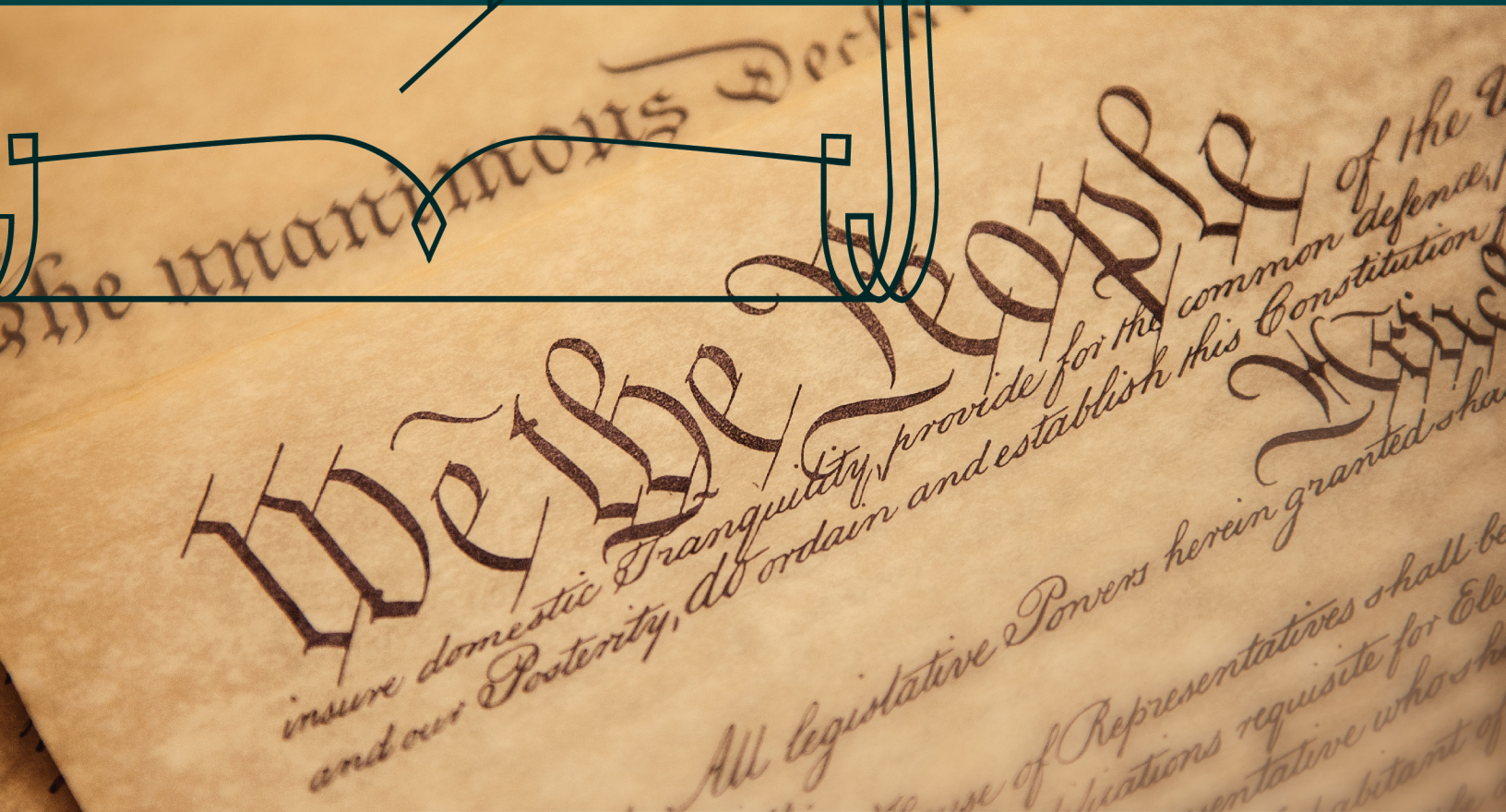




# THE CONSERVATIVE CONSTITUTION

BY ROBERT P. GEORGE, MICHAEL W. McCONNELL,  
COLLEEN A. SHEEHAN, AND ILAN WURMAN



# INTRODUCTION TO THE CONSERVATIVE CONSTITUTION

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As part of its “Constitutional Drafting” Project, the National Constitution Center asked three committees representing different perspectives on matters of politics and jurisprudence to draft new constitutions for the United States of America, 2020. Our committee was tasked with framing the “conservative” constitution. The members of our committee were not unanimous with respect to every provision in the proposed document; as with the Constitution of the United States, some provisions represent compromises. From the perspective of none of us is our proposed constitution perfect. Nor do we suppose that a perfect constitution is possible—for our society or any society. And, of course, our constitution will contain faults and flaws reflecting our own all-too-fallible judgments.

As conservatives, we were tempted to leave the Constitution largely unchanged, amending only those provisions most obviously in need of alteration. However, in the spirit of the NCC’s project, we attempted to think more boldly and propose changes that we believe would improve the Constitution to meet the exigencies of our era. Above all—and this is the real point of the exercise—we hope that our efforts will spur constructive discussion of the purposes of a constitution for a free people dedicated to the experiment in self-government.

A sound constitution will serve justice and the common good—that is its justifying purpose. A constitution cannot, however, and will not propose to, resolve all disputes (or all disputes that may someday arise) concerning political ends. Recognizing that reasonable people of goodwill can and do disagree about what justice and the common good require, a sound constitution will establish fair and workable procedures for resolving disputes about such matters. Our proposed Constitution, therefore, in large part consists in the articulation of basic principles and the establishment of institutions and procedures for effectuating those principles in the political life of the people.

The Constitution of the United States is not properly understood as a contract based on self-interest; nor is it merely a system built on shrewd institutional arrangements. It is an agreement whose authority derives from the people themselves, with the crucial qualification that the people are morally bound to exercise their authority in accordance with the standards of a higher, natural law. The Constitution is America’s charter. To consent to it even tacitly, James Madison argued, is to make a pledge to every other American to defend their equal natural rights. As such, the Constitution is a pact of social trust, grounded in the principles of the Declaration of Independence, viz., the recognition of our common humanity and the respect and protection that citizens owe one another. This is what Lincoln meant when he said that the Constitution is like a silver picture frame around the Declaration’s apple of gold. The picture frame was made “not to *conceal*, or *destroy* the apple, but to *adorn*, and *preserve* it. The *picture* was made *for* the apple—not the apple for the picture.” We thus begin with a reaffirmation of the principles of the Declaration.

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Today, we still confront the perennial conundrums of popular government, of which the problem of faction yet constitutes the disease “most incident to republican government,” as Madison warned. Simplistic adherence to pure democracy, unleavened by constitutional checks and balances, is therefore still undesirable. The good of the people is all too easily hijacked by self-interested and ideological factions that promote their own objectives at the expense of the long-term interest of the whole. In short, the goal of refining and enlarging the public views to achieve what Publius called “the reason of the public,” is not working as our Founders hoped it would.

Many of our proposed changes are designed to enable elected officials to break free of the grip of faction and once again to deliberate, with the aim of listening attentively to, as well as educating, public opinion, and promoting justice and the public good. To the conservative mind, self-government is simply not the same thing as “democracy” or “democratic accountability.” It is government by reflection and choice, ultimately responsible to the people themselves, but refined and enlarged through mediating institutions and the processes of deliberative republicanism.

Our country today is fraught with civic disrespect and, all too often, a disregard for the lives of others. America is in need not only of civic healing, but of a better and deeper understanding of the fundamental principles of our nation and its founding documents. We are especially in need of understanding the basic respect to which every member of the human family, without distinction, is entitled, so that our Constitution, informed by the principles of the Declaration, can fulfill the terms of the “promissory note” issued every American, as Martin Luther King believed and proclaimed.

It is these principles, more than the specific provisions of our existing Constitution, that we have sought to preserve. To this end, our committee dedicated many hours of discussion to major structural changes to our charter, as well as to several specific changes to certain powers and rights. Our team comprised two “originalist” constitutional law professors as well as a political theorist and a philosopher of law, and so we were first able to identify many provisions where the original meaning could be clarified or where there were genuine questions as to that meaning. We also sought to revise or extend some provisions to accommodate modern practices where the Constitution does not speak clearly to such practices. Most radically, we sought numerous institutional and structural changes—to the Senate, to presidential selection, to judicial and executive appointments, to the legislative process, to the role of the states in national affairs, and to various provisions touching modern administrative government—where we thought the Constitution has not worked as well as it could be made to work. Such structural changes, however, were made in the spirit of advancing the Founders’ own principles. In many instances, we return to ideas (or variants of ideas) that were proposed but not adopted at the time of the Founding.

