

OUR *Constitutional Amendments* – WE HAVE 27!

Stephen L. Bakke – February 23, 2010

I'm sure that not many people have the same curiosity as I do about the Amendments to the Constitution of the United States. That's because most people don't have as much time to be curious as I do. It's one of the luxuries I now enjoy! Anyway, if we listen closely, our Constitution's Amendments are mentioned all the time by friend and foe, by experts and pretenders – and I always just listen. Able to only give lip service to much of their content, and to repeat a few common phrases like “freedom of speech”, or “freedom of religion” (yada yada), I thought I should go just “a bit” deeper. **Not too deep!** because my ancient mind just might overload – but a bit deeper. I share that “look-see” with you below.

This information is compiled (that means “lifted”) from the following sources: *The American Patriot's Handbook* by George Grant; *The Handy History Answer Book* by Rebecca Ferguson; *A Patriot's History of the United States – From Columbus's Great Discovery to the War on Terror* by Larry Schweikart and Michael Allen; and *Arguing With Idiots* by Glenn Beck. No, I'm not in need of Wikipedia this time (I don't think?!). This is very brief, so fill in the gaps if you wish, and advise me of your additions and/or corrections.

The first ten Amendments to our United States Constitution comprise the *Bill of Rights*.

After the Constitution was ratified in 1788, there was some criticism, particularly among the “Anti-Federalists” (that's a subject for another day) that it contained few guarantees of individual rights. Heeding and respecting the Anti-Federalists plea, James Madison, then a member of the U.S. House of Representatives, led Congress to adopt 10 amendments that became known as the Bill of Rights.

For the Anti-Federalists, for the Constitution to grant such sweeping powers to the central government without simultaneously protecting life, liberty, and property seemed very wrong. Thomas Jefferson, who had carefully stayed away from this debate, nevertheless wrote from the “comfort” of France: “A bill of rights is what a people are entitled to against every government on earth, general or particular, and what no just government should refuse or rest on inference.”

Much of the “Bill's” rights focus on individual liberties that had been cited in the Declaration of Independence. Memories, whether Anti-Federalist or not, were still raw from the many violations of liberty carried out by the British. Those violations led to grievances which had been enumerated in the Declaration. The Constitution did not adequately address these and hence the motivation, in 1791, to adopt the first 10 Amendments.

A close look at the wording of these amendments is interesting: “Congress shall make no law” ... “shall not be infringed” ... “no soldier shall...without consent” ... “shall not be violated” ... “no person shall be held” ... “nor shall any person be subject” ... “nor shall be compelled” ... “nor be deprived” ... “shall not be required”. While these amendments certainly deal with

individual rights, these words demonstrate that the framers intended them as absolute limitations on the power of government. Some suggest that in retrospect, these should have been described as the Bill of Limitations on government to avoid the perception that the rights were granted by government in the first place. (This last interpretation suggests a question, the answer to which demonstrates a major schism between liberal and conservative thought – i.e. Does the federal government grant rights and is it their job to fulfill/guarantee certain of those rights? – SB)

Finally, it is the job of the Supreme Court to decide whether a law impinges upon the liberties listed in, **or implied by**, the Bill of Rights. The “hard part” of this responsibility is to determine what rights are “implied.”

Amendment One ~ 1791 – Proclaims the freedoms of religion, speech, press, and peaceful assembly – This is a much debated amendment – For example, we have come up with the concept of “separation of church and state” – We must not interpret this as “Freedom from religion” – I’m most comfortable with the interpretation that religions are protected FROM the state, and not vice-versa.

Amendment Two ~ 1791 – Declares the right to keep and bear arms – Let me just add Thomas Jefferson’s famous observation/warning: “When governments fear the people, there is liberty. When the people fear the government, there is tyranny.”

Amendment Three ~ 1791 – Forbids peacetime quartering of soldiers in private dwellings without the owners’ consent – This doesn’t often come up for debate, at least not recently, so relax!

Amendment Four ~ 1791 – Forbids unreasonable searches and seizures – It appears that “W” and President Obama are not far apart on this issue, particularly as it applies to national security monitoring and implementing policy.

Amendment Five ~ 1791 – Individuals are protected from mandatory self-incrimination, requires criminal indictment only be handed down by a grand jury, prohibits double jeopardy, and also defends private property from confiscation for public use without just compensation – We are all familiar with the phrase “I take the fifth” which comes from this amendment – But the issues surrounding public confiscation of property, e.g. condemnation for public purpose, are much more complicated.

Amendment Six ~ 1791 – Guarantees a speedy and fair trial, an impartial jury, and the right to counsel – This has become more and more inapplicable/unenforceable as our court system becomes more and more complex and as we deal with the complicating factor of frivolous lawsuits.

Amendment Seven ~ 1791 – Guarantees trial by jury – I can't add much here – It seems to still apply in all the ways it was intended.

Amendment Eight ~ 1791 – Prohibits excessive bail, excessive fines, and cruel and unusual punishment – I agree with all the words, but what do they really mean in today's world?

