

# The Amendments that Got Away

| Overview                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Outcomes                                                                                                                                                                                                                                                                                                        |
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| <p>In this lesson, students will engage in several activities to learn more about the constitutional amendment process. They will:</p> <ul style="list-style-type: none"><li>• Read about and discuss the constitutional amendment process</li><li>• Learn about three past constitutional amendments</li><li>• Advocate for or against ratifying one of three proposed constitutional amendments</li><li>• Reflect on the process of amending the Constitution</li></ul> | <p>As a result of this lesson, students will be able to:</p> <ol style="list-style-type: none"><li>1. Describe the constitutional amendment process</li><li>2. Analyze and evaluate a past proposed constitutional amendment</li><li>3. Examine the difficulties of passing constitutional amendments</li></ol> |
| <p>In an <b>optional extension activity</b>, students will examine and analyze the 27<sup>th</sup> Amendment.</p>                                                                                                                                                                                                                                                                                                                                                         | <p>As a result of the <b>optional extension activity</b>, students will be able to analyze why some amendments are ratified while others are not.</p>                                                                                                                                                           |



45 minutes

1. The Constitutional Amendment Process (5 minutes)
2. Three Amendments that Got Away (15 minutes)
3. State Ratification Simulation (20 minutes)
4. Summary/Debrief (5 minutes)

## Handouts

- Handout 1A—Amending the Constitution (Including Primary Source)
- Handout 1B—Amending the Constitution (No Primary Source)
- Handout 2A—Three Amendments that Got Away Reading (Level I – High School)
- Handout 2B—Three Amendments that Got Away Reading (Level II – Middle School)

- **Handout 3—State Ratification Simulation Notecatcher**

## Additional Materials Needed

- ☐ Room with enough space for students to sit in small groups
- ☐ Board/flip chart

## Optional Extension Activity

Students will examine and analyze the 27<sup>th</sup> Amendment to the Constitution to discuss why some amendments are ratified while others are not.

A complete description of this activity can be found at the end of the lesson plan.

## Modifying the Lesson

Need to save time? Ask students to read about just one of the Amendments on **Handout 2—Three Amendments that Got Away Reading**. Then, shorten the “State Ratification Simulation” by focusing on the one amendment that students studied.

## Scaffolding and Differentiating the Lesson

These strategies are embedded throughout the lesson and indicated with the star icon: ★

| Scale Up Strategies:                                                                                                                                                                                                                                                                                                                                                                                                     | Scale Down Strategies:                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
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| <ul style="list-style-type: none"> <li>• Push students’ critical reading and thinking by providing students with <b>Handout 1A—Amending the Constitution (Including Primary Source)</b> and <b>Handout 2A—Three Amendments that Got Away Reading (Level I – High School)</b></li> <li>• With additional time, allow students to research the history and text of the three amendments from <b>Handout 2A</b>.</li> </ul> | <ul style="list-style-type: none"> <li>• Provide students with <b>Handout 1B—Amending the Constitution (No Primary Source)</b> and <b>Handout 2B—Three Amendments that Got Away Reading (Level II – Middle School)</b>. If needed, read aloud and check for understanding before moving on.</li> <li>• Consider strategically grouping students for the “State Ratification Simulation” activity. Group homogenously and provide additional teacher support to groups as needed.</li> </ul> |

## The Constitutional Amendment Process (5 minutes)

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**Scale Down Strategy:** Provide students with **Handout 1B—Amending the Constitution (No Primary Source)**. If needed, read aloud and check for understanding before moving on.

**Scale Up Strategy:** Push students' critical reading and thinking by providing students with **Handout 1A—Amending the Constitution (Including Primary Source)**.