## **THE STRUCTURE OF THE SENATE**

The most radical change we propose is to the Senate. The Senate should deliberate about the common good, but the current Senate rarely does so. We believe that a principal failing of the current system is that politicians are forced to pander to the short-term (and sometimes short-sighted) interests of various interest groups, and find it difficult to adopt policies that trade short-term costs for long-term benefits (or, very often, prevention or amelioration of long-term catastrophe). The long term is not the exclusive province of the right or the left; consider such long-term concerns as the debt burden and the environment. Our committee thus returned to the Founders’ original conception of the Senate as a body that would exercise sober, independent





judgment, and the House as a more democratic, responsive institution—thus retaining the advantages of both, in the Montesquieuan spirit of balanced government as opposed to pure democracy.

We propose a series of reforms that will seem radical from a twenty-first century perspective but return to the original conception in important ways. (1) To reduce the size of the Senate to fifty to facilitate genuine deliberation. (The original Senate had twenty-six members.) (2) To increase the length of senatorial terms to nine years, with no chance for reelection. This is designed to create the independence that the Founders hoped from the original Senate. The intended effect is to enable Senators to vote their conscientious judgment regarding the common good rather than focusing on interest groups and reelection. (3) To reintroduce appointment by the state legislatures, as was the case until 1913. This will have two benefits: to increase the probability that senators will be selected on the basis of experience and character, and to give the states, as states, more of a voice in national legislation. (4) To require Senators to make a solemn pledge to legislate for the common good, and not for the good of any party or class. (5) To rein in, but not eliminate, the filibuster. And (6) to require that members of Congress, except for good cause shown, be physically present when their House is in session—a provision borrowed from the Commonwealth of Pennsylvania—in the hope that genuine deliberation will return to the floor of Congress.

As the framers understood, there is a tension between proportional representation, which is more purely democratic, and equal representation of the states in one of the branches of Congress, which is more in keeping with our federal structure. (The latter was so important to the founding generation that our current Constitution makes it unconstitutional to deprive the states of equal suffrage in the Senate.) Our committee was not unanimous on the balance to be struck, but we ultimately decided that the diversity of views and interests among the United States is best served by leaving many areas of policy to be decided at the state and local level. If 10 million New Yorkers want to restrict hunting or fracking, or to increase the minimum wage, they can do so at the city or state level. However, before imposing such value-laden policies on the entire nation, they should have to secure a nationally distributed majority. That is one of the virtues of the structure of the U.S. Senate, a virtue we have retained and strengthened in our proposed constitution. We have reduced, however—although we did not altogether eliminate—the advantage of small states in the electoral college in favor of popular election of the President.

## PRESIDENTIAL SELECTION

Another important structural change that recognizes these tensions is to the presidential selection process. The committee believes that the current system for selecting candidates for the chief magistracy, which is not in the Constitution, is insufficiently attentive to experience and character, while the electoral college system for choosing among the candidates is insufficiently democratic. The committee arrived at a system whereby candidates are selected by elected representatives at the state level (thus avoiding a concentration of power in Washington), with the possibility of petition candidates, and the ultimate choice made by popular vote by means of rank-choice voting. It is our view that the current primary system is not good at identifying candidates who would be good Presidents. Nonetheless, the People should have the final choice between two (or more) strong, highly qualified candidates, without distortion by an intermediary body of Electors.



Our proposal achieves this, while retaining the Electoral College’s wise provision for a broadly distributed national electorate, at least at the candidate-selection stage.

Returning to a proposal that was almost adopted by the original Constitutional Convention, we limit the President to a single six-year term. This will make it less likely that the President will make important decisions with a view to reelection rather than to the common good, and will prevent Presidents from improperly using the perquisites of incumbency to gain electoral advantage. It may be too much to hope, but maybe Presidents will focus on their presidential role rather than their position as leaders of political parties.

## **SUPREME COURT SELECTION (AND OTHER EXECUTIVE AND JUDICIAL NOMINATIONS)**

The selection of Justices of the Supreme Court should be made less political and arbitrary. Lifetime tenure for Justices has become a serious problem. Some Justices remain in office longer than they should, and many make tactical retirement decisions to ensure replacements from the same political party. The outcome is that one President may have the opportunity to appoint a significant number of Supreme Court Justices, and others might not appoint any. Much as we like the Supreme Court nominees of President Trump, there is no logical reason why he should be able to appoint three Justices in four years, while Presidents Obama and Bush appointed only two Justices in eight years. This makes the stakes of each nomination much higher than it need be. We therefore propose—as have other academics—eighteen-year, staggered terms for Supreme Court Justices, creating a vacancy every two years, thereby evening out the appointment opportunities among Presidents. In addition to being more equitable, we anticipate that if there were a new appointment every two years, that would significantly reduce the temperature of confirmation battles. We also propose modest reforms to reduce the importance of the Court relative to the elected branches.

We fix the number of Supreme Court Justices at nine—the number that has been in place for 150 years—thus preventing the manipulation of the Court by temporary political majorities. Court packing is the death knell of judicial independence. We also provide that the lower courts cannot be expanded by more than one judge per court per two years. This allows for natural growth of the judiciary but reduces the risk of “court packing” in the lower courts.

Relatedly, the conservative constitution changes the confirmation process for executive and judicial officials. Borrowing a proposal made by Madison at the Constitutional Convention, it provides that nominees are automatically appointed after three months, unless sooner disapproved by the Senate. The Senate should be able to disapprove a President’s nominee, but this should require an actual vote, with Senators on the record. (If this had been in place in 2016, Merrick Garland would have gotten an up-or-down vote, and likely been confirmed; the same rules would apply no matter which party is in power.)



## SUPER-MAJORITY RULES

Another structural change is the introduction of a three-fifths voting rule in Congress for specified matters that, we believe, should require bipartisan buy-in (such as declaration of emergencies, admission of new states, or adoption of voting rules). These bipartisan decisions are not subject to presidential veto.

The committee further concluded that the current amendment process was too difficult. We sought to make it a bit easier to amend—but not too much easier. Thus, we provide that Congress by three-fifths vote of both Houses, *or* the states by vote of a majority of the state legislatures, may propose amendments, and we clarify the process of a general convention. We then reduce the ratification requirement from three fourths of the states to two thirds of the states.

Treaties are also too difficult to ratify. The two-thirds requirement makes it increasingly likely that a president will turn to nonbinding executive agreements. The committee reduced the treaty ratification requirement to three fifths.

Finally, Article I, Section 5 proposes that any changes to the rules of proceeding in either House of Congress may only take effect three years after adoption. The idea is to prevent rule changes that unduly advantage a given Congress's majority. Congress may by law, however—that is, with bicameralism and presentment—make rule changes that take immediate effect. We conclude, moreover, that the filibuster in its current incarnation has gotten out of hand. Sixty votes should not be required for passage of all legislation. We have restored the filibuster to its original purpose of enabling a minority to delay, but not to block, controversial legislation, in part by returning to the “speaking filibuster.”

## RESTORING CONGRESS'S LEADING ROLE IN THE APPROPRIATIONS PROCESS AND IN LEGISLATING

The Founders expected Congress, not the executive branch, to take the leading role both with respect to the power of the purse and with respect to laws regulating private conduct. The conservative constitution contains provisions designed to restore that role. First, the terms for House and Senate are increased to three and nine years, respectively, and the President serves a single, six-year term. Longer terms will enable political officials to focus more on legislating and less, or not at all, on winning reelection. These provisions are faithful to the principle of popular sovereignty, in which all power must emanate from the people, but make a modest move in the direction of what is sometimes called the “trustee” (as opposed to the “agency” or “mirror”) theory of representation. Under this theory, the people choose officials in whom they have trust, relying on them to exercise their best judgment regarding the public good, rather than to respond to fleeting public passions.

