

Amendments Recommended by the State Ratifying Conventions and Amendments Proposed by James Madison (1788-89)

James Madison took the ratifying conventions extremely seriously, evident not only from how he thought the Constitution ought to be interpreted, in light of the ratifying conventions' original understanding, but also because he championed a Bill of Rights as many of them had demanded as an implicit condition of accepting the Constitution. These conventions recommended amendments, usually protecting states' sovereignty by clarifying that the federal government was indeed one of limited and enumerated powers, but in some cases insisting on substantive individual rights of the kind also found in many of their state constitutions. The defenders of the Constitution argued, most prominently in Federalist 84, that the limiting of the federal government to enumerated powers made it a bad idea to write out a Bill of Rights, because it could implicitly expand federal power to allow it to do anything not prohibited by a Bill of Rights—in other words, turning the limited power of the federal government into the expansive powers of the state governments. Critics of the Constitution disagreed, seeking an additional check limiting federal power.

Madison collected these amendments and incorporated them, alongside the Virginia Declaration of Rights, as the basis in drafting his own versions he presented to Congress. (Madison solved the Federalist 84 problem by adding what became the Ninth Amendment, explaining that spelling out certain rights did not mean the federal government could do everything else; this reiterated the enumeration of powers doctrine already implicit in Article I, Section 1 and which the corresponding Tenth Amendment made more explicit.)

Congress then debated and modified Madison's proposed amendments, before passing them onto the states for ratification. At the instigation of Senator Roger Sherman of Connecticut, who had been a pivotal member of the Constitutional Convention, the amendments were placed at the end, rather than inserted into the relevant text as Madison preferred (and as most state constitutions today are amended.)

There were also two additional amendments Congress proposed to the states: one concerned the size of the House of Representatives, and one preventing any raises in congressional salary from taking effect until after an election. (The latter was eventually ratified as the 27th Amendment.)

As the various ratifying conventions met, many delegates insisted on proposing amendments to the national convention. The list below contains the proposed amendments on topics which eventually became a part of the Bill of Rights.

AMENDMENTS PROPOSED BY THE MASSACHUSETTS CONVENTION February 6, 1788

FIRST, That it be explicitly declared that all Powers not expressly delegated by the aforesaid Constitution are reserved to the several States to be by them exercised.

SIXTHLY, That no person shall be tried for any Crime by which he may incur an infamous punishment or loss of life until he be first indicted by a Grand Jury, except in such cases as may arise in the Government & regulation of the Land & Naval forces.

EIGHTHLY, In civil actions between Citizens of different States every issue of fact arising in Actions at common law shall be tried by a jury if the parties or either of them request it.

**AMENDMENTS PROPOSED BY THE SOUTH CAROLINA CONVENTION
MAY 23, 1788**

...THIS CONVENTION doth also declare that no Section or paragraph of the said Constitution warrants a Construction that the states do not retain every power not expressly relinquished by them and vested in the General Government of the Union...

**AMENDMENTS PROPOSED BY THE NEW HAMPSHIRE CONVENTION
JUNE 21, 1788**

FIRST That it be Explicitly declared that all Powers not expressly & particularly Delegated by the aforesaid Constitution are reserved to the several States to be, by them Exercised....

SIXTHLY That no Person shall be Tryed for any Crime by which he may incur an Infamous Punishment, or loss of Life, untill he first be indicted by a Grand Jury except in such Cases as may arise in the Government and regulation of the Land & Naval Forces...

SEVENTHLY All Common Law Cases between Citizens of different States shall be commenced in the Common Law Courts of the respective States & no appeal shall be allowed to the Federal Court in such Cases unless the sum or value of the thing in Controversy amount to three Thousand Dollars.

EIGHTHLY In Civil Actions between Citizens of different States every Issue of Fact arising in Actions at Common Law shall be Tryed by Jury, if the Parties, or either of them request it.

ELEVENTH Congress shall make no Laws touching Religion, or to infringe the rights of Conscience...

TWELFTH Congress shall never disarm any Citizen unless such as are or have been in Actual Rebellion....

**AMENDMENTS PROPOSED BY THE VIRGINIA CONVENTION
JUNE 27, 1788**

That there be a Declaration or Bill of Rights asserting and securing from encroachment the essential and unalienable Rights of the People in some such manner as the following:

FIRST, That there are certain natural rights of which men, when they form a social compact cannot deprive or divest their posterity, among which are the enjoyment of life and liberty, with

the means of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety...

