

# **The Roadmap to a 21<sup>st</sup> Century Constitution**

**By Mike Hall**

## Forward

I grew up in the '80s with a reverence for the United States political system. To me, we were a leading example of good governance and a beacon of freedom. History and government became my favorite subjects in school, and I got involved in student government, Model UN, Florida Youth in Government, debate, and more.

I then went to study government in Washington, D.C. and soon started my career as a political consultant where I quickly discovered something that I did not foresee. I knew campaigning was Machiavellian, money was influential, and that corruption was a problem, but I hadn't put it together to realize what it all meant: the value of our vote has been greatly diminished.

Thomas Jefferson believed that if we put the power in the hands of voters and supported their ability to live freely and pursue a life of meaning, a great nation would arise—and it did. No matter who we elected, the upward trajectory of America was unwavering, held fast by the power of the vote.

Unfortunately, votes are less powerful than they once were. Politicians have found ways to amass power over the years so that they are far less accountable and rarely lose elections. Money and mass media now hold more power than votes. To realize Jefferson's dream for the next 250 years and beyond, we need to return the power to the people.

I think it's important to point out that there may not be an original thought in this document. The reality is that academics, think tanks, the media, politicians, and regular folks like me have been exploring the sorts of changes I discuss here in detail for a long time. In some cases, other countries are already implementing these recommendations. There have been dozens and dozens of papers and studies written on campaign finance, corruption, the size of our Congress, bipartisanship, and more, and I have had at least as many conversations with people from all walks of life on these matters.

My point is that the time for analysis is behind us. The time to study these problems has passed. Now is the time for action. We know that our Republic is in trouble, and we know what the fixes are. Now we must take on the powerful special interests that will fight tooth and nail to maintain the status quo.

## The Case for Change

A democracy that operates without the consent of the governed will not last. When a modern republic is unpopular no matter who is in charge, then distrust has more to do with core institutions than politicians or laws, both of which can be more easily changed. When core institutions are distrusted, it is critical to look at the causes of the distrust and change the law that underwrites these very institutions, their constitution.

Over the years, power and money have found ways to exploit our nearly 250-year-old bedrock law, while at the same time, massive population growth and changes in technology have left our Constitution ill-suited for today's challenges. The United States Constitution is one of the most important and powerful documents in world history. It brought peace and freedom to billions. Now, for the sake of the Republic it created, it must be updated for the twenty-first century.

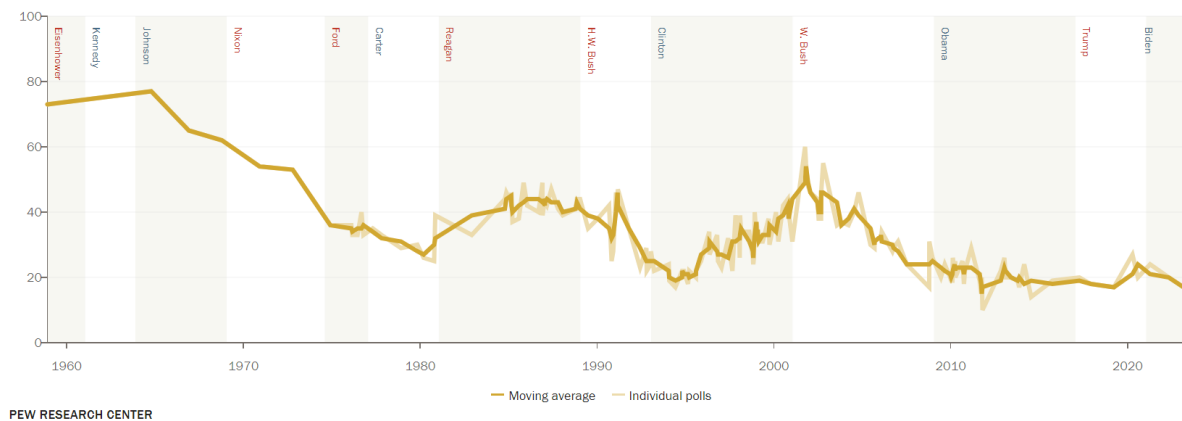
### The People Don't Trust Their Government

When a modern republic loses its electorate's trust for long periods, it must either change or have change foisted upon it. The peril of the latter is unpredictability, so the best path for a modern democracy caught in unpopularity is to reform proactively. That time is upon the United States of America.

Let's look at how much the United States government is trusted by its citizens since 1958:

#### Public trust in government near historic lows

*% who say they trust the government to do what is right just about always/most of the time*



Here we see a steady decline in trust in government through the decades, to where we are now—hovering around 20%. Even through the popular Reagan presidency, trust in government was often in the 30s, and the national pride brought about by 9/11 only buoyed trust in government for a very short period.

Humanity is best served when the consent of the governed is achieved through good governance. When people do not believe that democratic institutions are working in their best interests, or with sufficient competence, they will find alternatives. To put it more clearly, people must have more faith in their democratic institutions than in non-democratic alternatives. We can think of it as being on a continuum: the more that people have faith in their democratically elected government, the harder it is for less

democratic options to become viable. To hold onto our republic, we must work hard and quickly to restore people's trust in their democratically elected government. To do this, we must turn to the very law that underpins our government.

### **Our Constitution**

Our founders envisioned a constitution that would hold numerous goals in balance: effective government, individual liberties, maintaining a union of individual states, and equal protection under the law. Considering that our Constitution has been so successful in supporting the rise of a great nation, it is important to look at how it was structured and then how we have veered from that structure.

#### *Effective government*

Our founders wanted a government that could perform as well as the greatest countries in the world. Countries such as England and Spain could undertake huge infrastructure programs, mobilize massive armies, and be players on the global diplomatic stage. To compete, our elected officials had to be given broad powers to raise armies, levy taxes, administer justice, and promote the welfare of the people.

#### *The vote*

Given that our founders saw first-hand how great power could be levied by a king to maintain total control, they knew that something else with great power had to be used to maintain liberty. To keep the government working hard and honestly, it would answer directly to the people. Politicians would have to craft policy with their constituency in mind, and if they failed, someone else would eagerly take their job. People were promised the right to pursue a life of meaning as they saw fit, and if that promise was not kept, their vote would force change.