- 1) Provide students with **Handout 1A—Amending the Constitution (Including Primary Source)** or **Handout 1B—Amending the Constitution (No Primary Source)**. Ask students to take two minutes to review the handout on their own and be able to explain the constitutional amendment process in their own words.
- 2) Tell students to turn to a partner and explain the constitutional amendment process in their own words. Circulate the room as students are explaining and listen for misunderstandings and misconceptions.
- 3) Ask students:
  - What role do the states and their legislatures play in amending the Constitution?  
*Answer: Three-fourths of state legislatures must ratify an amendment that is passed by two-thirds of both chambers of Congress. Two-thirds of state legislatures can also ask Congress to organize a convention to propose an amendment.*
  - In what ways could that part of the process contribute to the fact that we have so few Amendments?  
*Answers may vary, but might include: It is difficult to find consensus in two-thirds or three-fourths of the states because political, geographical, historical, industrial, and cultural differences between states are great.*
- 4) Explain to students that in this lesson, they will first learn about three amendments that, for one reason or another, have not been able to make it through the full constitutional amendment process. They'll then have the chance to convince their classmates to ratify or oppose the ratification of one or more of these amendments in a mock state legislature ratification.

## Three Amendments that Got Away (15 minutes)

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**Scale Down Strategy:** Provide students with **Handout 2B—Three Amendments that Got Away Reading (Level II – Middle School)**. If needed, read aloud and check for understanding before moving on.

**Scale Up Strategy:** Push students' critical reading and thinking by providing students with **Handout 2A—Three Amendments that Got Away Reading (Level I – High School)**.

- 5) Distribute **Handout 2—Three Amendments that Got Away**. Ask students to read through the summaries of each of the three amendments on the handout. As students read, they should consider their responses to these questions:
  - What is the main idea of each amendment?
  - Evaluate each of the amendments. For each, consider: What is one reason that this amendment should be ratified? What is one reason that this amendment should not be ratified?
  - Whether you approve of it or disagree with it, which of these amendments is most interesting to you? Why?
- 6) In preparation for the mock state legislature ratification, divide students based on their interest and evaluation of the three amendments. Ideally, create these six groups based on interest:
  - pro-Equal Rights Amendment
  - anti-Equal Rights Amendment
  - pro-Flag Desecration Amendment
  - anti-Flag Desecration Amendment
  - pro-D.C. Voting Rights Amendment
  - anti-D.C. Voting Rights Amendment



Just one student is enough to form a group for the purposes of this activity. If there are no students interested in one of the groups, then see the note below about what to do during the mock state legislature ratification. If groups are too large, divide students into smaller groups of 3–4.

- 7) In their six interest groups, distribute **Handout 3—State Ratification Simulation Notecatcher** and ask students to work together to fill out their section. Explain to students that in the next part of the lesson, they will have 90 seconds to state their best arguments in support or opposition of the amendment. The opposing group will also have 90 seconds to state their case. Then, the rest of the class, acting as representatives of the state legislatures, will vote. To pass an amendment, they'll need three-fourths of the class's vote. (You may want to remind students that in reality, approval from three-fourths of the 50 state legislatures is needed for passage.) Circulate to identify any misunderstandings or misconceptions prior to students' presentations.

## State Ratification Simulation (20 minutes)

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- 8) Explain to students that in this portion of the lesson their group will have 90 seconds to present their best argument either in support of or against their amendment. Once their 90 seconds is up, the other side will have 90 seconds to present their best argument. Then, the class, acting as representatives of state legislatures, will vote on the amendment. Provide students with a few more minutes of preparation and time to determine who their main speaker will be.



During students' final preparation time, write a speaking order on the board/flip chart, with the pro- and anti- amendment speakers for the same amendment speaking back-to-back. If there are no groups to represent one of the sides of an amendment, then one option is to leave the time slot open and allow an extemporaneous speaker to provide a 90 second argument.

- 9) In final preparation for speakers, remind students that they should take notes about the pros and cons of each proposed amendment on **Handout 3—State Ratification Simulation Notecatcher**.
- 10) Allow each group 90 seconds of speaking time. After the pro- and anti-amendment group have presented their arguments for each amendment, take a class vote. Any amendments that receive at least three-fourths of the class's votes have passed.

## Summary/Debrief (5 minutes)

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- 11) Congratulate the class on a successful state ratification simulation. Debrief with students about the process of amending the Constitution based on their experiences.

Ask students:

- What is one new thing you've learned about constitutional amendments and the process it takes to amend the Constitution? What is one question you still have?
- How is the process of amending the Constitution an example of federalism?

