



# Six Amendments: How and Why We Should Change the Constitution

*John Paul Stevens*

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**Six Amendments: How and Why We Should Change the Constitution** John Paul Stevens  
**For the first time ever, a retired Supreme Court Justice offers a manifesto on how the Constitution needs to change.**

By the time of his retirement in June 2010, John Paul Stevens had become the second longest serving Justice in the history of the Supreme Court. Now he draws upon his more than three decades on the Court, during which he was involved with many of the defining decisions of the modern era, to offer a book like none other. SIX AMENDMENTS is an absolutely unprecedented call to arms, detailing six specific ways in which the Constitution should be amended in order to protect our democracy and the safety and wellbeing of American citizens.

Written with the same precision and elegance that made Stevens's own Court opinions legendary for their clarity as well as logic, SIX AMENDMENTS is a remarkable work, both because of its unprecedented nature and, in an age of partisan ferocity, its inarguable common sense.

## Six Amendments: How and Why We Should Change the Constitution Details

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## From Reader Review Six Amendments: How and Why We Should Change the Constitution for online ebook

### Steve says

A short and easy to read set of proposed Constitutional amendments by former Supreme Court Justice John Paul Stevens. From the death penalty, gun control and campaign finance to gerrymandering, sovereign immunity and the "anti-commandeering rule" Stevens' suggestions are each accompanied by a brief judicial history and personal stories. This book was an interesting position piece that quickly laid out the reasons for the proposals and placed the focus on where the changes should be made, in the language of the Constitution itself. I received a free ARC of this book through Goodreads First Reads giveaways.

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### Jason Anthony says

I have now read both of Justice Stevens' recent books (Five Chiefs about his time with five chief justices; this one, about his proposed revisions to six amendments). And, frankly, neither was that good. Five Chiefs was like reading a set of 1L law school case briefs (and not the insider take of someone more inside than Jeffrey Toobin, who writes nice/pop SCOTUS insider books). This one was very blah. His arguments (whether you agree with them or not) are very weak. It's as if he was told to keep this book very short and sacrificed the material.

Disappointing work from a Justice I recently met and admire.

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### Joe says

More like 3.5. I will avoid going into detail because of the subject matter (I realize this book touches on controversial topics), but I really enjoyed it. Any reader, whether agree or disagree with the six proposals in this book, if the reader is fair, will respect his careful and thorough reasoning. Justice Stevens has been working under the hood of our constitution for the better part of 40 years. He knows the rattles, the leaky spots, and he has watched its interpretation change for better and worse through so many SCOTUS opinions.

So, whether a person agrees with his particular proposals on a subject or not, Stevens is among a very small number of people who know our governing document at the very highest levels, and a fair-minded reader will find enrichment regardless of comfort. Stevens shows his work and makes strong logical arguments, as he did so often from the bench. Unfortunately, it's going to be given mostly 1s and 5s because he dares to speak of flashpoint topics. I can say I read every word and it is a really good argument by someone with elite-level constitutional credibility. It does go into some legal depth, so be warned, but I thought he was very clear in his presentation.

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### Andrew McBurney says

Six Amendments is Justice Stevens' prescription for a better America by reversing particular Supreme Court

decisions through the ratification of amendments to the Constitution.

Although we typically think of the Supreme Court as being the final say in matters of constitutional interpretation, there are two ways that a Supreme Court decision may be overturned. The first is by a later Supreme Court decision that reverses an earlier decision. The second is by amending the Constitution in a way that effectively nullifies the offending Supreme Court decision. An example of the latter would be the ratification of the 13th Amendment to overturn the infamous Dred Scot decision of 1857. Justice Stevens discusses this, as well as the purposes of the other amendments, in his prologue to his proposals.

Justice Stevens' six proposed amendments really target four areas: gun violence, our dysfunctional politics, sovereign immunity, and the death penalty. Additionally, while he does not directly discuss his theories of jurisprudence, his opinions on Court decisions and arguments for particular amendments offer some insight to his legal reasoning. He has an easy, almost conversational writing style that is very accessible; although some of his legal arguments would be more easily understood by law students than laymen.

Justice Stevens' first and sixth proposed amendments deal with gun violence. His arguments against the "anti-commandeering rule" are among the least easy to follow in the whole work, although he makes as good an effort as anyone could to make them easy to understand. The difficulty lies not with his writing but rather the complex nature of the law in that area—fundamentally a federalism issue. The short of it is, his amendment would reverse the anti-commandeering rule adopted (or affirmed, depending on your point of view) by the Court in the *Printz* case, and would thus allow the federal government to require local law enforcement to enforce federal laws—in particular, mandatory background checks for firearms purchases.