#### *A union of states*

At the same time, our government had to represent the interests of the many states, meaning geographic and not just popular considerations would be a part of our system of government. This concept is key to American success. Many nations struggle with regional differences, and while America is not immune, our system gives voice and power to all states.

#### *Equal protection under the law*

We added a fourth pillar of our Constitution when we added the Fourteenth Amendment. Now not only would we demand that our citizens are free, but that they are all treated equally under the law no matter where they live, what they look like, who they worship, or where they come from. For people to truly have the same chance to pursue a life a meaning, everyone must be treated equally under the law.

### **Four Pillars That Hold Up Our Nation**

A powerless government will lead to ruin just as easily as a government that does not treat its people equally, uphold freedom as sacred, or foster government petition from all corners of its domain. Veering from these ideals leads to government that is not properly aligned with its voters and will not be able to meet the needs of a diverse population.

Currently, each of these pillars is either not being upheld as well as it could, or it has become significantly corrupted. We need to look closely at this corruption and how it leads to poor government performance and then amend our Constitution to give it new strength to support these pillars.

### **The Vote: Not Worth What It Used to Be**

Abraham Lincoln was right to demand a government of the people, by the people, and for the people, yet today our elected officials are as beholden, and possibly more beholden, to forces other than the people than they are to the voters themselves.

Our campaign finance system is certainly a big reason for this. In United States congressional elections, only candidates with lots of money win. A candidate with \$5 million might beat a candidate with \$6 million, but you must have millions to play the game. The person with \$50,000 never wins—ever—so candidates must have a plan to raise the necessary money, which leads to the important issues of the day having two constituencies: the voter and the dollar, and because the candidate who raises \$50,000 never wins, it is easy to see where the dollar may be the preferred constituent.

This is hardly the only example of our elected officials having interests that compete with the needs of voters. Improperly enforced bribery laws and the revolving door of members of Congress getting high-paying jobs from companies they support while in office are two more examples. Operating in an environment riddled with conflicts of interest will also cause reasonable concern among voters that their interests aren't paramount. Some problems like gerrymandering lock in incumbency, again making politicians less reliant on the vote.

### **Geographic Representation and Equal Protection Are Significantly Weakened**

Our Constitution goes to great lengths to ensure each state has proper representation in Washington, so first, we need to reaffirm equal representation in the Senate, a state's right to structure its own elections, and Article 1 Section 8 of the Constitution, which assigns powers to Congress yet leaves unnamed powers to the states. At the same time, we have done much to uphold the ideals of equal protection under the law since the Fourteenth Amendment was ratified in 1868. However, two forces are pulling in the wrong direction when it comes to geographic representation and equal protection: the rise of ideological and national issues and a lack of proportional representation.

#### *National and ideological issues*

These issues represent some of the most important matters a voter will consider, but they must be held in balance with local issues. The issues that will likely impact a voter the most, even at the federal level, are local issues. What will union rules mean for the plant in my town? Can we get money to build a bridge that will significantly increase foot traffic for my store? Will the federal government protect our clean water?

Similarly, voters can cast their vote to give voice to who they are as a person. Will this new workplace safety law consider my disability? As a single dad, I need to know if there will be new funding for daycare along with funding for new jobs. Will there be special mental health benefits for veterans?

Unfortunately, what we find is that people are voting less on issues that are more personal to them than they have in decades and instead are using their voices on issues primarily of national importance. Again, these are salient issues, but they don't always impact the day-to-day lives of people and an overreliance on them in elections runs counter to two of the goals of our Constitution: being a union of states and equal protection under the law. If all issues are national and ideological, then we could not possibly be adequately addressing regional concerns or making sure all people are equally protected. When people wonder why government doesn't work for them, this bears significant blame.

### *Proportional representation*

When members of Congress pass laws, they give voice to people with shared experiences. People who share a hometown with their elected representative are more likely to feel as though their voice is heard. People who practice the same sect of religion, have a related career path, have a similar disability, or have ancestors from the same place are all more likely to feel their voices have been heard. Simply increasing proportional representation will help fulfill the constitutional promises of equal protection under the law and being a union of individual states.

### **Our Government Has Become Far Less Effective**

Our Constitution was crafted so that we could have an effective government and individual liberties at the same time. The great irony of our current problem of misaligned government is that we are at once limiting the power of our vote, and hence our liberties, while at the same time fostering ineffective government. Today's elected officials may act in ways that are detrimental to voters in a host of ways due to divided loyalties or to power that has been amassed over time. This can lead politicians to make decisions that hurt government performance when making political appointees, performing critical oversight, voting on legislation, deciding what committee to sit on, drafting legislation, hiring, and more.

This causes problems that are felt by voters. Services may lag those of other government entities and may be frustratingly inconsistent or deficient. Regulation is poorly implemented. Innovation and change are slow to come. Ineffective or counterproductive programs are allowed to persist. People feel that they cannot access the government and that their needs go largely unheard. There are numerous reasons why our country isn't run as well as it should be—here are just a few examples.

### *Presidential appointments*

On average, 25% of major government agencies have no permanent leader. A company run that way would be laughed off the New York Stock Exchange. A lack of leadership has numerous problems associated with it, including lower morale, inability to get ahead of industry changes, inability to weather political storms, being slow to realize needed change, and much more.

Yet over the years, the length of time to get a presidential appointment in place has dramatically increased because elected officials have figured out how to use the system to amass power. A president can avoid Senate oversight by gaming the system. A president can also avoid mass media scrutiny for a bad pick—a bad pick can be viewed by some as worse than no pick at all—something that benefits the politician but not the voter.

### *The Senate hold*

The flip side of this abuse of power is the Senate "hold" on appointments or legislation. Because the Senate is such a deliberative body, it relies on unanimous consent to handle procedural and routine matters. Over the years, individual senators have abused this by holding up important legislation or appointments until their demands are met.

### *Oversized congressional districts*

House members also have amassed power over time by increasing the size of their districts. Over the years, House districts have increased from fewer than 40,000 people in 1789 to more than 800,000 today. This causes two main problems for voters: people have far less access to elected officials than they once did, and people are far less likely to have someone in Congress who truly represents them. This means that Members of Congress will be unable to pass legislation that adequately reflects the regional or personal nuance that is critical to good lawmaking.

