provided that in cases of crimes committed within any county which may be in possession of an enemy, or in which a general insurrection may prevail, the trial may by law be authorized in some other county of the same State, as near as may be to the seat of the offence.

In cases of crimes committed not within any county, the trial may by law be in such county as the laws shall have prescribed. In suits at common law, between man and man, the trial by jury, as one of the best securities to the rights of the people, ought to remain inviolate.

**Eighthly.** That immediately after article 6th, be inserted, as article 7th, the clauses following, to wit: The powers delegated by this Constitution are appropriated to the departments to which they are respectively distributed: so that the Legislative Department shall never exercise the powers vested in the Executive or Judicial nor the Executive exercise the powers

vested in the Legislative or Judicial, nor the Judicial exercise the powers vested in the Legislative or Executive Departments.

The powers not delegated by this Constitution, nor prohibited by it to the States, are reserved to the States respectively.

**Ninthly.** That article 7th be numbered as article 8th.

#### QUESTIONS:

1. Which of Madison's proposed amendments is a restatement of the principles embodied in the preamble of the Declaration of Independence?
2. Which of Madison's proposed amendments address issues that are covered in what we now know as the federal Bill of Rights?
3. Which of Madison's proposed amendments is a formal statement of what we now call "separation of powers"?
4. Read through Madison's proposed amendments once again. This time, place the word "Yes" beside any provision within an amendment that you think should *absolutely* be added to the original Constitution. Place "No" beside any provisions that you think do not have to be added. (This does not mean you disagree with the provision. If you write "No," that just means that you do not think it warrants a place in the Constitution.) You do not have to put "Yes" or "No" beside every item. If you don't have a firm opinion, or don't fully understand the amendment, feel free to leave it blank.

## Madison's Amendments Handout B: Congress's Response To Madison's Amendments

*Madison's amendments received a cool response. Several congressmen said the House should postpone any talk of amendments until the government was up-and-running. Here is the response from James Jackson of Georgia:*

**Mr. JACKSON:** I am of opinion we ought not to be in a hurry with respect to altering the Constitution. For my part, I have no idea of speculating in this serious manner on theory. If I agree to alterations in the mode of administering this Government, I shall like to stand on the sure ground of experience, and not be treading air. What experience have we had of the good or bad qualities of this Constitution? Can any gentleman affirm to me one proposition that is a certain and absolute amendment? I deny that he can. Our Constitution, sir, is like a vessel just launched, and lying at the wharf; she is untried, you can hardly discover any one of her properties. It is not known how she will answer her helm, or lay her course; whether she will bear with safety the precious freight to be deposited in her hold. But, in this state, will the prudent merchant attempt alterations? Will he employ workmen to tear off the planking and take asunder the frame? He certainly will not. Let us, gentlemen, fit out our vessel, set up her masts, and expand her sails, and be guided by the experiment in our alterations. If she sails upon an uneven keel, let us right her by adding weight where it is wanting. In this way, we may remedy her defects to the satisfaction of all concerned; but if we proceed now to make alterations, we may deface a beauty, or deform a well proportioned piece of workmanship. In short, Mr. Speaker, I am not for amendments at this time.

[SOURCE: Annals of Congress 1:441-442 \(June 8, 1789\).](#)

*But Madison wanted to proceed without delay:*

**Mr. MADISON:** If we continue to postpone from time to time, and refuse to let the subject come into view, it may occasion suspicions, which, though not well founded, may tend to inflame or prejudice the public mind against our decisions. They may think we are not sincere in our desire to incorporate such amendments in the Constitution as will secure those rights, which they consider as not sufficiently guarded. The applications for amendments come from a very respectable number of our constituents, and it is certainly proper for Congress to consider the subject, in order to quiet that anxiety which prevails in the public mind."

[SOURCE: Annals of Congress, 1:444 \(June 8, 1789\).](#)

*Others questioned why Congress should consider only the amendments Madison proposed and not **all** of the amendments those put forth at state ratifying conventions:*

**Mr. TUCKER** [Thomas Tudor Tucker of Georgia] remarked, that many citizens expected that the amendments proposed by the conventions would be attended to by the House [of Representatives], and that several members conceived it to be their duty to bring them forward. If the House should decline taking them into consideration, it might tend to destroy that harmony which had hitherto existed, and which did great honor to their proceedings; it might affect all their future measures, and promote such feuds as might

embarrass the Government exceedingly. The States who had proposed these amendments would feel some degree of chagrin at having misplaced their confidence in the General Government. Five important States have pretty plainly expressed their apprehensions of the danger to which the rights of their citizens are exposed. Finding these cannot be secured in the mode they had wished, they will naturally recur to the alternative, and endeavor to obtain a Federal Convention; the consequence of this may be disagreeable to the Union; party spirit may be revived, and animosities rekindled destructive of tranquillity. States that exert themselves to obtain a federal convention, and those that oppose the measure, may feel so strongly the spirit of discord, as to sever the Union asunder. [By “Federal Convention,” Tucker meant a national convention to propose amendments, as provided for in Article V of the Constitution.]