Numerous changes have also been made to the appropriations process. The proposed constitution requires the House to adopt a budget resolution determining the amount of total expenditures for the upcoming three-year budget period. To the extent the total exceeds the anticipated revenues, which are calculated by a Board of Treasury, the budget resolution must propose legislation raising revenue or borrowing money in an



amount sufficient to cover the excess. Bills raising revenue and borrowing money in accordance with the budget resolution enjoy legislative priority and must be enacted before any appropriation for that budget cycle can be passed. If Congress fails to enact legislation raising revenue or borrowing money in an amount sufficient to cover any excess, the President has the duty to exercise a line item veto to reduce appropriations to fall at or below the lawful ceiling.

We do not regard borrowing as a mere policy question to be left to the vagaries of politics. When politicians finance current spending by borrowing, this favors the voters of today at the expense of the unrepresented voters of the future. The framers attempted to deal with this problem by requiring the vote of Congress for any additional borrowing, but the current system of “debt ceilings” creates a situation where the money is already spent before we reach the “ceiling,” giving Congress little choice but to borrow more. Our budget proposal requires Congress to cast votes for taxes or debt before they can spend the proceeds.

As explained more fully below, we also impose a cap on borrowing as a percentage of gross domestic product, except in times of war or national emergency. This proposal is not motivated by economic policy considerations so much as intergenerational equity. Increasing debt today means that higher proportions of future budgets will have to be devoted to payments of interest and principal—especially when interest rates return to their historically normal levels. We see no reason why our generation should enjoy the benefits of higher spending at the expense of our grandchildren.

Our committee rejected, however, the more extreme step of a balanced budget amendment. We agree with Alexander Hamilton that a modest public debt can be a national blessing, and think that borrowing is legitimate, indeed salutary, as long as it grows no faster than the national economy.

We also create a new Board of Treasury, named entirely by Congress, with authority to ensure that money is not expended except in accordance with appropriations passed by Congress. Recent presidents, including both Trump and Obama, have spent money on pet projects even after their proposals were voted down by Congress. There is no effective legal remedy for this kind of presidential overreach. Congress has the power of the purse, but that power is meaningless if there is no mechanism for ensuring executive branch compliance.

Article I, Section 9 gives Congress the power to establish a central bank like the federal reserve, independent of direct presidential control (thereby remedying originalists’ doubts regarding the constitutionality of this measure). This provision also authorizes the bank to issue paper money and provides for the independence of the bank governors. This is not a change, but a way to bring the Constitution into line with current salutary practice.

## **ADMINISTRATIVE GOVERNANCE**

The conservative constitution also grapples with modern administrative governance. The bureaucratic state, is, we believe, the most pronounced example of the “democratic deficit” in twenty-first century American governance. The so-called “fourth branch” of government has lost its ties to Congress because of excessive



delegation, to the presidency because of removal restrictions and the permanence of the bureaucracy, and to the judiciary because of an administrative court system that too often resembles kangaroo courts. Our proposed constitution reluctantly accepts the inevitability of significant (though not unlimited) delegations of authority and provides for a legislative veto of regulations by majority vote of both Houses of Congress (without possibility of presidential veto), thereby preserving a back-end legislative check. This is effectively a reversal of *INS v. Chadha*, but not because that case was wrongly decided. The current system, in which Congress can disapprove regulations—even regulations that distort the meaning of congressional statutes—only by passage of legislation, which can be vetoed by the very President whose administration promulgated the regulations, strips Congress of its rightful role as lawmaker.

Our proposal also makes explicit what we believe to have been implicit in the original Constitution: that the President has the right to remove any executive officer. Instead of relying on convoluted contortions of construction, we create exceptions for the categories of officer who should not be under immediate presidential control: especially officers of the central bank, administrative judges, and those charged with adjudicating electoral disputes. We see no reason in theory or practice to insulate officers in charge of regulatory policy and enforcement from presidential control; regulation is at the heart of the executive power.

The draft also seeks to solve the problem of executive adjudications. Historically, such adjudications could be justified in public rights cases, which are quintessentially those involving statutory public benefits. Private rights cases—those involving deprivations of life, liberty, and property, and the relations of two private citizens to another—should have been understood all along as judicial in nature and not susceptible to adjudication in the executive branch. Our proposed constitution restores that original constitutional scheme, while preserving the practical advantages of administrative courts in terms of efficiency and expertise.

In combination, these changes rein in the “fourth branch” and restore the authority of Congress, the President, and the courts over agency exercises of power that are legislative, executive, and judicial in nature. Congress has the last word on regulations, which are effectively a form of legislation; the President has effective control over law execution; and the courts have jurisdiction to ensure that life, liberty, and property are not taken away except in accordance with law.

## **CITIZENSHIP, VOTING, AND ELECTIONS**

The proposed conservative constitution makes two determinations with respect to citizenship. It maintains birthright citizenship (in the new Article IV, Section 1) and clarifies that persons born to U.S. citizens are also citizens, even if they are born abroad. We recognize that birthright citizenship for the children of persons who have come to the United States in violation of the laws is controversial, but retained it because of its long history in the Anglo-American legal tradition and because without it there is a real risk of some persons being born citizens of no country at all.

The committee did, however, provide that apportionment of voting representation should be based only on citizenship. Voting is the highest of all political rights and is reserved to citizens, and it follows that





apportionment for purposes of voting should only be based on the distribution of such citizens. Additionally, the concept of one person, one vote, further supports the restriction; there is no good reason why the voting power of a citizen in a state with many non-citizens should be weighted more heavily than the vote of a citizen in a state without many non-citizens.

The proposed constitution also solves the problem of the disenfranchisement of the residents of the District of Columbia. It provides that for purposes of “voting, apportionment, and representation” in federal elections, the citizens of the District shall count as citizens of the State from which the land on which they reside was ceded. This seemed to the committee to be the obvious solution to the D.C. problem. Making D.C. its own state would be blatantly partisan, and there is also something unpalatable about giving extra representation to the seat of government. Our solution solves the representation problem without creating new difficulties.

Regarding apportionment, Article I, Section 2 now provides that each state shall, “pursuant to legislation,” “allocate the State’s representatives by drawing compact and contiguous districts of as nearly equal voting- eligible population as is feasible; provided that Congress may by a vote of three fifths of both Houses authorize other equitable methods of allocation.” The committee regards the practice of partisan gerrymandering as corrosive to our politics but does not believe there is any constitutional or legal formula that can fully solve it within a scheme of geographically defined districts. It also recognizes that it is impossible to eliminate all politics from redistricting decisions. Congress by bipartisan vote of three fifths of both Houses may experiment with other systems, such as multi-member elections with rank-choice voting, but may not do so selectively, which would be an invitation to partisan machinations. We are skeptical that there is an objective legal solution to the gerrymandering problem, but if so, it should come from the representatives of the people and not from the courts. The formulation “pursuant to legislation” permits state legislatures to use electoral districting commissions or other devices that might be thought to reduce partisanship in the districting process, but the requirement of renewed action after the decennial census ensures that such mechanisms do not themselves become impervious to democratic reform.

The proposed constitution also fills gaps in the existing Constitution with respect to enforcement of voting rights. Article I, Section 4 constitutionalizes the central provision of the Voting Rights Act and makes it the duty of the several states to protect the right of all qualified voters to cast a secure and secret ballot for the qualified candidate of their choice and prohibits states from imposing any test or device that has the purpose or effect of denying or abridging the right to vote. It also makes it their duty to protect all qualified voters from violence, threats of violence, or the granting or withholding of any valuable right or benefit in connection with an attempt to influence voting, or dilution of the right to vote by allowing any person not legally eligible to vote. It also guarantees the franchise to former felons who have completed their sentence—a reform that has recently been adopted in a number of states and seems consistent with democratic principle.

Finally, the committee thought that some better mechanism for deciding election disputes is necessary. Currently, such disputes are resolved by the members of the House and Senate themselves or by the courts. The problem with resort to courts is that it puts federal judges in a tough position: there is always



the appearance, and too often the reality, that judges vote along party lines in such disputes. Our proposed constitution provides for a tribunal to be composed of members selected by the majority and minority leaders of the two Houses, and those members then select by unanimous agreement additional, neutral commissioners. The tribunal is thus selected much like arbitration panels. The tribunal will apply preexisting law, thus eliminating the unseemly spectacle of supposed law interpreters changing electoral law in the middle of the election. The commission has final say over election disputes, except that Congress may override the decisions by a vote of three fifths of both Houses.