### *Rent-seeking*

In political systems where companies can contribute to political campaigns, the corrosive problem of rent-seeking occurs where a company attempts to use the legislative or regulatory process to increase profitability rather than use its resources. What's more, rather than a company investing money in a better product, it is invested in taking money from others. If the company gets a politician to lower its taxes, someone else must pay more money as a result. If companies are not properly regulated, then people pay in workplace injuries, pollution, fraud, etc.

This is all made possible because of our campaign finance system. If politicians were not allowed to accept money from companies that could impact their actions, then this corporate money would be better spent. At the same time, politicians are changing their behavior based on that money. So rather than passing a law that is just best for the voter, it also must be best for the politician's revenue stream. To be clear: it is ok for politicians to cast votes that are good for companies, but it must be done through the lens of what is best for voters.

### **The World Has Changed and We Have Learned So Much**

The final reason for changing the constitution is that 250 years is a long time. As forward-looking as our founding fathers were, this was the first constitution for a modern republic ever written. The idea that it would not need fundamental changes by this point seems unrealistic. We have now seen how the Electoral College, an idea invented out of thin air, works in practice. Our founding fathers did not foresee that our system would be dominated by two political parties, nor did they foresee modern gerrymandering. There was no mass media when our Constitution was ratified, nor were there humanity-killing weapons.

We can either hold our current constitution up to unrealistic expectations, or we can make logical changes. We don't have to let politicians draw districts to their advantage. We don't have to have a House of Representatives where the minority party has zero power. We don't have to have a government with an absurdly high vacancy rate for agency heads. We don't have to give our president sole responsibility for "pressing the button." We can alter our constitution to make common-sense change and put the power back in the hands of the voter.

### **Building On Greatness**

We can do all of this without weakening the structure of the four main pillars of our great constitution: effective government, liberty, a union of states, and equal protection under the law. In fact, the changes recommended here will strengthen these pillars, making us more American than we have been in a long time while ridding our government of corruption. We will bring power back to the vote. We will fulfill our promise to respond to the needs of every American no matter where they live or who they are. We will once again have an effective government, ready to lead the world into the 21st century and beyond.

## **Seven Areas for Change**

- I. Campaign Finance
- II. Office of Government Integrity
- III. More Members of the House
- IV. More Members of the Supreme Court
- V. Presidential Power
- VI. Election Reform
- VII. Partisanship



## I. Campaign Finance

"I hope that we shall crush in its birth the aristocracy of our monied corporations, which dare already to challenge our government to a trial of strength and bid defiance to the laws of our country." -Thomas Jefferson

### **A History of Trying to Keep Power with the Voter**

The United States has sought to limit outside influence on our elected officials from very early on. Andrew Jackson is commonly credited with modern presidential campaigning where he, for the first time, actively courted grassroots support and media attention—and those who aided his victory were given lucrative civil service jobs. This practice led to the *Civil Service Reform Act*, which required that civil service jobs be granted on merit alone.

With this law, the precedent was set: our system was not going to be one of patronage and legal bribes. Our officials would be elected based on their ideas and not money. Doubling down on this concept, as we entered the Gilded Age and the birth of the modern corporation gave rise to modern influence peddling—including an unseemly \$18 million presidential campaign by William McKinley—the U.S. banned corporate contributions, required transparency, and set limits on individual contributions.

This led to a very important lesson that we have yet to learn: if campaign finance laws are not iron-tight, money will find a way in. To get around these campaign finance laws, corporations and unions formed Political Action Committees (PACs) that would raise money from employees and members and then give it to the candidate to buy access.

In the early 1970s a series of new campaign finance laws were passed that attempted again to shore up loopholes and limit the power of money on politicians. These laws established the Federal Election Commission, set contribution limits, limited ad spending, and significantly increased transparency.

This began an unfortunate cycle over the proceeding half century where Congress would pass the sort of laws necessary to keep voters at the center of lawmaking, but either the courts would put holes in those laws or overturn them outright, or monied interests would find some other way in. This has led us to where we are now: unlimited money going to unlimited campaign spending leading to unlimited influence on our politicians, despite our clear preference for the opposite.

### **How Do We Limit Money's Impact?**

As explained elsewhere in this document, there are numerous reasons to limit the influence of money on our elected officials, such as divided loyalties, rent-seeking, and poor government performance, but the solution must weigh two goals simultaneously: limiting the ability of money to corrupt while championing free speech. This presents two specific challenges, and luckily, there are two evident solutions.

#### *Challenge: campaigns need money*

High-functioning democracies have well-funded campaigns that develop innovative policy, aggressively communicate with voters, hire top talent, hold events, and more. These activities are critical to democracy and need financing, but how to do that without diminishing the power of the vote is tricky.

For example, let's say we limit individual donations to around \$2,000 and Political Action Committee donations to \$10,000 for federal elections, similar to how it was in the past. While far superior to the world we live in now, campaigns were still controlled by the wealthy, who could easily afford to give, or be a part of bundles to leverage power—activities that poor people had a much harder time participating in, leading to a significant misalignment.

Many countries with mature democracies use public financing—this has the benefit of giving campaigns and political parties the money they need without the influence of wealthy interests, but the risk here is apparent: If the government controls who receives campaign funds, then it can control elections.

*Solution: give people the power*

To solve this problem, we should again rely on the voter, as Thomas Jefferson and other founders frequently reminded us to do. If every voter had a set amount of money to give to registered federal candidates, then the will of the voter would be enhanced, while effective campaigns would have plenty of money. Let's say for example that every voter was given \$100 to give to campaigns. A House member would only need to attract 10,000 voters to raise \$1 million, meaning a well-operated campaign should have no problem being a well-funded campaign.

Some will say that this method of campaign finance will lead to taxpayer dollars going to support political campaigns backing beliefs that are particularly heinous to some—but this is what free speech is all about. It's not about a billionaire being able to drown out all other voices, it is about all voices feeling free to say what they think needs to be said.

Additionally, we already use taxpayer dollars to protect speech some find offensive. Free speech is not a state of being, it is an active pursuit. Our police protect protestors, our judicial system protects speakers, and our executive branch offers protection for numerous types of speech—all with our tax dollars.

Some will also say that fraud will be a problem and that enforcing anti-fraud measures will lead to government controlling who gets campaign dollars, but both problems are easily addressed as this will be closed-loop system—you only have voters with their set amount of funds and qualified candidates receiving those funds. Petitions can be used to prove the validity of candidates. All money received and spent must be actively reported and made public.