[SOURCE: Annals of Congress, 1:786-787 \(August 18, 1789\).](#)

*Madison, however, explained why he had chosen only a few select amendments and ignored others:*

**Mr. MADISON:** There have been objections of various kinds made against the constitution. Some were levelled against its structure, because the president was without a council; because the senate, which is a legislative body, had judicial powers in trials on impeachments; and because the powers of that body were compounded in other respects, in a manner that did not correspond with a particular theory; because it grants more power than is supposed to be necessary for every good purpose, and controls the ordinary powers of the State Governments... I should be unwilling to see a door opened for a re-consideration of the whole structure of the government, for a re-consideration of the principles and the substance of the powers given; because I doubt, if such a door was opened, if we should be very likely to stop at that point which would be safe to the government itself.

But I do wish to see a door opened to consider, so far as to incorporate those provisions for the security of rights, against which I believe no serious objection has been made by any class of our constituents... It will be a desirable thing to extinguish from the bosom of every member of the community any apprehensions, that there are those among his countrymen who wish to deprive them of the liberty for which they valiantly fought and honorably bled... We have in this way something to gain, and, if we proceed with caution, nothing to lose.

[SOURCE: Annals of Congress, 1:449-450 \(June 8, 1789\).](#)

#### QUESTIONS TO CONSIDER:

1. Do you agree with Jackson’s argument that amendments should only be considered later, after the Constitution has “a fair trial” and can be “examined by experience”? If not, how would you respond to that argument?
2. Do you think it is fair for Congress to consider only amendments proposed by one of its members while ignoring those suggested by the ratifying convention in your state?
3. If so, how would explain your decision to constituents?

4. But if you don't think it's fair, and you wish to consider the various amendments proposed by your state and other states, how do you respond to the argument that considering all sorts of amendments at this time will open up a can of worms, rekindle heated debates, and threaten to tear apart the nation just as it is trying to heal?

## Madison's Amendments Handout C: Should Amendments Be Woven Into The Body Of The Constitution Or Placed At The End?

As you see from reading Madison's proposed amendments, he wanted to weave them into the body of the Constitution. [But on August 13, when his amendments were first discussed in detail by the House of Representatives, Roger Sherman of Connecticut objected to this manner of treating amendments. Here are excerpts from the debate that ensued:](#)

**Mr. Sherman.**--I believe, Mr. Chairman, this is not the proper mode of amending the Constitution. We ought not to interweave our propositions into the work itself, because it will be destructive of the whole fabric. We might as well endeavor to mix brass, iron, and clay, as to incorporate such heterogeneous articles, the one contradictory to the other. Its absurdity will be discovered by comparing it with a law. Would any Legislature endeavor to introduce into a former act a subsequent amendment, and let them stand so connected? When an alteration is made in an act, it is done by way of supplement; the latter act always repealing the former in every specified case of difference. Besides this, sir, it is questionable whether we have the right to propose amendments in this way. The Constitution is the act of the people, and ought to remain entire. But the amendments will be the act of the State Governments. [According to Article VII, the Constitution had to be ratified by conventions chose by the people — as in “We, the People” — but according to Article V, amendments required the approval of three-quarters of the state legislatures.]

**Mr. Madison.**-- It appears to me, that there is a neatness and propriety in incorporating the amendments into the Constitution itself; in that case, the system will remain uniform and entire; it will certainly be more simple when the amendments are interwoven into those parts to which they naturally belong, than it will if they consist of separate and distinct parts. We shall then be able to determine its meaning without references or comparison; whereas, if they are supplementary [coming at the end], its meaning can only be ascertained by a comparison of the two instruments [the original clause in the Constitution and the amendment], which will be a very considerable embarrassment.

**Mr. Livermore** was clearly of opinion, that whatever amendments were made to the Constitution, they ought to stand separate from the original instrument. We have no right, said he, to alter a clause any otherwise than by a new proposition... It is questionable whether it is possible for us, consistent with the oath we have taken, to attempt a repeal of the Constitution of the United States, by making a new one to substitute in its place.

**Mr. Vining** disliked a supplementary form... If the mode proposed by the gentleman from Connecticut [Roger Sherman] was adopted, the system would be distorted, and like a careless written letter, have more attached to it in a postscript than was contained in the original composition. The Constitution being a great and important work, ought all to be brought into one view, and made as intelligible as possible.

**Mr. Clymer** was of opinion, with the gentleman from Connecticut, that the amendments ought not to be incorporated in the body of the work, which he hoped would remain a monument to justify those who made it [the framers of the Constitution].

**Mr. Jackson.**--The original Constitution ought to remain inviolate, and not be patched up, from time to time, with various stuffs resembling Joseph's coat of many colors. Some gentlemen talk of repealing the present Constitution and adopting an improved one. If we have this power, we may go on from year to year, making new ones; and in this way, we shall render the basis of the superstructure the most fluctuating thing imaginable, and the people will never know what the Constitution is.