*Answer: Successful amendments must have support of the federal and state governments.*

- The U.S. Constitution was ratified in 1788 and has just 27 amendments. Based on the process we learned about at the beginning of class and the simulation, why do you think we have so few amendments?

*Answers may vary, but might include: The process requires much more than a simple majority, which means that an Amendment must be appealing to a lot of different types of people from across the country.*

- Which of our three amendments today was the most persuasive? Why? Do you think any of the amendments we discussed today could be added to the Constitution in the near future? Why or why not?

## Optional Extension Activity

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- 12) Provide students with the text of the 27<sup>th</sup> Amendment. This was the most recent amendment to the Constitution, passed in 1992.

Ask students:

- In your own words, what does the 27<sup>th</sup> Amendment say?
- Compare this amendment to the other three that we examined during class today. Why do you think this amendment passed but the others did not?

*Answers may vary, but might include: This amendment is something basic that a lot of different people can agree on, but the other amendments have a lot more controversy and public debate around them. This amendment is the solution to a problem that existed in 1791 and was still a problem in 1992; therefore, constitutional amendments that pass are more likely to deal with issues that are deep-rooted and widely supported across time and political party lines.*



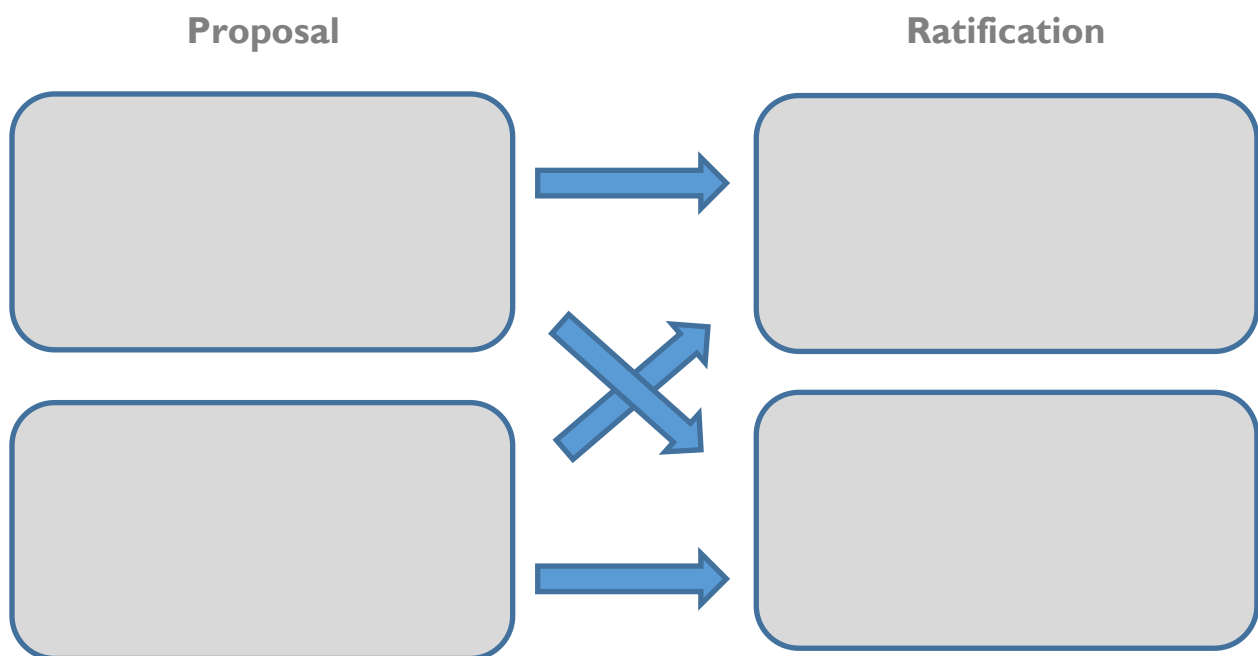
The link above provides the text of the amendment on the left, in the blue box. The text on the right provides a fascinating story about the history of the 27<sup>th</sup> Amendment. Consider using it as an additional extension to the lesson.

# Handout 1A—Amending the Constitution

**Directions:** Read the text of Article V of the United States Constitution below. Using two different colored highlighters or notations (e.g., underline, circle, star) note the two methods of proposing an amendment to the Constitution and two methods of ratification. Using that information, complete the graphic organizer below.