## CLARIFYING IMPEACHMENT AND INTER-BRANCH DISPUTES

Article I, Section 6, provides that impeachment may be for “for serious criminal acts and for gross abuses of the public trust.” We believe this clarifies the original meaning of high crimes and misdemeanors, which was not confined strictly to violations of criminal law but also was not intended to encompass mere maladministration or disagreement over policy. As noted, impeachment is made harder and conviction is made easier by requiring a three-fifths vote for each—making it less likely that a partisan House of Representatives will put the nation through the wrenching and distracting process of an impeachment trial with no realistic prospect of removal, as arguably occurred in two of the last four presidencies. The constitution also regularizes the procedures for impeachment, requiring the House to initiate an impeachment inquiry—which authorizes the subpoena power subject to claims of privilege—upon a vote of majority plus five percent. This section also provides that failure to comply with summonses and subpoenas authorized by this section may be prosecuted in court, and the House may choose any “legal officer” to prosecute the claim without the involvement of the executive branch. The current Constitution does not provide any mechanism other than sheer politics to resolve inter-branch disputes, and the committee believed a solution was needed.

## EMOLUMENTS AND PUBLIC DISCLOSURES

The new Article I, Section 12 provides that no person holding office under *either* the states or federal government may accept any “gift, payment for services, office, or title” from a foreign state without the consent of Congress. This clarifies the meaning of “emolument” in the current Constitution. Finally, Article II, Section 1 provides that the President shall not receive during the term in office “any other gift, payment for services, office, or title from any other source, but may receive any inheritance or return on investments, provided that any such inheritance or return shall be publicly disclosed.” This again clarifies that the “emoluments” under the current Constitution does not mean passive income such as returns on investments, even if foreign governments may happen to be customers. Any such sources of income, however, must be publicly disclosed.



## PROCESS OF ENACTING LEGISLATION AND OVERSIGHT

The new Article I, Section 8 combines the bicameralism and presentment rules of the current Constitution with the legislative veto noted above. It also provides that Congress has the power to call “for papers and testimony from executive branch officers relevant to their execution of statutory law, subject to claims of executive privilege by the President, which claims of privilege may be overridden by the vote of three fifths of the House issuing the call,” and that “all claims of privilege, and all decisions to override a claim of privilege, shall be accompanied by a written statement of reasons.” The current Constitution does not provide for legislative subpoenas and oversight, but Congress has assumed such power anyway; because it is not rooted in any text, the power is undefined and unlimited. The new provision in the proposed Constitution gives a firm constitutional basis for congressional oversight, but also limits it specifically to matters relevant to the execution of law on the part of executive officers. A modern-day House Un-American Activities Committee would no longer have power to haul private citizens before a public inquisition and demand answer to questions. It also provides a mechanism for resolving claims of executive privilege by bipartisan vote in Congress.

Our draft constitution also proposes a negative on national laws by a vote of Governors in three fifths of the states, or in states with three fifths of the population. Our committee was divided on this topic, and we put it forward for discussion with even more tentativeness than other suggestions. A majority of us believe that this could be an important check on national power but that the necessary vote threshold is high enough that it will be difficult to use too frequently. Importantly, the Framers initially considered a national negative on state laws. They may have been right for their time, when the states were the most powerful, but today it is the aggrandizement of the federal government that is most concerning.

## FINANCE, TAXING, AND SPENDING

The new Article I, Sections 9 and 10 involve finance, taxing, and spending. The first clause of section 9 provides that Congress may tax “for the purpose of paying the debts and providing for the common defense and general welfare of the United States.” This clarifies that the parallel clause in the current Constitution is not actually two powers (both to tax and to spend), which is the current understanding, but is rather one power: the power to tax *for* certain purposes.

The first clause also eliminates the concept of “direct taxes,” which no one really understands. (The current Constitution requires that direct taxes be apportioned among the states according to their respective populations.) The clause instead provides that “Congress shall not lay any capitation tax, tax on sales, or tax on real or personal property, which revenue sources are reserved to the States.”

As already noted, we limit the national debt to no more than fifty percent of Gross Domestic Product, though this cap is eliminated during declared wars and emergencies. The fifty percent cap was chosen by looking at historical rates. Between 1960 and 1985 the ratio was between thirty and forty percent, and the ratio hovered at sixty percent for most of the 1990s and 2000s. The ratio only jumped in 2008 and has been sitting at over 100 percent for several years.



The next clause grants Congress the power to spend. Although some of our committee were tempted to return to Madison's view that spending is permitted only in service of one of the other enumerated powers, we resolved to embrace Hamilton's view that spending should be an independent power, embracing purposes genuinely national and not local in scope. Additionally, we attempted to prevent the use of spending as back-door source of regulatory authority by two limitations: "No appropriation of money or provision of other public benefit shall be conditioned on the waiver of any constitutional right except insofar as such condition is necessary and proper to achieving the purpose of that benefit," and "Congress shall not condition any appropriation of money to a State except to specify how the appropriated funds themselves shall be spent, unless such condition is necessary and proper to the carrying out of any of the enumerated powers of Congress." The former reflects the not-always-followed constitutional doctrine of "unconstitutional conditions" and the latter is a federalism provision rejecting the Court's approach in *South Dakota v. Dole* and embracing Justice O'Connor's dissenting position in that case.

The last part of Article I, Section 9 then provides for formal declarations of emergencies, upon which borrowing and spending limits will be suspended. Such declarations can only issue upon the request of the President and by a three-fifths vote of both Houses of Congress. Declarations expire after six months if there is no renewal. It makes clear that presidents have no emergency powers under the constitution other than these. Congress may delegate other emergency powers, but we hope it will be more careful with this dangerous idea than it has been.

## OTHER CONGRESSIONAL POWERS

The new Article I, Section 11 is like the old Article I, Section 8, with important clarifications and modifications. Many of these are relatively minor housekeeping changes. Among the more substantive is a revised exclusive congressional power to regulate relations with native tribes, recognizing the importance of the trust responsibility and of self-determination by the tribes; prohibiting retroactive changes in patent and copyright terms; extending bankruptcy protection on a voluntary basis to states; and constitutionalizing conscientious objection from the draft. The commerce power is revised to accommodate some modern doctrine but also to strengthen state power somewhat, and now provides that Congress has the power "[t]o regulate and promote commerce with foreign nations, and among the several states, and with the native tribes, and to regulate the production and sale of goods and services in national markets." The revisions to the war powers in Article I, Section 11, as well as in Article II, Section 3, are designed to restore the primacy of Congress with respect to the use of military forces, while retaining executive flexibility to deal with genuine threats.

## RIGHTS

The Bill of Rights is largely moved up into the new Article I, Section 12. The prohibitions of this section explicitly apply both to the United States and to the States—solving the incorporation question. For the most part, the changes are designed not to alter the substance of rights under the Constitution as it now exists, but to correct and clarify their original meaning. One addition is a protection for parental rights,



which the Supreme Court has adopted as a matter of “privacy,” but which warrants explicit recognition. It also allows federal appropriations for education but preserves state and local control.

The modified “Second Amendment” clarifies what we understand to be the best original understanding. It provides, “Neither the states nor the United State shall make or enforce any law infringing the right to keep and bear arms of the sort ordinarily used for self-defense or recreational purposes, provided that states, and the United States in places subject to its general regulatory authority, may enact and enforce reasonable regulations on the bearing of arms, and the keeping of arms by persons determined, with due process, to be dangerous to themselves or others.”

The provisions of the Fourteenth Amendment are also brought here and made binding on both the states and the federal government. After the due process and protection of the laws clauses, the draft includes, “This prohibition shall not be construed to grant courts a general power to create new rights or to adjudge of the reasonableness or wisdom of laws enacted by the representatives of the people.” The idea was to get rid of the notion “substantive due process,” by which courts make up fundamental rights.

Finally, there is no “privileges or immunities clause.” Although there is a dispute over the original meaning of the clause, one committee member has written that the clause was an antidiscrimination provision with respect to civil rights. The draft constitution clarifies that this clause, not the equal protection clause, is what is doing most of the antidiscrimination work. There is also the question of what rights are covered by the privileges or immunities clause. The most likely answer is that it covers civil rights but not political rights, and it is not entirely clear what to do with public privileges or with “social rights.” To simplify and expand, the draft constitution provides, “Neither the states nor the United States shall make or enforce any law which shall discriminate on the basis of race or other irrelevant characteristic.”