Finally, as our system requires now, so will our new system require ethical use of campaign funds. This may likely require use of funds on campaign-related activities, restrictions on enriching family and friends, restrictions on personal enrichment and more. Critically, these rules will be developed by a body, the new Office of Government Integrity (OGI), that will be far more independent than the current body, the Federal Elections Commission (FEC).

While enacted by Congress as an independent commission, the FEC comprises six commissioners appointed by the president and confirmed by the Senate, which makes them political positions. What's more, Congress fully controls its budget and purview, meaning the FEC can only go so far in enforcing rules that are critical to a sound election system and frequently opts against acting despite solid evidence. What's more is that the FEC has equal representation from each party, so one party can block any action, and often does.

OGI will be a far more independent body with far more independent funding and the heft of comprising its own Constitutional Article. Therefore, OGI will not only be able to craft common sense rules to support ethical campaign spending, but it will have the independence to enforce them.

*Challenge: Third-party paid political speech*

Third-party paid political speech is speech that comes from people and organizations outside of the campaigns themselves. In many countries, including in the United States, an inability to regulate third-party paid political speech has led a de facto system of limitless campaign donations.

Third-party paid political speech is an important component of free speech and necessary to keep other political speakers in check. This group includes unions, corporations, non-profits, advocacy groups and other groups of people who band together to be heard.

In some countries, these groups are prohibited from paying for advertising because it is believed that may be the only way to keep these outside groups from unduly influencing our politics and bringing about voter misalignment, but that remedy unnecessarily goes too far, harming the political system by placing too much power in the hands of politicians and the media. Third-party paid political speech is an important way to bring new ideas into the public consciousness, fight against conventional thinking, and allow people to band together to be heard.

It can also be used by the wealthy to infiltrate that political system. If wealthy people and companies can swamp the political system with money and drown out speech from the campaigns themselves, then politicians will be forced to court these interests.

*Solution: separate third-party paid political speech from elections*

First thing to consider is that campaigns will be able to raise sizeable funds from Democracy Dollars. Currently, campaigns spend upwards of \$5 million and outside groups spend as much as \$10-15 million per race. It would be easy to devise a system where an average candidate would expect to raise \$20 million from Democracy Dollars making the need to raise money a far less desirable.

But even if outside money were half, or even a quarter, of Democracy Dollar money, it would be worth courting—during an election. Outside of actual campaign season, that money and those ads would be far less effective in helping an elected official get elected. Therefore, a law prohibiting paid third-party political speech within 90 days of a primary or general election should be part of our new Constitution.

## **II. Office of Government Integrity**

The ability of big-monied interests to impact the decisions of our elected officials, in ways that are currently legal and illegal, is a key reason for people's disapproval of the federal government. Money always seems to find a way to influence our elected officials, but mitigating this problem to the largest degree possible is key to a government that operates on behalf of, and therefore with the confidence of, its citizens.

In the first section, we discussed corruption stemming from campaign finance. This section will focus on the forms of corruption that come from outside the campaign: bribery and conflicts of interest.

While numerous laws protect voters from this type of corruption, there are significant holes in our system that lead to voter mistrust and poor government performance. While we can, and do, patch holes in our system as they arise, these patches are often ineffective or too late to come. A perfect example comes from the modern Supreme Court where it came to light that members took expensive gifts over the past decades. First, since there were no ethical rules in place, voters are left to assume that this has been going on since the Court's inception, putting trust in our legal system at risk. Second, when the Court finally enacted its first code of ethics, it failed to provide enforcement, leaving voters unsure about its effectiveness.

This is allowed to happen because we do not have the proper anti-corruption culture in this country or the independent institutions necessary to support a corruption-free society. For example, the Speaker of the House recently made changes to the Office of Congressional Ethics that critics argued significantly weakened the body. Whether or not this was the case, the fact that one person can have this level of control over his own ethics board should be troubling to everyone. This lack of independent ethics commissions across all levels of government leads to both open and covert corruption.

This poor ethical infrastructure means we are unable to tackle even obvious problems with obvious solutions. Here are some common-sense solutions that are not in place. Why not?

#### *Transparency*

If we look at scandals regarding high-ranking officials over the past few decades, most could have been avoided with proper disclosure. Lacking or nonexistent disclosure regarding business partners, gifts, and personal residences has opened the door to repeated problems, and yet necessary changes have not been made. This also leads voters to assume the problem is more widespread than what is publicly known.

#### *Future employment*

There are no restrictions regarding who a former Member of Congress may work for or for how much. This opens the door to Members of Congress voting on behalf of a future employer for the promise of a future large paycheck. Currently, Members can serve one term, vote on behalf of a company, and then turn around and receive a \$10 million job from that company. This clearly needs reform as do rules related to the employment of close family.

#### *Investment conflicts of interest*

Elected federal officials and the Supreme Court should be barred from trading individual stocks. Congress and the courts have a role in the profitability of every industry, and it would appear to be impossible that an official would be able to maintain an unbiased approach in light of the profitability of their investments. If Members of Congress and Supreme Court justices were allowed to continue trading, it would need to be done with far more oversight. Currently, recusal is completely voluntary.

These are just a few examples of the sorts of corruption that continue to plague our system, erode government performance, and destroy public trust. To combat this, we need to develop a culture of good governance and zero tolerance for corruption, and what better embodies the culture of a nation than its constitution?

## **Article V**

A new Article V should be added to the Constitution establishing the Office of Government Integrity. This new office, backed with the heft of a constitutional article, will set the national tone for what good governance in America means and how we root out corruption. In particular, OGI will:

### *Set and maintain ethical standards*

It is critical to both the perception and the reality of ethical behavior in our government that an independent third party devise our government's moral code. OGI will work with each branch of government to develop the rules of ethical behavior for Congress, the courts, and the executive branch. Critically, OGI will consistently work to update ethical codes to confront new realities and get ahead of potential problems, something that is much more difficult to do with self-regulation.

### *Establish rules for transparency and collect data*

OGI will have the power to collect from members of Congress and the courts as well as the President and high-level appointed government officials the information necessary to maintain a government that enjoys the faith of its citizens and operates largely corruption free. This includes all necessary financial data, visitor and meeting logs, travel logs, and other data that can help OGI do its job.