When discussing his sixth proposed amendment, Justice Stevens begins with his horror at the rising gun violence in our country. He is unyielding in his interpretation of the Second Amendment of the Bill of Rights as protecting a state power. Toward that end, he proposes amending the Second Amendment to say that the right to keep and bear arms should only exist in connection with militia service and therefore would be subject entirely to the authority of the state. In other chapters, he makes better and more even-handed arguments than he does here. He does not take as much time addressing historical and legal counter-arguments as he might have. He clearly opposes the interpretation of the Second Amendment by the Court in both the *Heller* and *McDonald* cases; but he approves of some elements of the opinions, and takes pains to point out that neither opinion recognizes the individual right to keep and bear arms as absolute. At times, this chapter almost seems as if it is written by two different authors. In fact, if you were to pick this book up at a store for perusal, and your eyes fell on certain paragraphs in this chapter, and you knew anything about the author, you might think some mistake had been made. But this is more a consequence of the nature of the law itself and its complexities, than it is any inconsistency on the part of the author. In any case, Justice Stevens' assessment is that, even with a modification to the Second Amendment, and the elimination of the anti-commandeering rule, not all gun violence would be eliminated, but his hope is that much of it would.

The inability of Congress and the states to act effectively, in the matter of not only gun control, even within the possibilities of *Heller* and *McDonald*, but also in other pressing areas, are attributable to our dysfunctional politics, according to Justice Stevens. He focuses on the issues of partisan gerrymandering and campaign finance. The chapter on partisan gerrymandering is fascinating for its discussion of unintended consequences that resulted from a series of decisions in the 1960's forbidding racial gerrymandering and establishing the one-person-one-vote rule for both congressional and state legislature districts. Justice Stevens argues strongly against gerrymandering in any form—almost. On page 35, he references a North Carolina case from 1991 in which that state was determined to have racially gerrymandered a district not to prevent African Americans from being in a majority, but to assure that African Americans were in the majority—he notes that this was an attempt by the state to comply with provisions of the Voting Rights Act of 1965. He further notes that "the Court invalidated the challenged plans" in a 5-4 decision, and that the "four dissenters thought that race-conscious redistricting for the purpose of benefitting minority voters was permissible." The case he references is *Shaw v. Reno*, 509 U.S. 630 (1993). He was one of the dissenters.

Unlike other discussions throughout the book where he explains at length his reasoning as a dissenter in certain cases, here, he is relatively quiet, probably because his purpose is the elimination of partisan gerrymandering. In any case, next school year, I will probably have my AP Government students read this chapter, since gerrymandering and its effects are typically given short shrift in government textbooks, and Justice Stevens' discussion is very readable.

The chapter on campaign finance also discusses effects, unintended and otherwise, stemming in part from the Buckley v. Valeo case in 1976, that eventually led to the Court's Citizens United v. FEC decision in 2010. Here, Justice Stevens makes very compelling historical and legal arguments against the Court's reasoning in Citizens United, but also shows how the result in that case came about, in part as a legacy of the Buckley case. He makes some of his strongest arguments in this chapter.

The chapter on the legal concept of sovereign immunity, and how it has developed in the United States, is particularly interesting, but, along with the chapter on the anti-commandeering rule, is particularly difficult to follow. Again, this is not due so much to Justice Steven's writing as it is the complex nature of the law at issue. When can you sue the government for a wrong it committed against you? The answer is, it depends. It depends on the Eleventh Amendment, Supreme Court decisions about the Eleventh Amendment—which have not always been consistent, the English common law rule of sovereign immunity, and more recent amendments that contain enforcement provisions for Congress. It is a treacherous spiderweb that Justice Stevens navigates as best he can, but the reader will likely still be left with questions. Justice Stevens' solution would indeed make things simpler: get rid of sovereign immunity entirely. He makes a strong argument for it, but spends little time discussing possible negative consequences that might have to be addressed (e.g.—Would there be a flood of litigation against government entities? Would new standards have to be developed over time for causes of action never before permissible?).

Justice Stevens' chapter on abolishing the death penalty is the most disappointing. Although he makes an argument for the absolute elimination of the death penalty, it is not as well supported by law and history as are most of his other arguments. Death penalty opponents will not find much if anything new to support their arguments; and neither will death penalty advocates be very much swayed by anything they find here to abandon their position.