## Article V

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress.

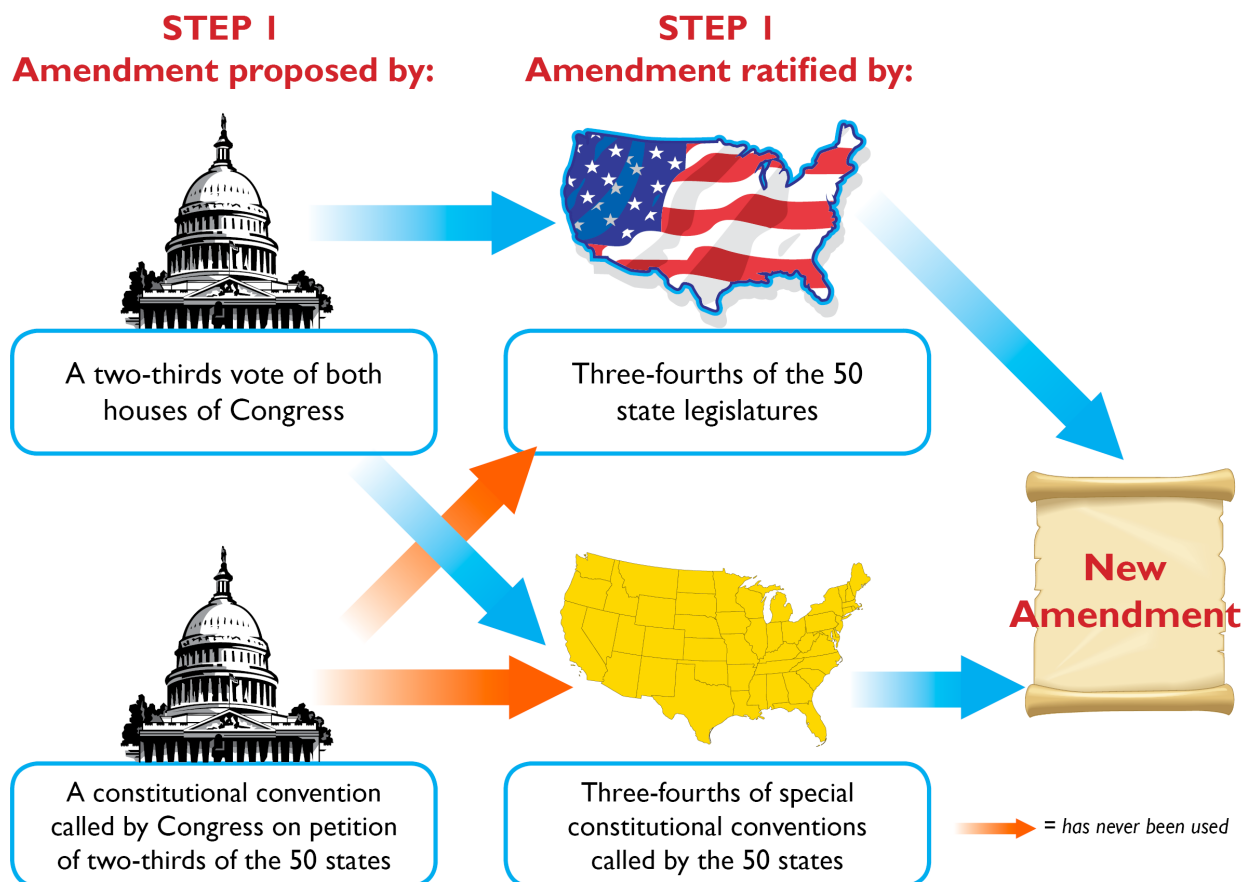


# Handout 1B— Amending the Constitution

There are two ways to propose amendments and two ways to ratify (approve) them. One way to propose an amendment is by a two-thirds vote in both houses of Congress. The other way to propose an amendment is for two-thirds of the states to ask Congress to call a convention. This process has never been used. All of our 27 amendments were proposed using the congressional vote method.