### *Compel recusals*

OGI will work with Congress and the courts to develop a system to force recusals if voluntary recusals are not sufficient. There is a belief that members of Congress should rarely recuse themselves because the voters of their district would no longer have a voice, but no voice may be better than a corrupt one. What's more, members can work with OGI to divest or otherwise change holdings to prevent recusals.

### *Advise Congress on anti-corruption laws*

OGI will have significant expertise in rooting out corruption and will provide valuable advice to Congress as it develops its anti-corruption codes. Importantly, OGI will provide its recommendations publicly so that the public is clear regarding the sort of laws Congress should pass, which will serve as an additional check on Congress.

### *Investigate with broad powers*

OGI will have broad powers to investigate potential corruption or conflicts of interest. This includes both ethical complaints that can lead to censure or removal, criminal complaints, and conflicts of interest that may force recusal.

### *Recommendations to Congress, the Courts and the Presidency*

OGI will recommend forms of non-criminal sanctions that may serve as corruption remedies, including recusals, impeachment and removal proceedings and other forms of discipline that would be implemented by the body of the offending official.

### *Prosecute criminal cases*

OGI will take criminal prosecution of elected and other high-level appointed officials from the U.S. Justice Department. We have seen too many instances where the public cannot fully trust that impartial decisions have been made regarding opening, closing or prosecuting cases involving official misconduct. Voters must have faith that elected officials who betray the public trust are held accountable, or the assumption will rightly be that elected officials do not have their constituents' best interests in mind.

### *Educate*

OGI will actively educate elected and appointed officials and key staff regarding corruption. This education will focus on both the day-to-day challenges of operating an ethical office as well as the overall culture of corruption-free governance.

### *Develop and promote whistleblower programs*

OGI will develop, maintain, and promote the federal government's whistleblower programs. This includes working with the various government agencies to implement the programs and informing all key government staff about the benefits of whistleblower programs and how they can use them to improve government performance and root out corruption.

### *Regulate the presidential pardon*

We want the president to have wide latitude in granting pardons, which presidents have used for humanitarian purposes, and to take leadership positions on a host of issues for more than 200 years. At the same time, the pardon process has been abused to grant political favors and to pardon potential witnesses against the president. OGI will devise a method of administering the presidential pardon that gives the president wide latitude to grant pardons while limiting its greatest abuses.

### **Office of Government Integrity Board**

OGI will be led by a Board consisting of two, 15-year non-renewable appointments from each president; the Speaker of the House and the Senate Majority leader will each appoint a representative; and the Supreme Court, using rotating 7-member panels, will appoint three members for 15-year non-renewable staggered terms. The Board will establish operating guidelines and appoint a commission to run OGI.

How OGI will be funded will promote its independence as well. Five-year funding will be determined by Congress via its typical 60-vote thresholds without the influence of a presidential veto. Similarly, funding will flow directly from Congress to OGI without passing through Treasury first.

Critically, Article V will use language to make it clear that funding should be adequate to enable OGI to perform its functions and that significant variances between budgets should be avoided, language that will be enforceable by the Supreme Court.

## **III. More Members of the House**

When our first House of Representatives convened in 1789, each representative served fewer than 40,000 people. Now a representative serves more than 800,000 people, and we are suffering as a result. This massive change in representation has led to poor oversight, poor legislating, poor constituent service, misinformation, polarization, and poor government performance.

With an expansion of the House to a level more in line with the vision of our founders, we will reap numerous benefits.

### **Better Oversight**

The world has also become significantly more complex than in 1789. Game-changing technologies are being developed on a consistent basis, our globe is more interconnected, information moves at the speed of light, and our population is eighty times the size it was at the dawn of our nation—but the

House has grown by less than eight-fold. At a time when we need more labor and more specialization, we have less.

Oversight provided by Congress was key to our founders' plans, with the House and its ability to grow and reshape taking the lead to properly oversee our ever-growing and changing government. But in 1929, the House stopped growing, even though it had reached a ratio of more than 250,000 citizens for every representative—a figure already at odds with our basic framework.

As a result, our Congress can no longer provide proper oversight. Not only can it not keep up with the sheer volume of programs and expenditures with proper analysis, but current committees and subcommittees lack the necessary expertise to provide meaningful oversight. With a significant increase in House members, not only will there be an opportunity to have much more granular oversight, but you increase the chances of having a representative with useful expertise—just as our founder envisioned.

### **More Committees, Specialization, and Better Legislating**

Similarly, Congress has far more legislative concerns than it did 200 years ago, and it helps to have representatives who know something about fracking, cybersecurity, and mRNA vaccines, but to be clear, a representative does not necessarily need to come in with the relevant expertise, although some of that will help. A representative can become a legislative expert on a subject and that has value. By having more, and more granular, committees, representatives will be able to focus on a smaller set of issues and gain a deeper understanding.

There also will be a geographic benefit. Many members represent districts with incredibly diverse needs, cultures, geographic challenges, major sources of income, economic opportunities, and more. Of course, a skilled politician can effectively legislate despite these challenges, but the result will be worse. The closer we bring our House representatives to the communities they serve, the more they can reflect the nuance of what's important to that community, just as our founders envisioned.

Let's say that your rural community shares representation with an urban area a four-hour drive away where your representative lives. A representative living nearby and representing a similar constituency is more likely to hit the nail on the head in how they represent you. How frustrating it must be for someone to work hard to be heard in Washington and then feel they have been misrepresented at the end of the day? This erodes trust as it is easy to attach poor performance to the fact that your sole conduit to the federal government doesn't even live in your community.

### **Localism**

The vaunted words of our Bill of Rights are meaningless if not actively pursued. What does a right to an attorney mean if nobody can afford one? What does it mean to give Black people the right to vote if institutional structures stand in their way, even if the Constitution itself guarantees that right?

The Constitution guarantees the right of people to petition the government, but we have moved in the opposite direction when it comes to guaranteeing this right, and people are mad about it. Many people see the federal government as a negative aspect of their lives, and because they don't have millions of dollars, there is nothing they can do about it. Significantly reducing the representative-to-constituent ratio will allow for the sort of constituent service and complaint logging that leads to real solutions and is at the heart of governing with the consent of the governed.

What's more, enormous House districts, coupled with saturation political ad campaigns, have led to overreliance on national and ideological issues by candidates for Congress. By limiting districts to 200,000 people, members of Congress will be more likely to know their constituents personally and therefore fight for the things that may more readily help them, rather than what is the hot issue on the national stage.

