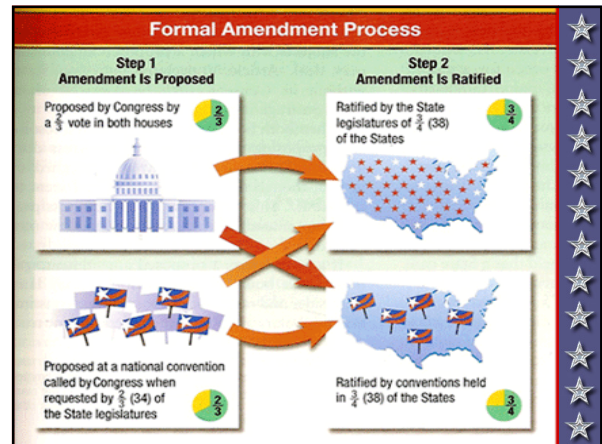


How Has the Constitution Been Changed?




- ## Amendments, II
- 6 additional amendments (including the Equal Rights Amendment) were sent to the states but failed to win the needed number of endorsements
 - Recent examples of failed proposed amendments include:
 - restriction of marriage that between 1 man & 1 woman
 - assuring "God" is included in the Pledge of Allegiance
 - providing a mechanism for Congress to replenish its membership should more than $\frac{1}{4}$ of its members be killed

- ## Informal Amendment Methods, I
- Custom & Usage
 - "The Constitution Among Friends"
 - Judicial Interpretation/Review
 - "The nature of injustice is that we may not always see it in our own times. The generations that wrote and ratified the Bill of Rights and the Fourteenth Amendment did not presume to know the extent of freedom in all of its dimensions, and so they entrusted to future generations a character protecting the right of all persons to enjoy liberty as we learn its meaning."—Justice Kennedy from Same-sex Marriage Decision


- ## Informal Amendment Methods, II
- Executive Interpretation
 - Legislative Interpretation

- ## The Complicating (Inevitable?) Factor of Political Parties
- Advantage over Individual Action
 - Toward a Responsible Two-party System?
 - Structuring the Rules (Centripetal v. Centrifugal Forces)




Context

- Continuation of Slavery as an Issue
 - Territorial Expansion
- Failure to Enforce Fugitive Slave Law of 1850
- Focus of Fifth Amendment Due Process Clause on Property Rights




Civil War Amendments

- 13th: Slavery/Involuntary Servitude
- 14th: Citizenship; Privileges & Immunities; Due Process; Equal Protection
 - 15th: Voting Rights
- Each with an "Enabling Clause"




Due Process

- 5th & 14th Amendments
- From *Barron v. Baltimore* (1833) to Selective Incorporation
- Procedural v. Substantive
 - 15th: Voting Rights
- Each with an "Enabling Clause"



Equal Protection

- Opportunity v. Outcome
 - Levels of Scrutiny
 - Rational Basis: rationally related to a legitimate state interest
 - Intermediate Scrutiny
 - Strict Scrutiny: "Suspect Classifications"-- state must show that law is necessary to promote a compelling state interest
 - Affirmative Action as a Remedy



Legal Expansion of Suffrage/Decline in Turnout