



## The Bill of Rights 2.0

### **Purpose of the Lesson:**

This lesson builds upon prior knowledge of the United States Constitution and the Bill of Rights by asking students to think critically about the issues and philosophies central to both. Through investigation and debate, students are asked to question why certain rights were added to the Constitution and why others were not. Such a discussion will encourage students to synthesize multiple historical and contemporary perspectives about their rights to decide if, in today's world, we need different rights, if our rights are complete the way they are, or if the existing ones need change.

### **Critical Engagement Question:**

Why did the Founders choose the rights they did for the Bill of Rights? Did they make the right choices? Answers that question with reference to both contemporary and historical circumstances.

### **Overview of the Lesson:**

This lesson asks pairs of students to conduct a thorough investigation of a particular amendment proposed by Anti-Federalists during the Ratification period. Each pair will take on the role as a representative and champion of that amendment, with one student completing a full historical analysis of the amendment, while the other student analyzes its modern application. After their investigation, the entire class will take on a mock ratification debate, where each pair will present their amendment and argue for its inclusion into a new bill of rights. Students will attempt to persuade their peers that their amendment is essential and worthy of inclusion, using historical and contemporary sources to back their arguments. At the end of the mock ratification debate, students will vote on their new bill of rights to decide if all, or only some, of their proposed rights should be codified and adopted.

### **Lesson Objectives:**

1. Students will understand the political and philosophical arguments for and against the Bill of Rights.
2. Students will understand why certain rights were added or not added to the Constitution.
3. Students will understand the two competing ideologies that divided the ratification discussion, the Anti-Federalists and Federalists.
4. Students will understand that we now have the Bill of Rights because the Anti-Federalists, through formal and informal political channels, fought to add it to the Constitution.
5. Students will understand the value of their rights and why the various provisions of the Bill of Rights are necessary.

## **Standards:**

Common Core State Standards: English Language Arts, Literacy in History/Social Studies, Grade 11-12

[CCSS.ELA-Literacy.RH.11-12.9](#) Integrate information from diverse sources, both primary and secondary, into a coherent understanding of an idea or event, noting discrepancies among sources.

[CCSS.ELA-Literacy.RH.11-12.7](#) Integrate and evaluate multiple sources of information presented in diverse formats and media (e.g., visually, quantitatively, as well as in words) in order to address a question or solve a problem.

[CCSS.ELA-Literacy.RH.11-12.8](#) Evaluate an author's premises, claims, and evidence by corroborating or challenging them with other information.

[CCSS.ELA-Literacy.RH.11-12.3](#) Evaluate various explanations for actions or events and determine which explanation best accords with textual evidence, acknowledging where the text leaves matters uncertain.

[CCSS.ELA-Literacy.RH.11-12.1](#) Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

[CCSS.ELA-Literacy.RH.11-12.6](#) Evaluate authors' differing points of view on the same historical event or issue by assessing the authors' claims, reasoning, and evidence.

## **Materials:**

1. Students will need access to a computer (at least one computer for each pair of students).
2. Students will need to be given a tutorial on using the ConSource library. A PowerPoint to do so is attached.
3. Students will need paper, pens, pencils, poster board, notecards, etc (whatever else is needed to complete their research and present their amendment argument to the class during the ratification debate).
4. Students will need a copy of the Bill of Rights, found [here](#) and in Appendix A as a transcript.
5. Students will need an excerpt from the Dissent of the Majority of Pennsylvania that includes the rights they requested to be protected (a numbered list found in the middle of the document) found [here](#) and in Appendix B as a transcript.
6. Teachers need a copy of the amendment raffle sheet, with the amendment slips cut out. Since this lesson works best if students randomly choose their amendment, you may want some sort of hat, bag, or bowl to put the slips in. Found in Appendix C.
7. This lesson will require heavy use of the internet throughout. Teachers should either reserve a computer lab for this lesson or acquire laptops for classroom use. If necessary data-enabled smart phones or tablets may also be used to access the ConSource website.