#### **Guaranteeing Equal Protection Under the Law**

Speaking of guaranteeing constitutional rights, the Fourteenth Amendment's equal protection clause needs active pursuit. There is a significant nuance to understanding how laws impact different communities—and different people within those communities—making the House key to making the equal protection clause a reality.

The closer members of Congress are to the communities they serve the more fully they will understand the impact of federal law on their constituents, which allows them to properly advocate for the best solution. Smaller districts also mean there is a greater chance that previously unrepresented groups will find a new voice in Congress. A community of 200,000 may have been swamped by a neighboring community of 600,000, even though the makeup and needs of the two varied vastly. Now that community of 200,000 will have their own representative, and as a result, may feel that they finally are equally protected under the law.

#### **Practical Solutions**

Because of the ability of campaigns to use mass media and travel more quickly around their districts than they could in 1789, an expansion to one representative per 200,000 voters seems in line with what our founders envisioned.

## **IV. More members of the Supreme Court**

We should set a minimum number of Supreme Court justices at twenty-one.

#### **A More Stable Base for our Justice System**

With only nine justices, each replacement is critical to the ideological makeup of the Court, which can lead to dramatic, destabilizing swings in the application of the law. While times have and will call for dramatic change, those changes will come with enough popular support, and with a more balanced judiciary, they are likely to come with fewer unintended consequences. When justices try to seize the moment and make changes because the court's makeup permits it, we are more likely to make rash and imprudent decisions than if the court changed more gradually.

Expanding the Supreme Court also ensures the court functions at a high level at all times. We have had justices faces ethical, health, and recusal matters—sometimes two or three at a time. It is easy to see where this court may not be able to live up to the challenges of its time with such diminished capacity. Greater continuity is certainly an asset of an expanded court.

Finally, a well-functioning judiciary is one with a manageable backlog. With only nine members, the Supreme Court can do little to address backlogs in important legal issues or in circuit splits.



### **Specialization**

Expanding the Supreme Court will also allow it to keep up with the times, similar to why expanding the number of House members is a good idea. The population is multitudes larger than it was 250 years ago, and the world is far more complex—why do we think the same number of justices can handle the vastly increased workload? There is no doubt that meaningful issues are not receiving proper consideration because of the court's size.

Again, like the House, the Supreme Court can take advantage of specialization with an expanded bench. Members can develop expertise in global affairs, communication technology, defense considerations, etc., and become much more useful to justice and progress than what occurs now where justices often must make critical decisions with a layperson's wisdom.

### **Equal Protection**

It also is hard to see where leaving the court with nine justices lives up to the promise of the Fourteenth Amendment and equal protection under the law. Every member of the court will proudly describe their work as impartial, but they will also tell you that they are a product of their experiences. More members of the Supreme Court means more people are represented. Are all Black men represented by Clarence Thomas? Are all Christian women represented by Amy Coney Barret? An expanded court will not represent everyone, but it will rule far more meaningfully in light of the Fourteenth Amendment, and that is an asset of change.

### **Expanded Function**

Finally, an expanded Supreme Court also can take advantage of its status as the highest-ranking non-elected office to perform other tasks, including on national defense and ethics, which is covered by this document elsewhere. As with our original Constitution, Article III will be written broadly, giving the Supreme Court the ability to use its membership to impartially administer justice and develop and protect lasting precedent as it sees fit.

### **Why 21?**

21 justices allows for three panels of seven jurists, letting the Court significantly expand its ability to take on a greater caseload, or to dive deeper into tricky legal issues or issues that require significant research or expertise. When we consider how quickly technology is advancing, and how critical it is that we form strong legal foundations to support these technologies, having judges specialize will become more and more necessary, and 21 justices allows for significant flexibility.

### **How to Nominate 21**

It is unwise to allow whichever party is in power when our new Constitution is ratified to nominate the additional 12 justices as that would create an ideological imbalance that would sit for a generation. Not only should our new Constitution have a method for nominating the additional justices that is equitable to parties currently in power, but it should reflect the current makeup of the Court so that ideology does not stand in the way of this commonsense change.

## V. Presidential Power

Possibly the most remarkable aspect of our current Constitution is that we have had fifty-nine presidential elections that have led to a peaceful transfer of power. We have had incredibly close, hotly contested elections, and presidents-elect who have lost the popular vote, but still power was transferred. We have had peaceful transfers through depressions and war.

All this while enjoying a presidency that is at once properly checked by other branches of government and yet able to provide bold leadership when needed. For this reason, we should not look to make structural changes to the power of the presidency, rather, we can simply learn from 250 years and 59 elections and act on areas of concern that can be addressed via the Constitution.

### Found Elsewhere in this Document

First, we need voters to elect our president more directly. The risk of corruption lies in the officials who stand in between the voters and their choice, not in the voters making the wrong choice. This is discussed more in the election reform section.

It is also worth noting here that Article V will have numerous implications for the president, including limits to presidential pardons, the establishment of ethical standards by a third party, and a whistleblower program administered by a third party.

Importantly, criminal prosecution of elected and other high-ranking officials will be moved out of the Justice Department, where a president can more directly influence the process, and into the newly formed, Article 4 backed, independent, Office of Government Integrity.

### Use of Force

Having a strong leader who can act forcefully without hindrance is key to our deterrence and defense. The president must be able to, in the face of significant criticism, order our troops on a massive scale and at a moment's notice, but there are circumstances where limits are appropriate and highly beneficial.

In any instance when the president wants to use troops domestically, such action must receive consent. Over the years, we have used troops to quell the Bonus Army March, conduct a manhunt for the Boston Marathon Bomber, quell protests at Kent State University, integrate public schools, quell the Rodney King riots in Los Angeles, and respond to COVID-19. There also was talk of using the military to quell the George Floyd protests and to deal with claims of fraud surrounding the 2020 election.

Some of these actions were viewed as necessary or successful and some raised eyebrows or sparked tragedies, but there are three lessons we can clearly learn:

- there was time to receive consent;
- we need clearer guidelines on the use of the military domestically; and
- we need to curb the power of the president to use military force domestically without a check.

