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| **On Constitution Day, a look at proposed amendments and how seldom they go anywhere**U.S. politicans say they [revere the Constitution](http://www.washingtonpost.com/blogs/the-fix/wp/2014/09/17/happy-constitution-day-here-are-pictures-of-politicians-showing-how-much-they-love-the-constitution/?tid=hpModule_ba0d4c2a-86a2-11e2-9d71-f0feafdd1394&hpid=z11), but that doesn’t mean they don’t have plenty of ideas for changing it. Since 2003, in fact, 465 proposed constitutional amendments have been introduced in the House or Senate, according to our count — including 82 in the current Congress alone.Although they cover dozens of different topics, the proposed amendments in this period all have one thing in common: None of them have gone into effect. In fact, no amendment proposal has gained the necessary two-thirds support in both the House and Senate since 1978, when an amendment giving District of Columbia residents [voting representation in Congress](http://www.dcvote.org/1978-dc-voting-representation-constitutional-amendment-0) was sent to the states for ratification. (Only 16 states had ratified it when the seven-year time limit expired.)Indeed, the vast majority of proposed amendments die quiet, unmourned deaths in committees and subcommittees. By our count, only 12 times in the past dozen years have proposed amendments even been voted on by the full House or Senate. The most recent was earlier this month, when a campaign-finance amendment [failed in the Senate](http://www.washingtonpost.com/blogs/post-politics/wp/2014/09/11/defeat-of-campaign-finance-amendment-especially-bruising-for-bernie-sanders/) on a procedural vote. One proposed amendment came close. In 2003, the House passed a flag-desecration amendment 300-125, but the Senate never took it up. The House passed another flag-desecration amendment in 2005, 286-130, but a companion measure in the Senate fell [one vote short](http://www.nytimes.com/2006/06/27/washington/27cnd-flag.html) of the two-thirds requirement. constitutional amendments that fail to pass*Columns from left to right: balanced budget, campaign spending, term limits, flag desecration, no same-sex marriage.**For the 108th Congress (’03-’04) to the 113th Congress (’13-’14)*Those long odds don’t stop members of Congress from proposing dozens of new amendments every session. Some members, in fact, offer the same amendment repeatedly (such as New York Rep. Jose Serrano’s recurrent proposals to repeal the 22nd Amendment, which limits presidents to two terms). Proposals in the current Congress run the gamut from classic (reintroduction of the [Equal Rights Amendment](http://thomas.loc.gov/cgi-bin/query/z?c113:H.J.RES.56:), which failed in 1982) to idiosyncratic (allowing two-thirds of state legislatures to [repeal federal laws](http://thomas.loc.gov/cgi-bin/query/z?c113:H.J.RES.115:)).Some ideas come up year after year after year. We looked at five of the most common subjects of amendment proposals to examine some trends. The number of proposed amendments related to campaign finance jumped after the Supreme Court’s 2010 [ruling in the Citizens United case](http://www.nytimes.com/2010/01/22/us/politics/22scotus.html) that federal law can’t ban corporate election spending. Conversely, the number of proposals seeking to bar same-sex marriage has dwindled even as such marriages have [become more common](http://www.pewforum.org/2014/06/25/same-sex-marriage-state-by-state/) and [public opinion has become more supportive](http://www.pewresearch.org/data-trend/domestic-issues/attitudes-on-gay-marriage/) in the past few years.Amendments often are proposed as ways to overturn or get around controversial court decisions. In the current Congress, for instance, three separate proposals from the right seek to limit Congress’ power to impose a tax on “a failure to purchase goods or services” or “to compel someone to engage in commercial activity,” a clear response to the Supreme Court’s [2012 ruling](http://www.supremecourt.gov/opinions/11pdf/11-393c3a2.pdf) upholding the Affordable Care Act’s individual health-insurance mandate. And on the left, in another reaction to *Citizens United*, two proposals state that constitutional rights apply only to “natural persons” and not to corporations.<http://www.pewresearch.org/fact-tank/2014/09/17/on-constitution-day-a-look-at-proposed-amendments-and-how-seldom-they-go-anywhere/>(17 Sept 2014) |