## **Time and Grade Level:**

Two 50 minute class periods in a Grade 12 government or civics classroom

## **Warm-up for the Lesson:**

At the beginning of this two-part lesson, teachers should revisit and/or review key background material necessary for a successful ratification debate. To begin, the class should read in small groups the Bill of Rights and the Dissent of the Minority in Pennsylvania; drawing up a list of proposed amendments on the whiteboard/chalkboard. Then, teachers should set students on a web quest to discover the heritage of the bill of rights, offered below (it is recommended to copy and paste the web quest into the body of an email and send to students, or post to a blog of Facebook page, rather than print). The content of the web quest will also be relevant to teachers in preparing to answer questions and elaborate on the topics discussed in this lesson. As students complete the web quest, ask them to complete the comprehension questions in an email that will be sent to you at the conclusion of the lesson for a participation/evaluation assessment.

## **Teacher & Student Warm-up:**

Web Quest: Heritage of the Bill of Rights (Part 1)

The English Bill of Rights written in 1689 and found [here](#) was part of the political heritage inherited by the Founding generation. It established that British subjects were entitled to certain rights that not even the governing sovereign, the King, could violate.

Shortly before the Continental Congress voted to announce the Declaration of Independence, George Mason drafted the [Virginia Declaration of Rights](#). Many of the states modeled their own bills of rights after Virginia's, which most states had at the time of the Federal (Constitutional) Convention in the summer of 1787.

Check for understanding: Was the concept of a bill of rights commonly known among the American people?

On the last day of the Federal (Constitutional) Convention, the author of Virginia's Declaration of Rights, George Mason, told the delegates of the Convention that he would "sooner cut off his right hand" than to sign the proposed Constitution without a protection for the people's rights. Virginia's governor, Edmund Randolph, also declined signing for the same reason. James Madison argued that each of the states already had bills of rights, so a federal version was not necessary. James Madison also thought it dangerous to list rights because it implied that those not listed were susceptible to Congress' legislation. Further, the Framers viewed

the federal government's power was limited, only having enumerated powers listed in the Constitution and therefore the federal government was not capable of transgressing the rights of its citizens. With this discussion surrounding the proposed Constitution, the document went to ratifying convention for discussion.

Check for understanding: Why did the Framers at the Federal (Convention) not include a bill of rights in the Constitution?

The absence of a bill of rights was one of several issues that divided Federalists and Anti-Federalists. The Federalists did not want each of the states to alter the proposed plan for fear there would be so many varying changes it would never pass and the Anti-Federalists argued that amendments must first be added by each of the states before it was adopted. Eventually, the Anti-Federalist agreed to ratify when Federalists promised that the first order of business for Congress would be to add the Bill of Rights.

Check for understanding: Why would the Anti-Federalists want to first amend the proposed Constitution and then ratify it instead of ratifying it and then amending it?

Web Quest: Heritage of the Bill of Rights (Part 2)

The Dissent of the Minority of Pennsylvania

Because of the close proximity to the Federal (Constitutional) Convention in Philadelphia, Pennsylvania was one of the first states to receive word of the proposed plan and quickly mobilized to form a ratifying convention (actually, the state legislature wanted to call a ratifying convention even before reading a copy of the proposed Constitution).

A minority objected to the proposed plan. Although too few to block the resolution, they had enough numbers to prevent a quorum by absenting themselves from the state house. In retaliation, a mob of citizens forcibly dragged enough minority members out of their homes and to the state house to form a quorum. At the close of the ratifying convention, the dissenting minority afterward published in a local newspaper on December 18, 1787 an account of their abuse and a list of their objections, since during the ratification debates, they were not allowed to record their dissents on the record. In this publication, they included what was essentially a proposal for a federal Bill of Rights. This publication widely circulated among readers, frequently referenced by Anti-Federalists in other states arguing against ratification. The United States Bill of Rights was ratified on December 15, 1791, four years later.