## Madison's Amendments Handout D. Historical Outcome: Congress's Twelve Amendments and The Bill Of Rights

On [July 21](#) the House referred Madison's amendments to a committee composed of one representative from each state. The committee did not consider amendments proposed by the states.

Starting on [August 13](#) the full House debated and amended the committee's report. At various times members introduced specific amendments proposed by the states, but each time these were defeated. (Some of these will be treated in following lessons.) As Madison had hoped, the House refrained from proposing significant structural changes to the Constitution. This omission infuriated Aedanus Burke of South Carolina, [who said the proposals were](#) "not those solid and substantial amendments which the people expect; they are little better than whip syllabub, frothy and full of wind, formed only to please the palate. ... All the important amendments were omitted."

On [August 24](#) the House sent seventeen amendments to the Senate. After the Senate made numerous changes, the draft amendments were sent to a joint conference committee. Finally, on [September 24](#), the House approved the joint committee's final recommendation and asked President Washington to send twelve amendments to the states for ratification. [The following day the Senate concurred with the House's decision.](#)

Although most of Madison's suggestions were included, some were not. Congress omitted his first amendment. The winning argument there was that the principle of popular sovereignty was included in the preamble to the Constitution, "We, the People." It also omitted Madison's eighth amendment, the statement of separation of powers. The House approved it but the Senate rejected it.

Contrary to Madison's wishes, Congress decided to place amendments at the end of the Constitution rather than weave them into the body of the text.

[Here are Congress's twelve amendments](#), together with its preamble:

THE Conventions of a number of the States, having at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added: And as extending the ground of public confidence in the Government, will best ensure the beneficent ends of its institution

RESOLVED by the Senate and House of Representatives of the United States of America, in Congress assembled, two thirds of both Houses concurring, that the following Articles be proposed to the Legislatures of the several States, as amendments to the Constitution of the United States, all or any of which Articles, when ratified by three fourths of the said Legislatures, to be valid to all intents and purposes, as part of the said Constitution; vizt.

ARTICLES in addition to, and amendment of the Constitution of the United States of America, proposed by Congress, and ratified by the Legislatures of the several States, pursuant to the fifth Article of the original Constitution.

ARTICLE THE FIRST. After the first enumeration required by the first Article of the Constitution, there shall be one Representative for every thirty thousand, until the number shall amount to one hundred, after which, the proportion shall be so regulated by Congress, that there shall be not less than one hundred Representatives, nor less than one Representative for every forty thousand persons, until the number of Representatives shall amount to two hundred, after which the proportion shall be so regulated by Congress, that there shall not be less than two hundred Representatives, nor more than one Representative for every fifty thousand persons.

ARTICLE THE SECOND. No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened.

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

ARTICLE THE FOURTH. 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.

ARTICLE THE FIFTH. No Soldier shall, in time of peace be quartered in any House, without the consent of the owner, nor in time of war, but in a manner to be prescribed by law.

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

ARTICLE THE SEVENTH. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of {a} Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger;<sup>13</sup> nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

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

ARTICLE THE NINTH. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

ARTICLE THE TENTH. Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

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

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

State legislatures were slow to respond, and by the time most did, there were fourteen states in the union rather than only eleven. This meant that eleven states had to ratify to meet the three-fourths threshold. Although most states ratified all twelve amendments, a few did not ratify either the first or the second.

On December 15, 1791, Virginia became the eleventh state to ratify Congress's third through twelfth amendments. Since the first two were not ratified, these became the first ten amendments, what we now call the Bill of Rights. Strangely, ratification was not celebrated at the time—indeed, it was barely noticed in the press. [Here is the official communication that Secretary of State Thomas Jefferson sent to the state governors on March 1, 1792](#) – almost five years after the opening of the Federal Convention in Philadelphia:

I have the honor to send you herein enclosed two copies, duly authenticated, of an Act concerning certain fisheries of the United States, and for the regulation and government of the fishermen employed therein; also of an Act to establish the Post office and Post roads within the United States; also the ratifications, by three fourths of the Legislatures of the several States, of certain articles in addition to and amendment of the Constitution of the United States, proposed by Congress to the said Legislatures; and of being with sentiments of the most perfect respect Your Excellency's Most obedient & most humble servant

Th: Jefferson

Fisheries, post roads, and “certain articles” – it was not a ceremonial inauguration of the Bill of Rights.

## **Madison's Amendments Handout E. Vocabulary List**

1. Ratification: To confirm by expressing consent, approval, or formal sanction.
2. Federalist: A person in favor of a strong central government.
3. Anti-Federalist: A person who opposed extension of the powers of the federal government.
4. Indubitable: Impossible to doubt; unquestionable.
5. Indefeasible: Not able to be lost, annulled, or overturned.
6. Enumeration: The action of mentioning a number of things one by one.
7. Impeachment: A charge of misconduct made against a holder of a public office.
8. Heterogeneous: Diverse in character or content
9. Sovereignty: Supreme power or authority