## **SPECIFIC PROHIBITIONS ON STATES ONLY**

Article I, Section 13 is akin to the old Article I, Section 10, and includes those prohibitions that are applicable only to the states. This section clarifies that the commerce power was intended to be exclusive, and so states cannot regulate interstate commerce; but they can exercise police powers that affect articles of commerce. The “dormant commerce clause” thus clarifies that states cannot discriminate against out of state commerce and clarifies that any regulations imposed on out-of-state products must also be imposed on similar in-state products.

The full faith and credit clause is moved up from the original Article IV to this section, and the Tenth Amendment is also moved here. Article I, Section 13 then ends with a congressional enforcement power.

## **OTHER CHANGES TO ARTICLE II**

The new Article II, Section 2 combines a variety of provisions about presidential disability, principally from the current Twenty-Fifth Amendment. We have, however, made some tweaks to that Amendment. The current version says that whenever the Vice President and the majority of the principal officers of the executive departments, “or of such other body as Congress may by law provide,” transmit to Congress





their declaration that the President is unable to discharge his duties, the Vice President acts as President. We eliminated the above-quoted language. We then simplified the rest of that provision, noting that the President resumes the office upon a written declaration to Congress, unless Congress by a vote of two thirds concludes that the President is still unfit.

Article II, Section 3 is the new section providing for presidential powers. It clarifies that the President is head of state and represents the nation “with dignity and impartiality” on ceremonial occasions. It provides that the President is to “conduct the relations of the United States with foreign nations and international organizations” and “to superintend the execution of the laws.” This clarifies that the President’s law-execution power is supervisory only. The President may issue executive orders binding on officers, as well as executive agreements with other nations, but neither executive orders nor agreements shall have legal effect unless authorized by Congress. Similarly, the new Article II, Section 4 provides that “[t]he President shall not direct the prosecution or non-prosecution of any person in a specific matter, but shall leave such decisions to the discretion of the relevant officer.” This is a change to the current Constitution, but a continuing of a salutary norm that has built up in recent decades. The committee concluded that the President may always remove an officer or pardon an offender, but it is generally improper for the President personally to direct prosecutions.

The next paragraph clarifies the President’s war powers, as noted previously. The following paragraph clarifies that the President may remove at will all executive officers. It retains the pardon power but specifies that the President may not pardon himself or the Vice President. It also solves a perennial separation of powers problem by providing that the President “shall be immune from criminal prosecution by the United States or any State during the term of office; provided that any statute of limitation shall be correspondingly extended, and the factual basis for any such prosecutions shall be reported to the Speaker of the House for possible impeachment proceedings.”

The appointments clause then further clarifies (in addition to changing the advice and consent process as described previously) that inferior officers may be appointed by the officers having supervisory authority over them, hence reversing part of the holding in *Morrison v. Olson*.

The third Amendment, with the language modernized, is moved up into a new Article II, Section 5, which also provides that the armed forces shall not be used within the United States “for the enforcement of criminal law except when ordinary means of law enforcement, supplemented by the Militia, are manifestly incapable of keeping order, and any such use may be disapproved by either House of Congress by majority vote.” This effectively adopts and modifies the *Posse Comitatus* Act.

## **OTHER CHANGES TO ARTICLE III**

The most consequential changes to Article III are the change in terms and mode of selection of Supreme Court Justice and the elimination of both federal and state sovereign immunity. The latter was a difficult decision, but ultimately we are persuaded by the popular sovereignty arguments of Justice James Wilson in *Chisholm v. Georgia* (as a matter of constitutional design even if not original meaning). In addition, the proposed constitution tweaks the definition of original, appellate, exclusive, and concurrent jurisdictions, eliminating the Exceptions Clause, which strikes us as mostly a source of partisan mischief.



## ARTICLE IV

Article IV has been broken up, and some parts relocated elsewhere. The new Article IV contains the citizenship clause, already discussed, and retains the Republican Guaranty Clause and what is now the Thirteenth Amendment's prohibition on slavery. These should be located together, because the prohibition on slavery and the definition of citizenship are integral to republican government.

Article IV makes two changes relevant to federalism. One requires a three-fifths vote for admission of new states, which discourages partisan manipulation of the scope of the Union. The other addition is a new "equal footing clause," which provides that "[e]ach State in this Union shall be on an equal footing; and no law shall discriminate against any State or States unless it is predicated on a real and substantial difference relevant to the power under which the law is enacted." Although this reflects the intentions of the framers, it is a change in the constitutional text. It should not be seen as an endorsement of *Shelby County v. Holder*, which several of our committee have criticized under the Constitution's current language.

## ARTICLE VI

The Supremacy Clause is clarified to say that the Constitution, and the laws and treaties of the United States made "in conformity with this Constitution," are the supreme law of the land—making clear that both statutes and treaties are subordinate to the higher law of the Constitution.

And, to come full circle, we recognize that a republican constitution itself rests on a still higher authority. We speak, of course, of that authority the Declaration of Independence invokes, the natural law, whose principles ground our Constitution and bind us together in a cause that justifies our civic association and makes worthy our civic life.



# THE CONSERVATIVE CONSTITUTION

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We the People of the United States reaffirm that “all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness. — That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, — That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness”;

And in reliance on those principles, in Order to form a more perfect Union, establish Justice, ensure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.

## ARTICLE I

### SECTION 1

All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

### SECTION 2

The House of Representatives shall be composed of Members chosen every third year by the People of the several States. Each State shall, pursuant to legislation adopted in the year following the national census, allocate the State’s representatives by drawing compact and contiguous districts of as nearly equal number of citizens as is feasible; provided that Congress may by a vote of three fifths of both Houses authorize other equitable methods of allocation.

No Person shall be a Representative who shall not have attained to the age of twenty five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in which he shall be chosen.

Representatives shall be apportioned among the several States which may be included within this Union, according to their respective numbers of citizens. The actual enumeration shall be made every ten years, in such manner as Congress shall by law direct. Each State shall have at least one Representative.



When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

The House of Representatives shall choose their Speaker and other officers.

### SECTION 3

The Senate of the United States shall be composed of one Senator from each State, chosen by the legislature thereof, for nine years, and ineligible to hold office for more than one term. No State shall restrict the legislature's choice by law or otherwise. Before taking office, each Senator shall pledge by oath or affirmation to promote the common good and long-term welfare of the nation and not the interests of any party or class.

Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the third Year, of the second class at the expiration of the sixth year, and of the third class at the expiration of the ninth year, so that one third may be chosen every third year; and if vacancies happen by resignation, or otherwise, during the recess of the legislature of any State, the executive thereof may make temporary appointments until the next meeting of the legislature, which shall then fill such vacancies.

No person shall be a Senator who shall not have attained to the age of thirty years, and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the Office of President of the United States.

### SECTION 4

In all elections for federal and State office, all citizens of the United States who are eighteen years of age or older and not currently serving a sentence for commission of a felony shall be entitled to vote. It shall be the duty of the several States to conduct all such elections and to protect the right of all qualified voters to cast a secure and secret ballot for the qualified candidate of their choice. No State shall impose any test or device that has the purpose or effect of denying or abridging the right to vote. It shall also be the duty of the several States to protect all qualified voters from violence, threats of violence, or the granting or withholding of any valuable right or benefit in connection with an attempt to influence voting, or dilution of the right to vote by allowing any person not legally eligible to vote. Rules governing the times, places and manner of holding such elections shall be prescribed in each State in accordance with its own constitutional processes; but the Congress may at any time by law make or alter such regulations.

Congress shall by law establish a tribunal that shall be the judge of the elections, returns, and qualifications of all elected federal officials, consisting of one member chosen by each of the Speaker and Minority



Leader of the House and the Majority and Minority Leaders of the Senate, and three members chosen by unanimous vote of those four members. Congress shall provide by law for equitable representation for resolution of disputes involving more than two candidates for office. This tribunal shall apply the law in effect at the time and place the dispute arose and shall not have authority to change or rewrite such laws. The decisions of this commission shall be final, except that any such decision may be overturned by a vote of three fifths of both Houses.