Check for understanding: Why did the minority of the Pennsylvania ratification convention publish this newspaper article?

## **Recommended Vocabulary Warm-up for Students:**

\*Display these key terms on a projected power point screen\*

**Amendment (Constitutional):** Changes in, or additions to, a constitution. Proposed by a two-thirds vote of both houses of Congress or by a convention called by Congress at the request of two-thirds of the state legislatures. Ratified by approval of three-fourths of the states.

**Bill of Rights:** First Ten Amendments to the Constitution. Ratified December 15, 1791, these amendments limit government power and protect basic rights and liberties of individuals.

**Enumerated powers:** Powers that are specifically granted to Congress by Article I, Section 8 of the Constitution.

## **Activity:**

### *Day 1*

1. Warm-up Activity (reading of Bill of Rights and Dissent of the Minority in Pennsylvania; and Web Quest). Find materials above in Teacher & Student Warm-up.
2. Introduce Ratification Debate assignment to students. Explain to students that pairs will work together to investigate the historical and contemporary meaning of particular rights to be presented and debated during the class ratification debate.
3. Group students into pairs and have one student from each pair pick an amendment (from slips found in Appendix C). Students should delegate amongst themselves who will cover the contemporary meaning of the right and who will assess its historical meaning.
4. The rest of the class period should be devoted to research for the Ratification day debate.
5. Instructions for students in completed the assignment should be distributed (see below and in Appendix D)
  1. Students who choose to analyze the right in its historical context should use the ConSource.org Library to search for information (using the Constitutional Index, if applicable).
  2. Students who choose assess the contemporary meaning of a right should search for current news articles, court cases, or scholarly articles that discuss the application of the right today.
  3. Student groups should synthesize their research, which they will then present to the class on ratification day. Student presentations should be no more than 3 minutes in length.
  4. The presentation should answer the following questions:
    - Why is this right important? What are the risks of not including this right in the Constitution? What are the risks of including it in the Constitution? Why should it be added to the Bill of Rights?
    - How is this right practically applied, both in 1791 and today?
    - Who would benefit from this protection? Who would suffer? Whose power is impacted by this amendment?
    - How did the Founder's feel about this right? Does this right exist elsewhere in the world? How important is this amendment, relative to other rights? Would you word the amendment the way the Framers chose to do so?

*Day 2*

1. Students should come to class prepared for the ratification day debate. Since today's activity will include presentation and debate, it would be best to arrange desks or chairs in a horseshoe or roundtable.
2. Taking turns, students should take turns presenting their arguments. Aim for about three minutes per student presentation.
3. As each pair completes their presentation, urge the class to take notes and ask questions after a group completes their presentation.
- \* Questions should be geared at testing the validity of the group's argument on why the amendment should or should not be added to the Bill of Rights.
4. After all students complete their presentations, students should then deliberate which amendments should be included in their proposed bill of rights, based upon the strengths and limits identified by each group. In order for this mock ratification debate to be successful, the teacher should play a minimal role in these deliberations, allowing students to decide and discover for themselves which amendments do or do not work.
5. As students complete their deliberations, they should vote on the amendments they wish to include in their bill of rights. Remember to tell them that they are not limited to choosing 10 amendments. They may choose fewer or more than the Founder's originally did.
6. After students complete their deliberations and voting, bring the class back together to reflect on the exercise. Leading the discussion, talk with students about what worked, what didn't work, and what surprised them about the debates. Ask students to reflect upon the research aspect of this project. What surprised them about the right they picked? Has the meaning of the right changed over time?
7. After debriefing, provides students with a short essay assignment to each component of this multi-day lesson together. Prompt students with a critical engagement question:

Why did the founders choose the rights they did for the Bill of Rights? Did they make the right choices? Think about that choice in its historical context and with respect to modern application.

Ask students to complete an essay that answers this question, with respect to their own research findings and/or their personal reflections after the conclusion of the class ratification debate.