Many new proposals are introduced in Congress every year. Suggestions have been made to lower income taxes and shorten the term of Supreme Court justices. None of these proposals won the necessary two-thirds vote in the House and Senate.

After an amendment is proposed, there is a second step. Congress chooses one of two methods for the states to ratify. In one method, the legislatures in three-fourths of the states can ratify the amendment. In the other method, the states hold special conventions and then must have three-fourths of the conventions approve it.



# Handout 2A— Three Amendments that Got Away

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## Equal Rights Amendment (ERA)

Equal rights for women has been the subject of approximately 1,100 of the over 11,000 amendments proposed to the Constitution. An amendment was first introduced in Congress in 1921. It was reintroduced in 1971 and was approved by Congress and sent to the states for ratification in 1972. The purpose of this amendment was to guarantee women equality in areas such as employment and pay. Proponents argued that it was necessary because there was still disparity between the way women and men were treated under the law. They also point out that the only place in the Constitution that specifically guarantees equality to women is the 19th Amendment which grants women suffrage (the right to vote). Opponents argue that the 14th Amendment's Equal Protection Clause, which states that all citizens enjoy "the equal protection of the laws," makes the ERA unnecessary. They also point to laws like the Equal Pay Act of 1963, the Civil Rights Act of 1964, and Title IX of the Education Amendment Act of 1972 to show that women already enjoy the protections this amendment aimed to secure. This amendment included a deadline for ratification that was extended once. At the expiration of the second date, it had received 35 of the 38 state ratifications it needed to become an amendment.

"Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex."

*Text of House Joint Resolution 208, known as the Equal Rights Amendment*

## Flag Desecration (also known as the Flag-burning) Amendment

Congress passed the Flag Protection Act in 1968 amid protests against the Vietnam War, which sometimes involved flag burning. Many states also had laws that made flag burning and desecration (treating the flag disrespectfully) illegal. The Supreme Court declared these laws unconstitutional and overturned them with their decision in *Texas v. Johnson* (1989) stating that flag burning was a protected form of expressed or symbolic speech. In other words, by burning the flag, protestors were voicing their disagreement with government policy through symbols. Because of the Supreme Court's interpretation, the only recourse those opposed to flag burning had was to amend the Constitution. This amendment would allow the federal and state governments to pass legislation outlawing the desecration of the flag. Proponents argue that flag burning is an

"The Congress shall have power to prohibit the physical desecration of the flag of the United States."

*Text of House Joint Resolution 79, proposed Flag Desecration Amendment*

extremely offensive action that shows disrespect to the nation. They point out that there are many forms of speech that are not protected by the First Amendment such as “fighting words” (speech that incites violence). Opponents argue that freedom of political speech is highly protected by the First Amendment. They also note that one accepted way to properly dispose of a flag is by burning. This amendment was passed by the House of Representatives, but needed four more votes to pass in the Senate.

## District of Columbia Voting Rights Amendment

In 1961, the 23rd Amendment to the Constitution gave the District of Columbia three electoral votes for the president of the United States. It did not, however, address the capital city’s lack of representation in Congress. The District has no senators. In the House of Representatives, it has a delegate who may participate in some activities but may not vote on legislation. This amendment would

“For purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.”

*Text of House Joint Resolution 554, proposed D.C. Voting Rights Amendment*

treat the District like a state for purposes of representation to Congress granting it two senators and representatives to the House based on population. Proponents of this amendment argue that the residents of the nation’s capital pay federal taxes and, therefore, deserve votes in both houses of Congress. The District even offers a license plate that reads, “End taxation without representation” echoing one of the battle cries of the American Revolution. Proponents also argued that the 14th Amendment’s Equal Protection Clause guarantees District residents the same rights as all Americans including representation. Opponents of this amendment point out that the Constitution has a provision that states Congress would “exercise exclusive legislation” over the seat of government. Opponents also argue that Washington, D.C. is not a state—only a city—and, therefore, should not be represented in Congress on an equal basis with states. This amendment was passed by both houses of Congress and sent to the states in 1978. It received only 16 of the 38 state ratifications required.

## Questions to Consider:

1. What is the main idea of each amendment?
2. Evaluate each of the amendments. For each, consider: What is one reason that this amendment should be ratified? What is one reason that this amendment should not be ratified?
3. Whether you approve of it or disagree with it, which of these amendments is most interesting to you? Why?