## SECTION 5

A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent Members, in such manner, and under such penalties as each House may provide.

Each House may determine the rules of its proceedings, provided that any change to rules shall take effect three years after adoption, unless repealed in the interim; may punish its Members for disorderly behavior or unwarranted absence; and, with the concurrence of two thirds, may expel a Member. Congress may by law determine the rules of proceeding for both Houses.

Unless otherwise specified in this Constitution, each House shall approve of resolutions or bills by majority vote of those present. The rules of each House shall provide an effectual means for preventing any filibuster or other dilatory tactic from precluding a vote on any resolution or bill for more than two weeks after any member has called for the question, provided that each Senator shall have one opportunity to speak for an unlimited time on any bill or other matter.

Except for good cause shown, every Member shall be present during the sittings of the House or Senate, respectively, and shall vote for or against each question, unless the Member has a direct or pecuniary interest in the determination of such question.

Each House shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the Members of each House on any question shall, at the desire of one fifth of those present, be entered on the journal.

Neither House, during the session of Congress, shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which the two Houses shall be sitting.

The terms of Senators and Representatives shall end at noon on the third day of January; and the terms of their successors shall then begin. The Congress shall assemble at least once in every year, and such meeting shall begin at noon on the third day of January, unless they shall by law appoint a different day.

## SECTION 6

The President and Vice President, the judges of the supreme and inferior courts, and all principal officers of the United States shall be subject to impeachment and removal for serious criminal acts and for gross abuses of the public trust.





The House of Representatives shall have the sole power to impeach, by a vote of three fifths of the members present, and shall set forth specific grounds in written articles of impeachment, which shall be conveyed to the Senate immediately upon adoption.

The Senate shall have the sole power to try all impeachments, and shall convict on the votes of three-fifths of the Members present. The Senate may convict only on the grounds set forth in the articles of impeachment. When sitting for that purpose, the Senate shall be on oath or affirmation. When the President or Vice President of the United States is tried, the Chief Justice shall preside.

The House, upon passage of a resolution initiating an impeachment inquiry by a majority of the members of the House of Representatives plus five percent, and the Senate, upon passage of articles of impeachment, or a committee of the House or Senate thereafter authorized by the House or Senate, respectively, shall have power to summon witnesses and call for papers, subject to privileges grounded in this Constitution. Any refusal to comply with such summons may be prosecuted in federal court as prescribed by law, and a legal officer designated by the House shall have standing to bring such prosecution without involvement by the executive branch.

Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States: but the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to Law.

## SECTION 7

The Senators and Representatives shall receive a compensation for their Services, to be ascertained by law, and paid out of the Treasury of the United States. No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened. All investments made, or sources of income received, by any Senator or Representative from any source other than the Treasury of the United States, shall be publicly disclosed. Senators and Representatives shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

## SECTION 8

Except as provided in the next paragraph, every bill, order, resolution, or vote which shall have passed both Houses by simple majority vote, before it shall become law shall be presented to the President for approval or disapproval. It shall become law if approved by the President or if not disapproved within ten days; or, being disapproved, if it shall be repassed by two thirds of the Senate and House of Representatives.

Within three months of any law going into effect, such law may be repealed by a vote of three fifths of the Governors of the various States, or by vote of Governors representing three fifths of the population as determined by the preceding census.

Every rule or regulation promulgated by the executive department pursuant to enacted law, must be presented to Congress, and may be disapproved by a majority vote of both Houses of Congress without



presentment to the President. Such rules and regulations shall take effect three months after presentment to Congress, unless sooner disapproved, but Congress may at any time thereafter revoke such rule in accordance with this provision. A failure by Congress to act shall not be construed as approval for purposes of judicial interpretation of the Act of Congress pursuant to which the executive department has acted; nor shall such failure to act affect any judicial determination as to whether such Act of Congress impermissibly delegates the legislative power of Congress or otherwise complies with law. If the President designates a regulation as an emergency measure, the regulation shall go into effect immediately unless disapproved by a majority vote of either House.

Each House of Congress shall have power to call for papers and testimony from executive branch officers relevant to their execution of statutory law, subject to claims of executive privilege by the President, which claims of privilege may be overridden by the vote of three fifths of the House issuing the call. All claims of privilege, and all decisions to override a claim of privilege, shall be accompanied by a written statement of reasons.

## SECTION 9

The Congress shall have power:

To lay and collect taxes for the purpose of paying the debts and providing for the common defense and general welfare of the United States, but all taxes shall be uniform throughout the United States; and Congress shall not lay any capitation tax, tax on sales, or tax on real or personal property, which revenue sources are reserved to the States.

To borrow money on the credit of the United States, provided that the public debt of the United States shall not exceed 50 percent of the gross domestic product as defined by law, except during a declared war or Emergency as provided herein.

To spend money for any purpose promoting the national (not local) interests of the United States, provided that, except during a declared war or Emergency, any increase in annual expenditure in excess of one percent more than the increase in gross domestic product during the preceding year shall require a vote of three fifths of both Houses of Congress. No money shall be drawn from the Treasury, but in consequence of appropriations made by Law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time. Appropriations shall be for a period of three years unless otherwise provided.

No appropriation of money or provision of other public benefit shall be conditioned on the waiver of any constitutional right except insofar as such condition is necessary and proper to achieving the purpose of that benefit. Congress shall not condition any appropriation of money to a State except to specify how the appropriated funds themselves shall be spent, unless such condition is necessary and proper to the carrying out of any of the enumerated powers of Congress.



To determine the method for calculating the gross domestic product; and to regulate the value of foreign money and to fix the standard of weights and measures.

To create a central bank with the authority to issue currency and to make it legal tender for debts, public and private; and to protect the independence of the governors and directors of such bank by reasonable limitations on the President's power to remove them from office, and by providing for the appointment of a minority of the governors and directors by member banks.

Upon request from the President, by vote of three fifths of the members of each House, to declare a state of Emergency, during which the foregoing limits on increases in spending and borrowing shall be suspended. Any such state of Emergency shall last no longer than six months without a renewed request by the President containing a statement of the reasons for continuation, and reapproval by a vote of three fifths of each House. Congress may by law provide for the suspension of other legislation during the pendency of a state of Emergency. Upon termination of the state of Emergency, it shall be the duty of Congress to return to constitutionally authorized levels of spending and borrowing as quickly as may be practicable. The existence of a declared Emergency shall not be construed to vest in the President any powers other than those specified in this paragraph.

## SECTION 10

Congress shall establish a Board of Treasury with one member appointed by the House, one member appointed by the Senate, and one member appointed by the members appointed by the House and Senate. Such Board shall have authority to judge whether expenditures proposed by the executive department comply with the appropriations laws enacted by Congress, and shall prepare and provide to Congress at the beginning of each Session an accurate estimate of the receipts from taxes and all other sources expected under then-existing law.

Every three years, within two months after the beginning of the Session, the House shall adopt a budget resolution determining the amount of total expenditures for the upcoming three-year budget period, divided into such spending categories as the House may determine. To the extent that this total exceeds the estimate of receipts prepared by the Board of Treasury, the budget resolution shall propose legislation raising revenue or borrowing money, in an amount sufficient to cover the excess of expenditures over anticipated revenues. Bills raising revenue and borrowing money in accordance with this budget resolution shall enjoy legislative priority and shall be enacted before any appropriation for that budget cycle may be enacted. No appropriation bill may be enacted that exceeds the amount specified for any category in this budget resolution without the concurrence of three fifths of the members of the House. No subsequent increase in appropriations shall be enacted without a corresponding increase in revenue.

If Congress fails to enact legislation raising revenue or borrowing money in an amount sufficient to cover any excess of appropriations over estimated revenue under prior law, the President shall have the duty to exercise a line-item veto to bring appropriations down to the sum of the anticipated revenue under prior law, increased revenue, and borrowing.