8. As a way to assist students in completing this paper, or simply for future reference/review, collect copies of all the "ratification proceedings" (each group's amendment presentation) and make copies for each student."

**Homework:**

Day 1: If students do not complete their amendment presentation for ratification day, they should complete their preparation for homework.

Day 2: Essay on the critical engagement question (see above).

**Extension Activities:**

To modify this lesson slightly to achieve understanding of state government, have students work with their state constitution's Bill of Rights.

## **Appendix A. Bill of Rights**

### Bill of Rights/Amendments I–X

#### Amendment I

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.

#### Amendment II

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.

#### Amendment III

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.

#### Amendment IV

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.

#### Amendment V

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; 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.

#### Amendment VI

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.

#### Amendment VII

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.

**Amendment VIII**

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

**Amendment IX**

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

**Amendment X**

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.

## **Appendix B. The Dissent of the Minority of the Pennsylvania**

### [The Dissent of the Minority of the Pennsylvania Convention, Pennsylvania Packet \(December 18, 1787\)](#)

The Address and Reasons of Dissent of the Minority of the Convention of the State of Pennsylvania to their Constituents...We offered our objections to the convention, and opposed those parts of the plan, which, in our opinion, would be injurious to you, in the best manner we were able; and closed our arguments by offering the following propositions to the convention.

1. The right of conscience shall be held inviolable; and neither the legislative, executive nor judicial powers of the United States shall have authority to alter, abrogate, or infringe any part of the constitution of the several states, which provide for the preservation of liberty in matters of religion.
2. That in controversies respecting property, and in suits between man and man, trial by jury shall remain as heretofore, as well in the federal courts, as in those of the several states.
3. That in all capital and criminal prosecutions, a man has a right to demand the cause and nature of his accusation, as well in the federal courts, as in those of the several states; to be heard by himself and his counsel; to be confronted with the accusers and witnesses; to call for evidence in his favor, and a speedy trial by an impartial jury of his vicinage, without whose unanimous consent, he cannot be found guilty, nor can he be compelled to give evidence against himself; and that no man be deprived of his liberty, except by the law of the land or the judgment of his peers.
4. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel nor unusual punishments inflicted.
5. That warrants unsupported by evidence, whereby any officer or messenger may be commanded or required to search suspected places, or to seize any person or persons, his or their property, not particularly described, are grievous and oppressive, and shall not be granted either by the magistrates of the federal government or others.
6. That the people have a right to the freedom of speech, of writing and publishing their sentiments, therefore, the freedom of the press shall not be restrained by any law of the United States.
7. That the people have a right to bear arms for the defence of themselves and their own state, or the United States, or for the purpose of killing game; and no law shall be passed for disarming the people or any of them, unless for crimes committed, or real danger of public injury from individuals; and as standing armies in the time of peace are dangerous to liberty, they ought not to be kept up: and that the military shall be kept under strict subordination to and be governed by the civil powers.

8. The inhabitants of the several states shall have liberty to fowl and hunt in seasonable times, on the lands they hold, and on all other lands in the United States not inclosed, and in like manner to fish in all navigable waters, and others not private property, without being restrained therein by any laws to be passed by the legislature of the United States.

9. That no law shall be passed to restrain the legislatures of the several states from enacting laws for imposing taxes, except imposts and duties on goods imported or exported, and that no taxes, except imposts and duties upon goods imported and exported, and postage on letters shall be levied by the authority of Congress.

10. That the house of representatives be properly increased in number; that elections shall remain free; that the several states shall have power to regulate the elections for senators and representatives, without being controuled either directly or indirectly by any interference on the part of the Congress; and that elections of representatives be annual.

11. That the power organizing, arming and disciplining the militia (the manner of disciplining the militia to be prescribed by Congress) remain with the individual states, and that Congress shall not have authority to call or march any of the militia out of their own state, without the consent of such state, and for such length of time only as such state shall agree.

