

The founding and the constitution

[History](#)



1. Article V of the Constitution of the United States defines the procedure for altering the document's contents, primarily consisting of the proposal of an amendment followed by its ratification. Two ways of proposing amendments are described in Article V, the first being the normal procedures of any lawmaking in the legislative branch. In this first method (the "formal method"), the United States Congress proposes an amendment, which requires agreement from a super majority (defined as two-thirds of voting members) in each house. Super majority is required given the absolute nature of laws written into the Constitution, so the document is laying out a requirement that seeks a high standard of judgment. Also, the Constitution requires super majority votes from both the Senate as well as the House because, in theory, the two parts of the legislature were meant to represent different interests and different people (the Senate representing more of the small, rural states, which get to send two Senators in all cases whereas the House representing more of the populous states, which get to send representatives on the basis of population) (Alder).

The second procedure (the "informal method") for proposing amendments to the Constitution provides protection for states to an unresponsive Congress. If two-thirds of states agree to call for a convention, the Congress is obliged to call a convention. This method has neither constitutional instruction for how to complete the convention nor precedent to be relied upon. It is not clear whether the states would be represented equally or by population. With that said, all amendments to the Constitution have been carried out through the first procedure described. The Founders may have wanted this second procedure as a way of empowering the states and protecting against an intrusive, federal government (Mount).

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2. “Loose construction” refers to a loose or liberal interpretation of the U. S. Constitution, thus expanding federal powers beyond those explicitly mentioned in the document. In contrast, “strict construction” refers to the opposite: it is a legal philosophy that requires the interpreter of the Constitution to apply the text only as it is written. In other words, powers not enumerated in the Constitution are invalid (Welch).

As was described previously, the formal method of amendment has a clear process described in the Constitution, which maps onto the normal procedure for business of the Congress in creating laws. Therefore, the formal method of amendment is consistent with a strict constructionist approach to the document. On the other hand, the informal method of amendment’s exact procedure is not clearly defined by Article V and therefore requires some interpretation, which is most consistent with the loose constructionist approach to the Constitution. So far, all proposed Amendments to the Constitution have been through the formal approach and therefore consistent with a strict constructionist view.

3. One can see loose construction and strict construction as two extremes in a case where common sense, moderate viewpoints are preferable. Loose construction is problematic in the sense that the Constitution can be misused by activists to enforce new interpretations and value-judgments on the American people. Also, since the Founders provided a process of Amending the Constitution, one can assume they did not intend for the words and their interpretation in the document to change. Strict construction is problematic also in the sense that the world has changed since its creation in the late 18th century. Concepts and social dynamics in the document may no longer apply and therefore it should be interpreted loosely. Also, the Founders did <https://assignbuster.com/the-founding-and-the-constitution/>

not provide guidance on interpretation and therefore it can be assumed that there is no one way to interpret it, which is against strict constructionism.

The best textual approach to the Constitution would seek to follow an explicit, strict approach but only up until the point where the strict approach offers insufficient guidance, at which point an interpretive, loose approach is best.

Works Cited

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