Amendment Nine ~ 1791 – States simply and un-specifically that just because a right is not enumerated in the Constitution, does not mean that the people do not retain that right – Some of our founders did not want to include a “Bill of Rights” in the Constitution for fear that if certain rights were specified, then the people could be denied other rights that were not specifically listed – This amendment was therefore a compromise.

Amendment Ten ~ 1791 – Relinquishes to the state governments those powers the Constitution did not expressly grant the federal government or deny the states, thereby limiting the power of the federal government to that which is granted in the Constitution – My best comment to add to this comes from a quote from my chief political advisor, son Jason who wrote this to me recently: “In practice, the Constitution is not ‘what it says’ or ‘what we want it to say’; the Constitution is what the Supreme Court **SAYS IT IS**. The fact is the Supreme Court has continually and dramatically eroded states rights and the idea of limited federal government.”

So ends the *Bill of Rights*.

Amendment Eleven ~ 1798 - Declares that U.S. federal courts cannot try any case brought against a state by a citizen of another state or country – I have nothing to add to that.

Amendment Twelve ~ 1804 – Revises the presidential and vice presidential election rules such that members of the electoral college vote for one person as president and for another as vice president – Previously, the electors simply voted for two men and the one with the most votes was the president, and the other became vice president – Makes sense to me!

Amendment Thirteen ~ 1865 – Prohibits slavery – For me, this is one of the most important of the amendments (sounds trivial just to say that) – Suffice it to say that it took 78 years and the deaths of 618,000 people during the Civil War to get to the end of that sad part of our history.

Amendment Fourteen ~ 1868 – Defines U.S. citizenship and gives all citizens equal protection under the law, and forbids states from denying equal rights to any person – Made former slaves citizens of the U.S. and the state where they lived – A wonderful but complicated idea as we found while litigating issues contested under the “equal protection” clause.

Amendment Fifteen ~ 1870 – Extends suffrage to black men – The wording proclaims the right of a U.S. citizen to vote and that right will not be denied or abridged by the U.S. or any state on the basis of race, color, or previous condition of servitude – They forgot age but covered that 101 years later with the 26th Amendment.

Amendment Sixteen ~ 1913 – Authorizes a federal income tax – Many very conservative friends would attribute this to the “ultra-progressive” policies of Woodrow Wilson and his minion – I’m not convinced we didn’t need to do this, eventually, in some form (don’t hate me for that).

Amendment Seventeen ~ 1913 – Provides for the direct election of senators by the people – Prior to this, state legislators elected their senators – OK, but I want to explore this issue later – I’m not yet sure this amendment was a good idea.

Amendment Eighteen ~ 1919 - Makes prohibition legal – In effect this made the manufacture and distribution of alcohol illegal – A mute point because of the 21st Amendment.

Amendment Nineteen ~ 1920 – Grants women the right to vote – Sounds great!

Amendment Twenty ~ 1933 – Changes congressional terms and the date of the presidential inauguration so that these individuals take office closer to the date of their election – No argument from me.

Amendment Twenty One ~ 1933 – Repeals prohibition which was legalized by the 18th Amendment – Fine with me.

Amendment Twenty Two ~ 1951 – Limits presidential tenure to two terms – Additionally, a President can hold office for no more than 10 years, two as an unelected president and two terms as an elected president – Cool! But remember this was enacted after the death of a very popular president: Franklin Roosevelt who was elected to four terms as president – maybe he wasn’t as popular as we thought.

Amendment Twenty Three ~ 1961 – Grants residents of Washington, D.C. the right to vote in presidential elections – The only fair thing to do.

Amendment Twenty Four ~ 1964 – Outlaws the poll tax in all federal elections and primaries – These taxes had effectively disenfranchised many minorities and poor people – By the early '60s, only five states still used taxes as a means of discrimination and disenfranchisement – In the final analysis, Mississippi is the only state that rejected this amendment outright.

Amendment Twenty Five ~ 1967 – Provides for procedures to fill the vice presidency and further clarifies presidential succession rules – Specifies that the vice-president succeeds the president if there is a vacancy in the presidency – If there is a vacancy in the vice presidency, the president nominates a replacement subject to a majority confirmation in both the House and the Senate – This measure was precipitated by the assassination of JFK.

Amendment Twenty Six ~ 1971 – Lowers the voting age for federal and state elections to 18 – But please note that we still can't deny voters the right to vote on the basis of stupidity (which I guess is the right thing to do).

Amendment Twenty Seven ~ 1992 – Prevents Congress from passing immediate salary increases for itself – Salary increases can't take effect until after the next congressional election – This amendment had originally passed in Congress way back in 1788, and since there was no time limit on states ratifying amendments, it didn't become law until 204 years later when Michigan became the 38th state to ratify it in 1992.

How could someone who hated history as much as I did when in school, become so intrigued by it now? Go figur'! Maybe if I'd paid more attention in the '60s, I wouldn't have to go to all this trouble in **MY** 60s. But, no matter! This is more fun!

Soon, I hope to take a look at better understanding our form of government – as envisioned by our founders, and as it has evolved. It may not be what many of us think it is!