That the sovereignty, freedom and independency of the several states shall be retained, and every power, jurisdiction and right which is not by this constitution expressly delegated to the United States in Congress assembled.

12. That the legislative, executive, and judicial powers be kept separate; and to this end that a constitutional council be appointed, to advise and assist the president, who shall be responsible for the advice they give, hereby the senators would be relieved from almost constant attendance; and also that the judges be made completely independent.

13. That no treaty which shall be directly opposed to the existing laws of the United States in Congress assembled, shall be valid until such laws shall be repealed, or made conformable to such treaty; neither shall any treaties be valid which are in contradiction to the constitution of the United States, or the constitutions of the several states.

14. That the judiciary power of the United States shall be confined to cases affecting ambassadors, other public ministers and consuls; to cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states- between a state and citizens of different states- between citizens claiming lands under grants of different states; and between a state or the citizens thereof and foreign states, and in criminal cases, to such only as are expressly enumerated in the constitution, & that the United States in Congress assembled, shall not have power to enact laws, which shall alter the laws of descents and distribution of the effects of deceased persons, the titles of lands or goods, or the regulation of contracts in the individual states.

After reading these propositions, we declared our willingness to agree to the plan, provided it was so amended as to meet those propositions, or something similar to them: and finally moved the convention to adjourn, to give the people of Pennsylvania time to consider the subject, and determine for themselves; but these were all rejected, and the final vote was taken, when our duty to you induced us to vote against the proposed plan, and to decline signing the ratification of the same.

**Appendix C. Amendment Raffle Slips**

|  |   |  |
|--|---|--|
| No state may violate equal rights of conscience, the press, or trial by jury in criminal cases           | Freedom of Religion   | Freedom of Speech  |
| Freedom of Press   | Right of Assembly   | Right to Petition  |
| No ex post facto law except for those that apply to criminal law   | Wild Card (find contemporary support for a new amendment not previously proposed) | Right to Keep and bear arms  |
| Protection from quartering of troops   | Right to be secure in one's person  | Right to Due Process   |
| Trial Rights (fair, public, speedy trial, right to counsel, confronted by witnesses, alerted of charges) | Protection from Cruel and Unusual Punishment                                      | Right to protections that are not explicit in the Constitution                         |
| Right of states to powers not delegated by the Constitution  | Protection against self-incrimination   | Right to hunt and fish on all public, unclaimed lands                                  |
| Protection from the federal government interfering with State tax laws.                                  | Apportionment of representatives to constituents                                  | Protection from Congressional pay raises (cannot tack effect until the next election ) |

## **Appendix D. Bill of Rights Ratification Debates: Instructions**

1. After picking an amendment to research, decide who will cover the historical research and who will cover the contemporary research.
  - a. Students engaging in historical research should use the ConSource.org Library to search for information (using the Constitutional Index, if applicable).
  - b. Students engaging in contemporary research should search for current news articles, court cases, or scholarly articles that discuss the application of the right today. Your sources might include: news websites, scholarly databases (i.e., JSTOR), SCOTUSblog, Oyez.org, and the ConSource.org blog (accessible from the main menu of the website).
2. Student groups should synthesize their research to develop a short presentation to be given on ratification day. Your goal is to persuade your classmates that your right has historical and contemporary legitimacy. The class's goal is to question the opposite. Your presentation should be no more than 3 minutes in length.
3. The presentation you give should be informed by research that answers, but is not limited to, the following questions:

Why is this right important?

What are the risks of not including this right in the constitution?

What are the risks of including it in the Constitution?

Why should it be added to the bill of rights?

Why is this right important? What are the risks of not including this right in the Constitution?

What are the risks of including it in the Constitution? Why should it be added to the Bill of Rights?

How is this right practically applied, both in 1791 and today?

Who would benefit from this protection? Who would suffer?

Whose power is impacted by this amendment?

How did the Founder's feel about this right? Does this right exist elsewhere in the world?

How important is this amendment, relative to other rights?

Would you word the amendment the way the Framers chose to do so?