## SECTION 11

The Congress shall have power:

To regulate and promote commerce with foreign nations, and among the several States, and with the native tribes, and to regulate the production and sale of goods and services in national markets;

To exercise exclusive legislative power with respect to the native tribes, subject to a trust responsibility to use such power for the welfare of those tribes, and reserving to those tribes all powers of self-government consistent with the national weal;

To establish uniform rules of naturalization and immigration, and enact uniform bankruptcy laws applicable to individuals, corporate and other private entities, States, and municipalities, provided, however, that no State or municipality within a State shall be subject to such bankruptcy laws without the consent of the legislature thereof;

To establish a system for the prompt and efficient delivery of the mail;

To promote the progress of science and useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries; but no extension or reduction of such times shall apply retroactively;

To constitute tribunals inferior to the supreme court;

To establish administrative courts for the adjudication of cases involving entitlements to statutory public benefits and other cases of public right, subject to such rights of appeal to the courts of the United States as Congress may direct; and for the adjudication of cases involving the enforcement of federal regulatory measures of a noncriminal nature, subject to de novo review as to both law and fact of specific objections in the courts of the United States. The judges of said courts may be appointed by heads of departments and may serve for fixed terms of no more than four years, subject to removal for cause.

To define and punish piracies and felonies committed on the high seas and other acts of violence by non-state actors, and to define and determine the applicability of the Law of Nations;

Upon request from the President, to declare or authorize war; to authorize military measures short of war; to grant Letters of Marque and Reprisal; to make rules concerning Captures; and to rescind any declaration of or authorization for war by a three-fifths vote of both Houses of Congress;

To raise and support military forces, and to make rules for their government and regulation; provided, that laws compelling military service shall expire at the end of a two year period, and any extension shall require passage of a new law; and no person religiously scrupulous shall be compelled to bear arms in combat;

To provide for calling forth the Militia to execute the laws of the Union, suppress insurrections and repel invasions;



To provide for organizing, arming, and disciplining, the Militia, and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively, the appointment of the officers, the authority of training the Militia according to the discipline prescribed by Congress, and the use of the Militia when not in the service of the United States for purposes authorized by the laws of the State;

To pass criminal laws when necessary and proper for carrying out the national powers specifically enumerated in this Constitution, but such laws shall be narrowly construed;

To provide by law for the extradition of any person charged in any State with any crime, who shall flee from Justice, and be found in another State;

To enforce by appropriate legislation the prohibitions elsewhere in this Constitution on abridging the privileges or immunities of citizenship, denying equal protection of the laws to any person, or depriving any person of life, liberty, or property without due process of law;

To exercise exclusive legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by cession of particular States, and the acceptance of Congress, become the seat of the government of the United States, but all residents in such District shall be considered for purposes of voting, apportionment, and representation in federal elections as residents of the particular States from which the territory in which they reside was ceded; and to exercise exclusive legislation in all cases whatsoever over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of military bases, national parks, and other federal enclaves;

To purchase, dispose of, and regulate the use of property belonging to the United States; to exercise the power of eminent domain when necessary and proper for carrying out the national powers specifically enumerated in this Constitution, subject to the requirement of paying just compensation; to acquire territories and exercise therein the general powers of the type exercised by States within their jurisdictions, directly or through local institutions; but all such territories, the seat of the national government, and other federal enclaves shall be bound to respect all rights of persons as if they were States. — And

To make laws necessary and proper for carrying into execution laws enacted pursuant to the foregoing powers, or to facilitate the execution of powers vested by this Constitution in the Government of the United States, or in any department or officer thereof.

## SECTION 12

All persons have the inalienable right to the free exercise of religion in accordance with conscience. Neither the States nor the United States shall make or enforce any law requiring or with the specific purpose of inducing any religious practice, or favoring any religion over another, or prohibiting, impeding, or penalizing the free exercise of religion, except where necessary to secure public peace and order or comparably compelling public ends; nor abridging the freedoms of speech, press, or association, or the right of the People peaceably to assemble or to petition the government for a redress of grievances; nor denying to any person or association of persons the same legal right to publish their views at their own expense as is enjoyed by the owners of the media of communications.





Neither a State nor the United States shall make or enforce any law that abridges the right of parents or other legal guardians to control the education and upbringing of their children, including the right to choose education outside of public schools; nor may they discriminate against any non-public school on the basis of its religious, philosophical, or ideological character; nor may the United States use its authority, by appropriations or otherwise, to displace State or local control over educational content.

The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion Congress determines the public safety may require it.

Neither the States nor the United States shall make or enforce any Bill of Attainder or Ex Post Facto Law.

All persons in the United States have the right to be secure in their persons, houses, papers, or effects, and neither the States nor the United States shall authorize or conduct unreasonable searches or seizures; 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;

No title of nobility shall be granted by any State or the United States: And no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any gift, payment for services, office, or title, of any kind whatever, from any foreign state.

Neither the States nor the United State shall make or enforce any law infringing the right to keep and bear arms of the sort ordinarily used for self-defense or recreational purposes, provided that States, and the United States in places subject to its general regulatory authority, may enact and enforce reasonable regulations on the bearing of arms, and the keeping of arms by persons determined, with due process, to be dangerous to themselves or others.

Neither the States nor the United States shall make or enforce any law which shall discriminate on the basis of race or other irrelevant characteristic.

Neither the States nor the United States shall deprive any person within their jurisdiction of life, liberty, or property, without due process of law, or the equal protection of the laws; nor shall private property be taken for public use, without just compensation. This prohibition shall not be construed to grant courts a general power to create new rights or to adjudge of the reasonableness or wisdom of laws enacted by the representatives of the People.

The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law; but when not committed within any State, the trial shall be at such place or places as Congress may by law have directed.

The accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State, 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 defense.

No person shall be twice put in jeopardy of life, liberty, or property within the United States for the same offense; nor shall be compelled in any criminal case to be a witness against himself.

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

The enumeration in this Constitution of certain rights shall not be construed, by negative implication, to deny or abrogate rights, privileges, or immunities arising from other sources of law, which shall be retained by the People; or to enlarge the powers of the state or federal governments.

### SECTION 13

No State shall enter into any treaty, alliance, or confederation; grant Letters of Marque and Reprisal; coin money; emit bills of credit; make any thing other than money created under the authority of the United States a tender in payment of debts; or pass any law impairing the obligation of contracts.

Except as may be necessary to the exercise of its police powers over health and safety, no State shall regulate commerce with foreign nations or with the native tribes, or bar, tax, or discriminate against commerce arising in other States; provided that States may impose on imports from other States regulations also imposed on in-state products to protect the People of the State from effects of those imports within the State.

No State shall, without the consent of the Congress, lay any taxes or discriminatory regulations or restrictions on imports or exports, except what may be absolutely necessary for executing its inspection laws.

No State shall, without the consent of Congress, lay any duty of tonnage, enter into any agreement or compact with another State, or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

No State shall deny full faith and credit to the public acts, records, and judicial proceedings of other States, as defined and regulated by Congress.

The powers not delegated to the United States by this Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the People.

Congress shall have power to enforce the provisions of this section, and of the preceding section as applicable to the States, by appropriate legislation.



## ARTICLE II

### SECTION 1

The executive power shall be vested in a President of the United States of America, who shall hold office for a term of six years and be ineligible for reelection, and, together with the Vice President, chosen for the same term, be elected, as follows:

On the second Tuesday of September of the sixth year of a President's term, each member of the respective State legislatures may cast one vote for a person eligible to be elected President, and the two persons receiving the most votes from each branch of the legislature (or the four persons receiving the most votes in the case of a unicameral legislature) shall receive that State's nominations. No State shall restrict the legislature's choice by law or otherwise. The two nominees receiving the most nominations by the State legislatures shall be candidates for President. In addition, any eligible person may become a candidate on petition signed by one percent of the number of votes cast in the preceding presidential election in at least a majority of the States by October 10 of that year. On the first Tuesday of November of that year, the States shall conduct a national popular vote among the candidates so qualifying. The candidate who obtains the majority of popular votes by method of ranked choice voting shall be elected President. Congress shall by three fifths vote set the rules and procedures for ranked choice voting.

Each candidate for President shall select a candidate for Vice President from among the persons receiving one or more nominations for President by a State legislature, or from among the sitting Governors of the respective States. The President and Vice President shall be elected as a single ticket.

The terms of the President and the Vice President shall end at noon on the 20th day of January. If, at the time fixed for the beginning of the term of the President, the President elect shall have died, the Vice President elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President elect shall have failed to qualify, then the Vice President elect shall act as President until a President shall have qualified; and the Congress may by law provide for the case wherein neither a President elect nor a Vice President elect shall have qualified, declaring who shall then act as President, or the manner in which one who is to act shall be selected, and such person shall act accordingly until a President or Vice President shall have qualified.