Justice Stevens shows that he is compelled by the law, history, and stark present reality. His proposals are not likely to be passed by Congress or ratified by three-fourths of the states anytime soon. This work does offer some important insight into his legal reasoning without the stuffiness one might expect of a retired Supreme Court justice. Given the momentous decisions the Court has made during his tenure, that insight alone makes the book worthwhile. His usually even-handed historical discussions of how the law and certain legal principles developed—even those he disagrees with—are the strongest part of his work. His conclusions about the death penalty and the Second Amendment are polemics and consequently are the weakest of his proposals. He does not shy away from offering his opinions on the other topics of course, but neither does he present his opinions to the exclusion of those of fellow justices with whom he disagrees—usually. Even if you disagree with Justice Steven's opinions and conclusions, this book is still worth the read.

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## Jared Cook says

Concise, cogent, and to the point. The six changes Justice Stevens would make are (1) enable the federal government to require state officers to enforce federal law (currently, although the constitution says that federal law is "the supreme law of the land" over state law, the supreme court has interpreted this to mean only that state judges have to follow federal law, but not that other state officers are required to enforce

federal law), (2) give political gerrymandering the same scrutiny under the constitution that racial gerrymandering gets, (3) overturn Citizens United by clarifying that the constitution does not prohibit reasonable limits on campaign financing, (4) get rid of sovereign immunity as a defense for violations of the constitution or federal law by state officers, (5) expressly prohibit capital punishment as one example of a cruel and unusual punishment, and (6) clarify that the second amendment's right to bear arms is tied to service in a state militia.

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## **Bryan says**

May it please the court.

"Six Amendments" is fascinating in some places, but disappointing in others. On the one hand, this is a unique insight into what a Supreme Court justice really thinks, and a chance to keep pace -- for an hour or two -- with a towering intellect. On the other hand, the text can get a little dry at times, and it's no surprise to learn that Justice Stevens can sometimes be somewhat out of touch with modern life.

The book is at its strongest when talking about the anti-commandeering clause and the death penalty, but the chapter on sovereign immunity was not so impressive. The overall narrative could have done with some work too - it often reads like a collation of unrelated notes; the book ends abruptly with no summary or musings or conclusion; the footnotes are not insightful (in contrast to footnotes in the Justices' opinions!); and there's huge padding to get to 180 pages by simply tacking the Constitution in its entirety onto the end.

For hard-core Constitutional Law fans only.

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## **Scott Porch says**

*This review originally appeared in my column for Huffington Post on April 23, 2014.*

*As you may recall from your eighth-grade social studies class, the United States Constitution was written to be changed and we have changed it often. Even as the last of the 13 colonies were ratifying the Constitution in 1789 and 1790, the First Congress was already deep into debate over the Bill of Rights that would become the first ten amendments.*

*In the years since, we have tinkered with the Constitution a number of times for a number of reasons: to abolish slavery (13th Amendment), redefine citizenship (14th), give African Americans (15th) and women (19th) the vote, abolish (18th) and un-abolish (21st) the manufacture and sale of alcohol. We have altered how we elect presidents (12th), changed the date they take office (20th), and limited them to two terms (22nd).*

*Since the 1960s, when there were three amendments -- giving Washington, D.C., electoral votes (23rd), repealing poll taxes (24th), and adjusting presidential succession (25th) -- there have been only two. In 1971, the 26th Amendment reduced the voting age to 18; in 1992, the 27th Amendment prohibited Congress from increasing its own salaries in the middle of the term.*

*Since then? Nothing.*

*Despite polling that shows incredible frustration with how poorly Washington works, there have been no serious efforts to address such perceived failings by amending the Constitution. Even proponents of*

*congressional term limits -- who had their heyday during the 1990s with Newt Gingrich's proposed Contract with America -- failed mount a serious effort to put term limits into the Constitution.*

*Retired Supreme Court Justice John Paul Stevens revives the idea of amending the Constitution in his new book, Six Amendments: How and Why We Should Change the Constitution, though only two have much chance of ever happening.*

*Two of Stevens' proposed amendments -- revising the anti-commandeering and sovereign immunity provisions -- are too legalistic and obscure to galvanize a national effort. Two others -- regulating firearms and outlawing the death penalty -- are too controversial to get traction in the current political environment.*

*Stevens' final two proposed amendments, though, are aimed at reforming Congress, and there he may be onto something.*