Similarly, in instances where we are using weapons of mass destruction proactively, the president should not be able to act alone. If we are under fire from similar weapons from another country and there is little time to act, then the president may act alone because the circumstance is an effective limitation, but without such urgency, the president should be forced to receive consent.

Because a strong military hand is required for deterrence and success, and because even when considering using force proactively, time is a critical factor in war, a group to provide advice and consent to the president must be in place. The entire Congress is not appropriate for this group as it will need to be well informed, often with sensitive information, and be able to react quickly. This group again will rely on our other branches and will be composed of: one appointment each by the Speaker of the House and the Senate President and three people appointed by the Supreme Court serving 5-year non-renewable terms. The Department of Defense will incorporate this group in its preparation so that its members are well prepared and able to react quickly and decisively.

Finally, this group will provide necessary consent when the president wants to use weapons of mass destruction proactively or use force domestically but will also provide advice to the President at the request of the President or preceding any large-scale troop movement.

### **Speed Presidential Approvals**

Whereas the Kennedy administration took an average of two-and-a-half months to get its appointees sworn in, the Nixon administration took three-and-a-half, Carter four-and-a-half, Reagan five-and-a-half, the first Bush administration just over eight, and Clinton eight-and-a-half. Almost half of the senior-level appointees who served from 1964 to 1984 were confirmed within two months after entering the process, compared to just 15 percent of the appointees who served from 1984 to 1999.

Slow approvals mean major agencies are leaderless for months or sometimes years, which can lead to problems such as low morale and an inability to properly plan for the future. Slow approvals do not serve voters' interests, and they may provide political benefit to politicians, a combination we should not stand for.

### *Executive branch sloth*

Part of the problem is that nobody wants to be embarrassed by a poor nominee, who is now subjected to an overly burdensome process that may shield the politician from some embarrassment but does little to benefit voters. This can also cause talented people to avoid public service.

The other part of the problem is that over the years, the executive branch has learned how to game the system. Administrations create a de facto subcabinet composed of non-Senate-confirmed appointees, often in sensitive positions that should have confirmation. This problem was made worse by the Vacancies Reform Act of 1998, which allowed interim appointees to serve six times longer than they were allowed to before.

### *Senate sloth*

The Senate also is part of the problem. It took Reagan appointees 36 days to gain congressional approval. It took Biden nominees 103 days. This is a massive increase in a short period. Administrations routinely tolerate 50 to 60 percent vacancy rates in Senate-confirmed positions in the first year and accept 20 to 30 percent vacancy rates thereafter.

Finally, while the size of the U.S. government has grown significantly, and with it the number of positions requiring appointments, the approving body, the Senate, has grown at a much smaller rate. The result is that there are numerous positions that demand approval but currently have none, such as senior advisors, regulatory chiefs, military commanders, and more.

### **Practical Solutions: The House of Representatives**

First, to deal with the sheer number of appointment approvals Congress should be making, we will bring the House into the approval fold, where they will handle lower-level approvals. The Senate will focus its efforts on more strategic positions such as those with significant policy making power; that concern foreign relations or federal jurisprudence; that have a national impact; or that report directly to the president. Specifically, Senate approvals will include but not be limited to heads of executive departments and agencies; federal judges and ambassadors; members of independent regulatory commissions; key national security officials; and other positions designated by law as requiring Senate advice and consent.

The House will focus on positions managing the more tactical aspects of government service delivery. This suits the House as the body closest to constituents, as the body with greater technical expertise, and as the oversight body. The House will therefore confirm all officers of the United States not expressly reserved to the Senate, including leaders of regional federal offices; technical, administrative, and enforcement officials; members of specialized commissions; and officers exercising statutory authority delegated by primary agencies.

### **Practical Solutions: Deadlines with Teeth**

If the president fails to nominate within sixty days of a vacancy, he or she will need two-thirds majority for confirmation. Additionally, our new constitution will make it clear that all nominations shall be made within ninety days of a vacancy.

Similarly, the relevant legislative body shall hold a determinative vote within sixty days of receiving a nomination.

## **VI. Election Reform**

The United States enjoys free and fair elections, and while there are legacy practices that serve the interests of the politician over the interests of voters, it is important to also recognize and reaffirm some aspects of our election system. In that vein, three aspects of our federal election system are commonly mentioned as ripe for change that we will look at—the electoral college, state control of elections, and gerrymandering—but only two require change.

### **Electoral College**

Our founders wrote the world's first constitution for a modern republic, meaning they were creating the first government where the people had tremendous power. If voters wanted to elect someone completely unfit for the presidency, it seemed as though they could, a sobering thought in a world of unknowns. To protect against an unforeseen move by the masses to elect a Republic-killing president, our founders thought it prudent to have a failsafe between the people and the president: the electors.

Of course, Thomas Jefferson knew there was no need for this stopgap and opposed its inclusion. He knew that safety rested within the hands of the masses and not in a group of elites, and if people were given a free and fair choice it could never be the wrong choice. Only corruption can lead to a wrong choice, and the electors exist as a corruptible body that does not need to exist. Our new constitution will see that they do not.

## **State Control of Elections**

This is largely seen as an asset of our Constitution because it protects against nationwide fraud and federal election corruption, and it leads to innovation as various states try differing methods of encouraging participation and ensuring security.

There is another aspect to this, though, that may require more discussion, and that is the ability of states to determine the apportionment of their electors. Along with the egalitarian apportionment of Senators—which we should discuss in concert—lower-population states use this ability to increase the voice of their majority.

While this overrepresentation by lower population density states creates a misalignment where some voters will have more representation and therefore benefit from laws and regulations crafted in their favor and likely to the detriment of their countryfolk, which as we know leads to mistrust in government, the benefits assuredly outweigh liabilities.

First, it's important to point out that the misalignment is from one voter to another, and not to a company or wealthy interest, and as lower population density states already have a smaller voice in the House, this actually serves as a realignment.

Second, geographic considerations matter. If we say it is okay for a large region of our country to have a smaller voice, we are inviting mistrust in government. This is a problem we have seen in other countries, where large geographic regions are institutionally marginalized, and it often ends poorly.

Yes, this means that presidents will be selected that lost the popular vote, and there will be appointments approved by senators elected by a minority of the population, but again this is a feature, not an obstacle. Presidents who won the popular vote but not the electoral college did not properly appeal to all geographic regions and should not have won. Similarly, sometimes a bill or an appointment needs 51 Senators from rural states, which lifts their voice to be on par with big population centers.