| **Checks and Balances: The Government Shutdown in Perspective**When James Madison wrote the U.S. Constitution in 1787 he intended the system of Checks and Balances to operate in such a way that by separating the powers of different institutions "tyranny of the majority" would be countered. He relied on differing opinions in the separate branches. Even now that the majority of Congress has passed the Affordable Care Act, and the president has signed it into law, Madison's system of checks and balances enables the House of Representatives to stand in the way of its effective implementation. Conservative Republicans are using the system, because they can, to bring the healthcare bill back on the agenda by refusing to pass the omnibus budget bill for 2014. This is possible by design and a result of the Separation of Powers. That system of checks and balances incorporates the need for agreement and compromise between the legislative, executive and judicial branches of government.Needless to say, I don't believe that the Founding Fathers ever imagined that statesman would behave in such an unstatesmanlike manner as to risk default on government debt, penalizing federal workers or those in the military, with job suspensions and related pay suspensions. Yet many federal government functions and offices are now shuttered, the result of refusing to compromise. Even though it is out of context with 18th-century financial systems, it is precisely what the Separation of Powers was intended to make possible. At the time of the writing of the Constitution, the wealthy minority, who constituted the Founding Fathers, were afraid that democracy was a threat to property ownership. The dilemma they faced was reconciling economic inequality with political freedom. I don't believe that they anticipated that congressional standoffs would translate into potentially great financial losses for the very wealthy it was intended to protect.Although the system of the Separation of Powers and Checks and Balances allows almost all in the political system to have their views heard, the system also encourages stalemate as we see today. The Separation of Powers and the System of Checks and Balances was intended to promote the politics of bargaining, compromise and playing one body against the other. What the current Congress doesn't seem to get is the necessity for bargaining and compromise. Without that, the result is gridlock.If our Congressional representatives, the president and legislative houses, cannot respond effectively to the fragmented system of our policymaking processes, with the consequence that all of us pay financially as a result, it may be time for us to recall our representatives en mass and replace them with others that will negotiate in the public interest. That is the ultimate power that the people have over their government and the ultimate check in our American system.<http://www.huffingtonpost.com/jack-pinkowski/checks-and-balances-the-g_b_4080850.html> (10 Oct 2013) |
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| **Yes, Ted Cruz Can Be Born in Canada and Still Become President of the U.S.**Why is Cruz a longshot? He's a first-term senator. He's probably too conservative even to win a GOP primary, but particularly to win a general election. In just a few short months, he has managed to [consistently alienate](http://thecaucus.blogs.nytimes.com/2013/04/29/cruz-breaks-with-senate-tradition-while-criticizing-colleagues/) even his Republican colleagues. But what won't prevent Cruz from becoming president is his place of birth. Cruz was born in Calgary, Canada, while his parents were living there. His father is now an American citizen, but was not at the time; his mother, however, was born in the United States.Helpfully, the Congressional Research Service gathered all of the information relevant to Cruz's case a few years ago, at the height of Obama birtherism. In short, the Constitution says that the president must be a natural-born citizen. "The weight of scholarly legal and historical opinion appears to support the notion that 'natural born Citizen' means one who is entitled under the Constitution or laws of the United States to U.S. citizenship 'at birth' or 'by birth,' including any child born 'in' the United States, the children of United States citizens born abroad, and those born abroad of one citizen parents who has met U.S. residency requirement." So in short: Cruz is a citizen; Cruz is *not* naturalized; therefore Cruz is a natural-born citizen, and in any case his mother is a citizen.There were questions about John McCain's citizenship, because he was born in the Panama Canal Zone when his father was stationed there in the Navy. George Romney was born in Mexico to American parents, but faced no serious challenges to his bona fides in his 1968 run for the GOP nomination, though a few diehards even [questioned](http://www.theatlanticwire.com/politics/2012/05/ask-birther-are-you-convinced-mitt-romneys-birth-certificate/52968/) his son Mitt's qualifications in 2012. There are birthers for prospective 2012 Republican candidates [Marco Rubio](http://dailycaller.com/2011/08/24/coming-soon-rubio-birthers/) and Bobby Jindal, too. On the Democratic side, there's no ground for any questions about Hillary Clinton or Martin O'Malley. New York Governor Andrew Cuomo is lucky to have been born in the New York borough of Queens, rather than an adjoining borough; everyone knows Manhattan isn't real America, either.