*First, to combat the increasing tendency of congressional seats to be either safely Democratic or safely Republican, Stevens proposes an amendment that would require states to draw more geographically cohesive districts. That would result in a greatly expanded number of politically moderate districts and, therefore, more members of Congress with more interest in serving the voters in the middle than those at the extremes.*

*Second, to neutralize the dominance of corporate money in congressional elections, Stevens would amend the Constitution to wrest campaign finance from First Amendment limitations -- and from the Supreme Court -- and allow Congress to impose reasonable limitations on campaign spending.*

*Richard L. Hasen, a law professor and expert on campaign finance, dinged Stevens in The Daily Beast for the impracticality of proposing constitutional amendments that have no chance of gaining the support of two-thirds of Congress and three-quarters of the state legislatures when the Republican Congress has already rejected more modest campaign finance reform.*

*That's true to a point, but I come much nearer seeing success from outside pressure on a Congress less popular than bad breath to reform itself than proposed amendments that people either don't care about or are evenly divided. The best-case scenario would be an outsider president like Ronald Reagan or Bill Clinton running an anti-Congress campaign, winning, and then making redistricting or campaign finance reform a major goal of his or her first hundred days in office.*

*Stevens structured the book as a collection of bench briefs -- short histories of the various judicial interpretations of the provisions that he would change -- that take on issues where he thinks the conservative majority has led the Supreme Court astray in recent years.*

*Adam Liptak of the New York Times wrote of his recent interview with Stevens that "there was a hint of anger in some of his remarks" and that Stevens "said the court had made a disastrous wrong turn in its recent string of campaign finance rulings."*

*It's a matter of framing whether Six Amendments seeks more to rebuke the conservative majority for politicizing the Constitution to achieve ideological ends or to improve public policy -- certainly, Stevens would say it is both -- but there should be no dispute that gerrymandered congressional districts and corporate money in elections are structural impediments to effective government and that both could be addressed through constitutional amendments.*

*Stevens does not make a case for how to galvanize public support for the reforms or how the amendments would work in practice, but that's not the point of the book, which is to serve as a conversation-starter for a conversation worth having.*

## Kyle says

Gotta hand it to former Justice Stevens: Just when you think you're gonna get a straight political polemic on the ills of the country, you instead get a quiet, calm, legally-reasoned set of arguments for a handful of constitutional amendments. Each proposed change gets its own mini legal history, with special focus on how the Supreme Court has adjudicated. Some involve qualifying changes to existing amendments (like his proposed addition to the Second Amendment), while others (like the one involving gerrymandering) are brand new amendments altogether. Personal politics, being inextricable from any such argument, are generally thoroughly restrained, with the benefits to the political process at large being the primary focus. In terms of style, Stevens writes in a cold, calculating manner, lending to a touch of dryness, but I attribute that to decades of legal writing (which, if anyone's ever read any arguments or decisions, doesn't tend toward stylistic flourishes). There's the occasional factual error (the big one that leapt off the page to me was his mention of Henry IV being the king of England in 1600...), but this is likely due to the nature of the earliness of the draft. In all, this is an intelligent, well-reasoned defense of new changes to the Constitution; a quick read with a good amount of information.

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## Chris Lund says

A relatively short and easy read covering quite a range of legal topics, from major hot button issues like gun control and campaign finance, to issues that the average person has probably never even heard of, like sovereign immunity and the anti-commandeering rule. It's a nice change of pace to see him arguing political and legal points outside of the constraints of the bench. He does a good job in summarizing each of the 6 issues discussed, and, as usual, presents highly structured and logical arguments. Because of his deep familiarity with the issues and with the internal procedures, he also presents a fairly unique perspective with the occasional "behind-the-scenes" look, and his analysis often follows a path that diverges somewhat from the typical political conversations you hear on these topics, which in itself makes the book worth reading.

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## Kristen Coppola says

I listened to this on my drive back from Austin. It was so informative to hear these suggestions from a former Supreme Court Justice. He cited so many opinions; he's got such a wealth of knowledge of legal history. It's just fascinating. (A+)

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## Jacob says

It's been kind of hard to separate my opinion of Justice Stevens' opinions from my opinions of his writing and how he makes his arguments. Hopefully I can focus on the latter two in this review. In regards to his opinions, in some cases I agree and some I don't, but most of the time even when I agree it's for different reasons.