# Handout 2B—

## Three Amendments that Got Away

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### Equal Rights Amendment (ERA)

About 1,100 of over 11,000 proposed amendments have been about equal rights for women. The Equal Rights Amendment (ERA) was passed by Congress and sent to the states to ratify in 1972. This amendment was supposed to make sure women were treated equally in their jobs and at school. People who wanted the ERA argued that women and men are not treated equally. They also pointed out that only the 19th Amendment guarantees equal treatment to women. The 19th Amendment gives women the right to vote. People who did not want the ERA said that the 14th Amendment states that all people already have “equal protection of the laws.” They also argued that there are laws that already give women the rights the ERA would give them. This Amendment did not pass. It received 35 of the 38 state ratifications it needed to become an amendment.

“Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.”

*Text of House Joint Resolution 208, known as the Equal Rights Amendment*

### Flag Desecration (also known as the Flag-burning) Amendment

Congress passed the Flag Protection Act in 1968 while some people were protesting against the Vietnam War. It was a national law that made it illegal to burn or treat the flag disrespectfully, which is called desecration. Many states also had laws that made flag burning illegal. The Supreme Court stated that flag burning was a protected form of speech because by burning the flag, protestors were disagreeing with government policy through symbols. The Supreme Court said these laws were unconstitutional and overturned them. Because of the Supreme Court’s decision, those who wanted to ban flag burning would have to amend the Constitution to make it happen. People who wanted this amendment argued that flag burning is an offensive action that shows disrespect to the nation. They pointed out that there are many forms of speech that are not protected by the First Amendment. People who did not want this amendment argued that freedom of political speech is protected by the First Amendment. They also pointed out that one of the proper ways to dispose of a flag is by burning it. This amendment was passed by the House of Representatives, but needed four more votes to pass in the Senate.

“The Congress shall have power to prohibit the physical desecration of the flag of the United States.”

*Text of House Joint Resolution 79, proposed Flag Desecration Amendment*

## District of Columbia Voting Rights Amendment

In 1961, the 23rd Amendment gave the people who live in the District of Columbia (or Washington, D.C.) the right to vote for the president of the United States. The District still does not have any voting members in Congress. In the House of Representatives, it has a delegate who may do some activities, but may not vote on laws. This amendment would treat the District like a state. It

would get two senators and a number of representatives based on the number of people who live there. People who wanted this amendment said that the people pay taxes and should have votes in both houses of Congress. They also argued that the Constitution gives people who live in the District the same rights as all Americans, including being represented in Congress. People who did not want this amendment said that the Constitution stated that Congress would make laws for the District. They also argued that the District is not a state and should not be represented in Congress like it is a state. This amendment was passed by both houses of Congress and sent to the states in 1978. It received only 16 of the 38 state ratifications required.

“For purposes of representation in the Congress, election of the President and Vice President, and article V of this Constitution, the District constituting the seat of government of the United States shall be treated as though it were a State.”

*Text of House Joint Resolution 554, proposed D.C. Voting Rights Amendment*

### Questions to Consider:

1. What is the main idea of each amendment?
2. Evaluate each of the amendments. For each, consider: What is one reason that this amendment should be ratified? What is one reason that this amendment should not be ratified?
3. Whether you approve of it or disagree with it, which of these amendments is most interesting to you? Why?

# Handout 3—State Ratification Simulation

## Notecatcher

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**Directions:** Work with your group to fill out your section of the chart below. During presentations, fill out the remaining sections with your notes.

|                              | Arguments in Favor | Arguments Against |
|------------------------------|--------------------|-------------------|
| Equal Rights Amendment       |                    |                   |
| Flag Desecration Amendment   |                    |                   |
| D.C. Voting Rights Amendment |                    |                   |

# Handout 1A—Amending the Constitution (answer key)

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**Directions:** Read the text of Article V of the United States Constitution below. Using two different colored highlighters or notations (e.g., underline, circle, star) note the two methods of proposing an amendment to the Constitution and two methods of ratification. Using that information, complete the graphic organizer below.

## Article V

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