<http://www.theatlantic.com/politics/archive/2013/05/yes-ted-cruz-can-be-born-in-canada-and-still-become-president-of-the-us/275469/> (1 May 2013) | **Ben Carson Says No to a Muslim U.S. President** GOP presidential candidate Ben Carson told NBC’s Meet the Press on Sunday that the United States [should never elect a Muslim president](http://www.nbcnews.com/meet-the-press/ben-carson-does-not-believe-muslim-should-be-president-n430431). “I would not advocate that we put a Muslim in charge of this nation. I absolutely would not agree with that”. When asked if he believed Islam “is consistent with the Constitution,” Carson answered, “No, I don’t, I do not.”That would probably be news to the Founding Fathers. In 1786, Thomas Jefferson drafted the Virginia Statute of Religious Freedom to protect adherents of all faiths throughout the commonwealth and and to disestablish a state church. The statute subsequently influenced the First Amendment’s drafting and is considered a cornerstone of American religious pluralism. Jefferson later cited it among his greatest accomplishments.Many years later, in 1821, Jefferson [wrote](http://press-pubs.uchicago.edu/founders/documents/amendI_religions45.html) that the Virginia legislature had explicitly rejected the idea that the statute applied only to Christians.Where the preamble declares, that coercion is a departure from the plan of the holy author of our religion, an amendment was proposed, by inserting the word "Jesus Christ," so that it should read, "a departure from the plan of Jesus Christ, the holy author of our religion;" the insertion was rejected by a great majority, in proof that they meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and Infidel of every denomination.“Muslim” has replaced “Mohametan” as the preferred nomenclature, but the principle endures. Forbidding a Muslim president by law would be stupendously unconstitutional. Even if the First Amendment didn’t protect freedom of religion, Article VI of the Constitution forbids all religious tests for any public office.<http://www.theatlantic.com/politics/archive/2015/09/ben-carson-muslim-president/406339/> (20 Sept 2015) |
| No, Arnold Schwarzenegger Can’t Be President — And This Is DumbThe New York Post reported Friday that former California Gov. Arnold Schwarzenegger (R) “has been talking openly about [working on getting the constitutional rules changed so he can run for president in 2016](http://pagesix.com/2013/10/18/schwarzenegger-mounting-legal-challenge-to-run-for-president/).” He’s unlikely to succeed. A presidential bid by the Austrian-born Governator runs afoul of the Constitution’s requirement that “[n]o person [except a natural born citizen](http://www.law.cornell.edu/constitution/articleii) . . . shall be eligible to the office of President,” and the Constitution is [virtually impossible to amend](http://thinkprogress.org/justice/2013/10/10/2755741/what-chile-could-teach-the-united-states-about-preventing-government-shutdowns/). As the former leader of America’s most populous state, Schwarzenegger’s likely already served in the highest job he can ever achieve.The “natural born citizen” language in the Constitution is a relic of Eighteenth Century concerns that have little relevance to modern America. As Alexander Hamilton explained in the Federalist Papers, this requirement was placed in the Constitution to ward off “the [desire in foreign powers to gain an improper ascendant in our councils](http://avalon.law.yale.edu/18th_century/fed68.asp)” by “raising a creature of their own to the chief magistracy of the Union.” More than two centuries after Hamilton wrote these words, however, it’s difficult to imagine a foreign power undertaking such a task.In addition to requiring the President of the United States to be a citizen at birth, the Constitution also requires him or her to have “[been fourteen Years a resident within the United States](http://www.law.cornell.edu/constitution/articleii).” Thus in addition to everything else a foreign sleeper agent would need to do in order to become president, they would also need to set up residence in the United States and then wait for nearly a decade and a half before they would even be eligible for the presidency. That’s one heck of an time investment for a foreign power seeking to infiltrate the United States, and all for the sake of a plot that depends upon the American people electing a sleeper agent to a job that only 43 people have every held.Beyond fears of foreign infiltrators, there is [another explanation](http://www.legalaffairs.org/issues/March-April-2004/argument_amar_marpar04.msp) for the Constitution’s natural-born citizenship requirement. As Yale’s Akhil Amar explains, European monarchies often imported high-born citizens of other nations to serve as their new king or queen — think of [Willem III of Orange](http://en.wikipedia.org/wiki/William_III_of_England), the Dutch prince invited to rule Britain during the [Glorious Revolution of 1688](http://en.wikipedia.org/wiki/Glorious_Revolution). Indeed, a prominent early American politician named Nathaniel Gorham reportedly wrote to Prince Henry of Prussia to inquire whether Henry would [consider becoming King of America](http://www.legalaffairs.org/issues/March-April-2004/argument_amar_marpar04.msp) months before the Constitution was drafted. The natural-born citizen requirement, according to Amar, “reject[ed] all vestiges of monarchy.” It ensured that no foreign royal would ever set foot on American shores expecting to be crowned king.<http://thinkprogress.org/justice/2013/10/21/2807531/arnold-schwarzenegger-president-dumb/> (21 Oct 2013)  |