***We the People: the Citizen & the Constitution***

2019-2020 High School Hearing Questions

Information, Tips, Analysis, & Resources from the Oregon high school We the People community

Unit 2 / Q. 3

**“I do not recollect to have met with a sensible and candid Man who has not admitted that it would be both safer and better if amendments were made to the Constitution … Some thinking that a second Convention might do the business, whilst others fear that the attempt to remedy by another Convention would risk the whole.”\* What were some of the amendments proposed by the Anti-Federalists? Should they have been added before the adoption of the Constitution? Why or why not?**

* Why did Federalists oppose prior amendments to the Constitution?
* In your opinion, why have there been so few amendments to the Constitution?

\* Richard Henry Lee to Edmund Pendleton, “Richard Henry Lee to Edmund Pendleton,” May 26, 1788, ConSource, accessed August 19, 2019, https://www.consource.org/document/richard-henry-lee-to-edmund-pendleton-1788-5-26/20130122083153/.

**Collaboration Tips:**

**5** different questions are in this overall question.

Dates/Timespan/Era of this question: **Post-Constitutional Convention**

Historical events/context that connects to this question:

* **State ratification conventions**
* **Equal Rights Amendment**

Possible Current Events that apply:

* **Article 5 challenges**
* **Electoral College**
* **Campaign Finance**
* **Andrew Yang**
* **Environmental Amendments**
* **Agency’s procedure**
* **Malheur movement (state v. fed)**
* **National Popular Vote**

**Comments from Justice Jack Landau:**

*Almost immediately following the end of the Convention, opponents (whom supporters of the proposed constitution cleverly and ironically labeled "Anti-Federalists") complained that there was no bill of rights included, as there was in nearly all of the state constitutions. The Anti-Federalists wanted the state ratification conventions to consider amendments before deciding to ratify the proposed constitution. Federalists complained that none was needed and derided the Anti-Federalists as "amendment mongers" or "amendmentites" (the Federalists were great at name-calling). The advanced two reasons -- first, because the proposed constitution was one of limited, enumerated powers, so a bill of rights would be unnecessary; and second, because listing a bill of rights could imply that other rights not mentioned don't exist. Federalists further contended that any attempt to amend the proposed constitution before it was even adopted would endanger its chances of being adopted at all.*

*The Federalists prevailed, at least at first. Five states ratified without considering amendments. But things changed with the Pennsylvania ratification convention, when it was insisted that ratification must be accompanied by resolutions proposing the immediate adoption of amendments. A majority of the convention refused to adopt the resolution, but supporters published the proposed amendments in newspapers. In Massachusetts, the delegates agreed to approve the constitution without prior conditions, but with "recommendatory amendments," which would be taken up by the new Congress. Six of the states followed suit. By the time New York's ratification convention convened, more than 40 amendments had been proposed. Proposed amendments included declaration of rights of conscience and religious freedom, guarantee of a jury trial, a prohibition against excessive fines and cruel and unusual punishments, right of free speech, right to bear arms, right "to fowl and hunt at reasonable times" and to fish navigable waters, limitations on the jurisdiction of federal courts, a declaration that the sovereignty of the states is retained except to the extent expressly stated in the constitution, a requirement that there be one representative in the House of Representatives for every 30,000 people, a right to indictment by grand jury before any criminal charges are maintained, a requirement that no one in public office may accept any title or office from a foreign government, a declaration that search warrants unsupported by oath are "oppressive," a declaration that there can be no national religion, a prohibition of maintaining a standing army in time of peace, and others.*

*For a list (and full text) of all of the amendments proposed during the ratification conventions, see the University of Wisconsin Center for the Study of the American Constitution* <https://csac.history.wisc.edu/document-collections/constitutional-debates/debate-about-amendments/recommendatory-amendments-from-state-conventions/>.

*Even after the Constitution was ratified, though, the Federalists denigrated the idea of amending it during the first elections to Congress. And, in fact, Congress did nothing until months later, when Madison argued for the adoption of amendments in June 1789.*

*The most complete account of the ratification debates is Pauline Maier, Ratification: The People Debate the Constitution. It's heavy going, though. Michael Klarman has a good chapter on ratification in his Framers' Coup. And the Journal of the American Republic includes a terrific article, "A Tub to the Whale": The founding Fathers and the Adoption of the Federal Bill of Rights, by Kenneth Bowling, which also may be found at* <https://csac.history.wisc.edu/wp-content/uploads/sites/281/2017/07/tub_to_the_whale.pdf> .