Any citizen shall be eligible to the office of President who has attained to the age of thirty five years, and been fourteen years a resident within the United States.

The President shall, at stated times, receive a compensation, which shall neither be increased nor diminished during the presidential term, and shall not receive within that Period any other gift, payment for services, office, or title from any other source, but may receive any inheritance or return on investments, provided that any such inheritance or return shall be publicly disclosed.

Before entering on the execution of the office, the President shall take the following oath or Affirmation: —  
"I do solemnly swear (or affirm) that I will faithfully execute the Office of President of the United States, and will to the best of my Ability, preserve, protect and defend the Constitution of the United States."



## SECTION 2

In case of the President's removal from office, death, resignation, or inability to discharge the duties of the office, the Vice President shall become President. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office unless, within three weeks of nomination, the nomination is disapproved by a vote of three fifths of either House of Congress. The Congress may by law provide for the case of removal, death, resignation or inability, both of the President and Vice President, declaring what principal officer of the executive department shall then act as President, and such officer shall act accordingly, until the disability be removed, or a President shall be elected.

Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives a written declaration that the President is unable to discharge the powers and duties of the office, and until the President transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

Whenever the Vice President and a majority of the principal officers of the executive departments transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of the office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, if the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives a written declaration that no inability exists, the President shall resume the powers of the office unless within one month Congress by two-thirds vote of both Houses determines the President is unable to discharge the powers and duties of his office, in which case the Vice President shall discharge the same as Acting President.

## SECTION 3

The President shall perform the duties of Head of State, representing the nation with dignity and impartiality on ceremonial occasions; conduct the relations of the United States with foreign nations and international organizations; and superintend the execution of the laws. The President may issue executive orders carrying into effect the powers vested in the President by the Constitution and laws of the United States, which orders shall be binding on all executive branch officers on penalty of removal, and may enter into executive agreements with foreign nations and international organizations, provided that no executive order or agreement shall have the force and effect of law, or bind future executives, unless authorized by this Constitution, by act of Congress, or by treaty.

The President shall be commander in chief of the military forces of the United States, and of the Militia when called into the actual service of the United States; and is empowered to conduct War when declared by Congress, or when the nation or territories are actually invaded, or are in such imminent Danger of invasion as will not admit of delay; and may take defensive or proportionally offensive military actions when necessary for the defense of the nation, its territories, its enclaves, and its instrumentalities, or as required by treaty; but any military action not authorized by Congress shall cease within thirty days unless Congress declares war or authorizes military action as provided in Article I of this Constitution.



The President may require a written statement from executive branch officers upon subjects pertaining to their respective offices, and may direct such officers in the execution of their duties and may remove them at will; and shall have power to grant reprieves and pardons for criminal Offences against the United States, except self-pardons and pardons of the Vice President. The President shall be immune from criminal prosecution by the United States or any state during the term of office; provided that any statute of limitation shall be correspondingly extended, and the factual basis for any such prosecutions shall be reported to the Speaker of the House for possible impeachment proceedings.

The President shall have power, by and with the advice and consent of the Senate, to make treaties, provided that three fifths of the Senators present concur; and shall nominate, and with the concurrence of the Senate shall appoint, ambassadors, other public ministers and consuls, judges of the supreme and inferior courts, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of officers under the control and supervision of other such officers, as they think proper, in the officer with supervisory authority. Nominations shall be deemed to have received the advice and consent of the Senate unless disapproved by majority vote within three months of the nomination; but any Senator shall have the right to bring any nomination to the floor for debate and vote prior to that time. Any nomination made within the last three months of the President's term shall lapse at the end of the President's term, unless sooner approved by the Senate.

Congress shall by law provide for the designation of persons currently holding an executive branch office as interim officers in vacant positions.

#### SECTION 4

The President shall from time to time give to the Congress information on the state of the Union, and recommend to their consideration necessary and expedient measures; and may, on extraordinary occasions, convene both Houses, or either of them, and in case of disagreement between them, with respect to the time of adjournment, may adjourn them until a later time; and shall send and receive ambassadors and other public ministers; and shall take care that the laws be faithfully executed. The President shall not direct the prosecution or non-prosecution of any person in a specific matter, but shall leave such decisions to the discretion of the relevant officer.

#### SECTION 5

No member of the armed forces 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; nor shall the armed forces be used within the United States for the enforcement of criminal law except when ordinary means of law enforcement, supplemented by the Militia, are manifestly incapable of keeping order, and any such use may be disapproved by either House of Congress by majority vote.





## ARTICLE III

### SECTION 1

The judicial Power of the United States, shall be vested in one supreme court, and in such inferior courts as the Congress may from time to time ordain and establish. The Judges of the inferior courts shall hold their offices during good behavior. Congress may by law provide for a process within the judiciary branch for the suspension from duty of inferior court judges on grounds of disability.

There shall be nine judges of the supreme court, who shall hold their offices for staggered terms of eighteen years, such that every two years there shall be a vacancy. In the event of a vacancy resulting from death, resignation, impeachment, or other inability to perform the duties of the office, a new judge shall be appointed for the duration of the term only. After a term of office has expired, the judge whose term has expired may elect to sit on an inferior court during good behavior, which court is to be determined by the Chief Justice or as Congress shall direct.

Congress shall determine the number of judges to sit on each of the inferior courts, provided that any diminution in number shall be effectuated by attrition, and any increase in that number shall be effectuated by the addition of no more than one new seat on any court every two years.

Both the judges of the supreme and inferior courts shall, at stated times, receive for their services, a compensation, the real value of which shall not be diminished during their continuance in office.

### SECTION 2

The judicial Power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;—to all cases affecting ambassadors, other public ministers and consuls;—to all 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 another State, — between citizens of different States, —between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens or subjects.

### SECTION 3

In cases in which an ambassador or other public minister, native tribe, or the United States is a party, the federal courts shall have exclusive jurisdiction. In controversies between two or more States, the Supreme Court shall have exclusive jurisdiction. In all other cases and controversies to which the federal judicial power extends, Congress may regulate the respective jurisdictions of the State and federal courts. The Supreme Court shall have appellate jurisdiction in all cases from the inferior courts of the United States, and in cases from the State courts involving this Constitution, the laws made in pursuance thereof, and the treaties made or which shall be made under the authority of the United States. Neither the United States nor any State shall enjoy immunity from suit in the courts of the United States.

In suits at common law, where the value in controversy shall exceed ten thousand dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of the common law.



## SECTION 4

Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

The Congress shall have power to declare the punishment of treason, but no attainder of treason shall work corruption of blood, or forfeiture except during the life of the person attainted.

# ARTICLE IV

## SECTION 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, and the children of a citizen of the United States wherever born, are citizens of the United States and of the State wherein they reside. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

## SECTION 2

New States may be admitted into this Union by a vote of three fifths of both Houses of Congress, with presentment to the President; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures of the States concerned as well as of the Congress.

## SECTION 3

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion and domestic violence. Neither slavery nor involuntary servitude shall exist within the United States, or any place subject to their jurisdiction.

## SECTION 4

Each State in this Union shall be on an equal footing; and no law shall discriminate against any State or States unless it is predicated on a real and substantial difference relevant to the power under which the law is enacted.

## SECTION 5

The Congress shall have power to enforce the provisions of this Article by appropriate legislation.



## ARTICLE V

The Congress by three-fifths vote of both Houses, or the legislatures of a majority of the States, may propose amendments to this Constitution, which shall be valid as part of this Constitution if ratified within seven years of being submitted by the legislatures or ratifying conventions of two thirds of the several States in accordance with the constitutional processes of each State. Upon the application of the legislatures of two thirds of the States, there shall be a general convention authorized to propose revisions to the Constitution, to be conducted in accordance with procedures enacted by Congress, which revisions shall be valid as part of this Constitution if ratified in like manner as amendments.

## ARTICLE VI

This Constitution, and the laws and treaties of the United States made in conformity with this Constitution, shall be the supreme law of the land; and the judges in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the Members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution; and no religious test shall ever be required as a qualification to any office or public trust under the United States.