For anyone who still holds that the Supreme Court has been an unbiased, objective body focused on adjudicating based on established laws, this book is a fairly short way to disabuse them (shorter, for example,

than *The Nine: Inside the Secret World of the Supreme Court*). It's interesting to know that John Paul Stevens has his own opinions about what laws should be made and what some of them are. He's held many of them for a long time, and his memories of opinions made with his fellow justices are illustrative that the boundary between making the law and interpreting it is pretty thin. In addition, his recounting of how justices who agreed with him were "correct" in how they interpreted things and how those who disagreed were "persuaded" or flat out coming from nowhere makes it clear that, at least for Justice Stevens, there was no difference between his opinion and the law.

Stevens' "Anti-Commandeering Rule" adjustment is mainly a recognition that the battle for the balance of power between states and the federal government is over, and the states lost. This amendment seems more like a cleanup of weird legal cruft than anything else, although Stevens makes his reasoning very clear. Similarly, for an anti-gerrymandering amendment he's clear and shows a driving need. I was a little surprised that he repeatedly limits himself to accusing the political parties in power of gerrymandering, when I've seen cases (like California) where politicians on both sides show ability to work together in order to ensure they all get reelected.

The third amendment on Campaign Finance is where things start to falter. Although Stevens is semi-convincing that money spent may not influence elections significantly, I would think that should be an argument against limited campaign spending instead of for it. However, he brings up a very good issue about corporations being people legally yet not being able to vote, and how their spending may make a difference. I anticipated his chapter on Sovereign Immunity would suggest that sitting political leaders be vulnerable to suits, but it turns out there's a weirdness (like anti-commandeering) where individuals in one state cannot sue another state without that state's permission. His accounting of the (non-Constitutional) origin of that practice is interesting, as is his utter lack of desire to acknowledge any of his own opinions that may also have had entirely non-Constitutional origins.

The last two chapters, abolishing the death penalty and advocating much firmer gun control, are where Stevens shows more of his own feelings without regard to the law or strong evidence. His core example for the death penalty was a case where an individual stirred up a lot of legal costs simply to fight the prosecution's push for the death penalty. Yet the example itself suggests that, if the death penalty didn't exist as a bargaining chip, the costs would have been incurred anyway fighting lifetime incarceration. It also reveals the perpetrator's fear of death once he'd been charged, which kind of undermines Stevens' assertion that the death penalty is not a deterrent. The other strong issue is that where the wrong person is convicted of a crime. I don't see that as a good argument against the death penalty, I see it as a good argument that we should fix up our legal system so innocent people don't get convicted of crimes. After all, how is life imprisonment with no parole so much better for an innocent person than being executed? You can't really say it offers the hope of exoneration because there are many current cases where the state refuses to test evidence it already possesses in order to clear innocent people who have been wrongfully convicted.

And the gun control suggestion is a bit tough to deal with. Stevens is convincing that the wording of the second amendment doesn't exactly match the original intentions of the founders, but the wording itself is strong and clear enough it's hard to change without getting drastic. Also, apparently his motivation for pushing this change is the tragedy at Sandy Hook, although he freely admits his suggested change wouldn't have prevented what happened? Also: handguns have no military use? Last I checked, members of the military were issued handguns. In addition, police serve a military-like function that very much involves the use of handguns. So this last section is especially garbled in its reasoning and arguments.

So the suggestions for amendments are kind of a mixed bag, but for anyone who is interested in how the Supreme Court works, or political issues, it's definitely a recommended read.

### **Tomi says**

A fun and quick read for me. I appreciated Stevens' insights and enjoyed hearing this material in closer to layman's terms, outside of the context of cases and textbooks. His descriptions were occasionally somewhat confusing, but generally informative and thoughtful. Glad I read it!

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### **Jennine Ihde says**

Politically I agree with all of these amendments and I appreciate his logic. Sometimes I wished it didn't read so much like a dissenting opinion.

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### **Patrick Gendron says**

Weather or not you agree with what John Paul Stevens lays out as the amendments he would make, this is a great read. Quick, to the point, and well thought out. I found myself enjoying this read more than I thought I would.

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### **Bill Warren says**

a very linear description of how history and historical law got us from a starting point in the Constitution to current supreme court rulings. A pretty dry read (more like a textbook) but it contains enough personal touch from JPS to keep it moving. I have a similar view of the Constitution as does Justice Stevens but I think this is a quality read even for those who do not. Even if you are starting from square one with knowledge of the Supreme Court this book is very digestible and can be tackled in an afternoon. You'll have a much greater knowledge of how the Constitution and the law work after reading...if you occupy the oval office and don't know anything about the Constitution this book might help (if such a person exists).

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