EIGHTH, That in all capital and criminal prosecutions, a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence and be allowed counsel in his favor, and to a fair and speedy trial by an impartial Jury of his vicinage, without whose unanimous consent he cannot be found guilty (except in the government of the land and naval forces) nor can he be compelled to give evidence against himself.

NINTH. That no freeman ought to be taken imprisoned, or disseised of his freehold, liberties, privileges or franchises, or outlawed or exiled, or in any manner destroyed or deprived of his life, liberty or property but by the law of the land.

TENTH. That every freeman restrained of his liberty is entitled to a remedy to enquire into the lawfulness thereof, and to remove the same, if unlawful, and that such remedy ought not to be denied nor delayed.

ELEVENTH. That in controversies respecting property, and in suits between man and man, the ancient trial by Jury is one of the greatest Securities to the rights of the people, and ought to remain sacred and inviolable.

TWELFTH. That every freeman ought to find a certain remedy by recourse to the laws for all injuries and wrongs he may receive in his person, property or character. He ought to obtain right and justice freely without sale, completely and without denial, promptly and without delay, and that all establishments or regulations contravening these rights, are oppressive and unjust.

THIRTEENTH, That excessive Bail ought not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

FOURTEENTH, That every freeman has a right to be secure from all unreasonable searches and siezures of his person, his papers and his property; all warrants, therefore, to search suspected places, or sieze any freeman, his papers or property, without information upon Oath (or affirmation of a person religiously scrupulous of taking an oath) of legal and sufficient cause, are grievous and oppressive; and all general Warrants to search suspected places, or to apprehend any suspected person, without specially naming or describing the place or person, are dangerous and ought not to be granted.

FIFTEENTH, That the people have a right peaceably to assemble together to consult for the common good, or to instruct their Representatives; and that every freeman has a right to petition or apply to the legislature for redress of grievances.

SIXTEENTH, That the people have a right to freedom of speech, and of writing and publishing their sentiments; but the freedom of the press is one of the greatest bulwarks of liberty and ought not to be violated.

SEVENTEENTH, That the people have a right to keep and bear arms; that a well regulated Militia composed of the body of the people trained to arms is the proper, natural and safe defence of a free State. That standing armies in time of peace are dangerous to liberty, and therefore ought to be avoided, as far as the circumstances and protection of the Community will admit; and that in all cases the military should be under strict subordination to and governed by the Civil power.

EIGHTEENTH, That no Soldier in time of peace ought to be quartered in any house without the consent of the owner, and in time of war in such manner only as the laws direct.

NINETEENTH, That any person religiously scrupulous of bearing arms ought to be exempted upon payment of an equivalent to employ another to bear arms in his stead.

TWENTIETH, That religion or the duty which we owe to our Creator, and the manner of discharging it can be directed only by reason and conviction, not by force or violence, and therefore all men have an equal, natural and unalienable right to the free exercise of religion according to the dictates of conscience, and that no particular religious sect or society ought to be favored or established by Law in preference to others.

AMENDMENTS TO THE BODY OF THE CONSTITUTION

FIRST, That each State in the Union shall respectively retain every power, jurisdiction and right which is not by this Constitution delegated to the Congress of the United States or to the departments of the Federal Government...

FIFTEENTH, That in criminal prosecutions no man shall be restrained in the exercise of the usual and accustomed right of challenging or excepting to the Jury.

AMENDMENTS PROPOSED BY THE NEW YORK CONVENTION JULY 26, 1788

That the Powers of Government may be reassumed by the People, whensoever it shall become necessary to their Happiness; that every Power, Jurisdiction and Right, which is not by the said Constitution clearly delegated to the Congress of the United States, or the departments of the Government thereof, remains to the People of the several States, or to their respective State Governments to whom they may have granted the same;

And that those Clauses in the said Constitution, which declare, that Congress shall not have or exercise certain Powers, do not imply that Congress is entitled to any Powers not given by the said Constitution; but such Clauses are to be construed either as exceptions to certain specified Powers, or as inserted merely for greater Caution.

That the People have an equal, natural and unalienable right, freely and peaceably to Exercise their Religion according to the dictates of Conscience, and that no Religious Sect or Society ought to be favoured or established by Law in preference of others.

That the People have a right to keep and bear Arms; that a well-regulated Militia, including the body of the People capable of bearing Arms, is the proper, natural and safe defence of a free State.

That in time of Peace no Soldier ought to be quartered in any House without the consent of the Owner, and in time of War only by the civil Magistrate in such manner as the Laws may direct.

That no Person ought to be taken imprisoned, or disseised of his freehold, or be exiled or deprived of his Privileges, Franchises, Life, Liberty or Property, but by due process of Law.

That no Person ought to be put twice in Jeopardy of Life or Limb for one and the same Offence, nor unless in case of impeachment, be punished more than once for the same Offence.

That every Person restrained of his Liberty is entitled to an enquiry into the lawfulness of such restraint, and to a removal thereof if unlawful, and that such enquiry and removal ought not to be denied or delayed, except when on account of Public Danger the Congress shall suspend the privilege of the Writ of Habeas Corpus.

That excessive Bail ought not to be required; nor excessive Fines imposed; nor Cruel or unusual Punishments inflicted.

That (except in the Government of the Land and Naval Forces, and of the Militia when in actual Service, and in cases of Impeachment) a Presentment or Indictment by a Grand Jury ought to be observed as a necessary preliminary to the trial of all Crimes cognizable by the Judiciary of the United States, and such Trial should be speedy, public, and by an impartial Jury of the County where the Crime was committed; and that no person can be found Guilty without the unanimous consent of such Jury.

And that in all Criminal Prosecutions, the Accused ought to be informed of the cause and nature of his Accusation, to be confronted with his accusers and the Witnesses against him, to have the means of producing his Witnesses, and the assistance of Council for his defence, and should not be compelled to give Evidence against himself.

That the trial by Jury in the extent that it obtains by the Common Law of England is one of the greatest securities to the rights of a free People and ought to remain inviolate.

That every Freeman has a right to be secure from all unreasonable searches and seizures of his person his papers or his property, and therefore, that all Warrants to search suspected places or seize any Freeman his papers or property, without information upon Oath or Affirmation of sufficient cause, are grievous and oppressive; and that all general Warrants (or such in which the place or person suspected are not particularly designated) are dangerous and ought not to be granted.

That the People have a right peaceably to assemble together to consult for their common good, or to instruct their Representatives; and that every Person has a right to Petition or apply to the Legislature for redress of Grievances.

That the Freedom of the Press ought not to be violated or restrained.

That the Prohibition contained in the said Constitution against [ex post] facto Laws, extends only to Laws concerning Crimes....

UNDER these impressions and declaring that the rights aforesaid cannot be abridged or violated, and that the Explanations aforesaid are consistent with the said Constitution, And in confidence that the Amendments which shall have been proposed to the said Constitution will receive an early and mature Consideration: WE the said Delegates, in the Name and in the behalf of the People of the State of New York Do by these presents Assent to and Ratify the said Constitution. IN full Confidence nevertheless that until a Convention shall be called and convened for proposing Amendments to the said Constitution

**AMENDMENTS PROPOSED BY JAMES MADISON,
JUNE 6, 1789**

Although many of the members of Congress who had once been Madison's allies in defending the Constitution proved disinterested in approving a Bill of Rights (as the Constitution's skeptics had been provisionally promised if they would ratify the Constitution), Madison pressed forward. In a speech to Congress, he proposed a series of amendments based on those offered by the ratifying conventions.

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. *[eds. note: such prefatory clauses discussing the purpose of government and the nature of the social contract creating it are common in state constitutions, but this was rejected by Congress, led by Roger Sherman's opposition, who preferred to leave the original preamble untouched].*

....Fourthly. That in article 1st, section 9, *[eds. note, the list of restrictions placed on the federal government]* between clauses 3 and 4, be inserted these clauses....

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 [*eds. note, the list of restrictions placed on the state governments*], 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 [*eds. note: the Article creating the judiciary*], 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...

Amendments proposed by the Convention from the Avalon Project: [Massachusetts](#); [South Carolina](#), [New Hampshire](#), [Virginia](#); [New York](#)

Madison's Speech and Proposed Amendments from Liberty Fund, [Online Library of Liberty](#)