## **Gerrymandering**

Politicians should not draw House districts to their advantage. Because districts are drawn to help politicians and not voters, districts are not drawn to lift voters' voices. We can and should draw districts that allow people in one geographic area, or who are composed of people of a combined special interest, to unite to amplify their voices. Currently the districts we draw often specifically do the opposite, dividing like-minded groups so their power is diminished.

### *This protects incumbency and promotes extremism*

Especially today with computer-aided mapping, gerrymandering protects incumbency, which reduces the voice of voters. Computer modeling has gotten so good that fewer than 10% of our House races nationwide are competitive most years. By drawing districts so that the vast majority of people living in a district are in the incumbent's party, politicians make it so the only race that matters is the primary, which in turn promotes extremism in both campaign messaging and lawmaking. Candidates will be reticent to compromise with the other party during lawmaking since they are unlikely to need moderate voters in a general election.

### *Ending gerrymandering promotes localism*

Gerrymandering also contributes to the focus on national issues that we see dominating our Congressional campaigns today. As stated above, districts are often drawn without any consideration for

continuity of geography or people, so to appeal to an unnecessarily diverse population, Congressional candidates often focus advertising on issues that appeal to the broadest population possible: national and ideological issues. If we drew districts that combined people of like geography or background, candidates would be more likely to focus on issues important to them rather than national issues.

### **Practical Solutions**

As mentioned above, state control of elections is preferable, which means there should be as little federal interference as possible. However, we clearly know now that without any guiding languages, many states will allow their elected officials to engage in the most corrosive forms of gerrymandering, so to protect the voice of the American voter, our new Constitution should provide narrowly tailored guidance. First, it should be clear that only non-elected officials should draw district maps.

Second, district map drawers should have as primary goals that districts be compact, contiguous, non-partisan, and with an eye toward existing political boundaries, and these goals should exist alongside other goals individual states deem important such as historical voting records, racial representation, languages spoken, etc.

## **VII. Partisanship**

Political parties play a critical role in United States elections, lawmaking, and governing. In a complex world, they allow voters to know the basic platform a politician is running on. Parties help formulate complicated and forward-looking policies, and they are critical to helping presidents form governments. The two parties in the U.S. have historically provided a strong check on each other while effectively promoting civic engagement.

And they are not mentioned in the Constitution even once. Our founders did not foresee the role parties would play and certainly did not foresee a government dominated by two parties. What this means is that there is an opportunity for improvement. Now that we have seen a government largely operated by two main parties for more than 200 years, we can identify areas of weakness that we can amend.

### **Runaway Partisanship Reduces Representation**

There is a running joke in Washington that the minority party in the House doesn't need to show up for work. The majority party in the House controls the legislative agenda and because a simple majority vote is all that is required to pass a law in the House, the majority party can typically pass any measure, while the minority party cannot even hope to introduce legislation that the majority finds objectionable.

It is unacceptable that a large portion of our country has such poor representation just because the other side won a few extra seats. If we are serious about making Washington more responsive to every voter, then mitigating the impacts of partisanship in this way is a worthy goal.

The same can be said for committees in both the House and Senate. Minority parties on committees have little to no control over committee agendas, hearings (including witnesses), processes for amendments, and more. It must be frustrating for a voter who is desperately seeking change to see his or her small connection to Washington left impotent for so long.

### **Partisanship Leads to Poor Lawmaking**

A theme throughout this document has been returning power to the voter, the purpose of which is to make members of Congress legislate in ways that are more likely to produce positive results for constituents. Reducing the size of districts, becoming intolerant of corruption, and ending gerrymandering all force politicians to become more responsive to the specific needs of the people in their districts. In the same way, reducing the impact of partisanship will lead to legislation that accurately reflects the needs of people everywhere.

Critically, the changes recommended here, in concert with the other amendments, will lead to more votes going to truly effective lawmakers. Lawmakers will no longer be able to hide behind a mountain of corporate cash or a gerrymandered district and with this amendment, it will be harder to hide behind ideology as well. If lawmakers are forced to work across the aisle to get things done, then voters will be more likely to accept that as part of effective governance.

Of course, we already have the presidential veto, which plays a role in encouraging bipartisan legislation, and we require bipartisan lawmaking due to the rules of the Senate that require sixty votes to end debate—a tradition that continues to be eroded, unfortunately. The Senate can avoid the 60-vote requirement on many budget matters, for example, as well as on all appointment approvals.

We have seen massive tax cuts and industry-altering spending bills passed in a partisan way that left half the country feeling deeply disillusioned. Government cannot please everyone, but our current method where a handful of seats can mean total domination is ludicrous. We are all Americans, and our elected officials should not be able to legislate for only half. We can require more of our legislators, and we should.

Similarly, the localization fostered by ending gerrymandering, particularly the ability to make more cohesive districts, makes it less likely that increasing requirements for nonpartisan lawmaking will lead to gridlock. Voters will be more likely to forgive their representative for reaching across the aisle if the purpose is to solve a problem in a nuanced way.

### **Practical Solutions: Leadership Elections**

We should require that the election of the Speaker of the House and the Senate Majority Leader require a two-thirds majority. This will require candidates to enter into power-sharing agreements that will afford far more rights to the minority party, likely to include a greater voice in committees and a greater ability to introduce legislation.

### **Practical Solutions: 60 Percent Threshold**

We should reaffirm our commitment to legislating on behalf of all Americans by formalizing the 60-vote threshold for the enactment of laws in the Senate and extending this requirement to the House.

## From Roadmap to Constitution

Bringing power back to the voter and greater accountability to lawmakers is no small task. Wealthy special interests and politicians will tell us that we shouldn't believe our own eyes: that corporate money hasn't corrupted our system, that partisan politics is good for voters, that presidential power can go unchecked.

The only way to get the Constitution we need to preserve our Republic is via a clear mandate, and the best way to claim a mandate is to win an election. We therefore should elect as our next President someone who will not relent until the ideals in this document are made law. The person we elect should also be clear that half measures will not suffice as the changes made here work far better in concert, for example: forcing bipartisanship works far better once we end gerrymandering; our new system of appointment approvals works better with an expanded House; new systems to limit presidential power and enforce ethics laws work better with an expanded Supreme Court.

### *This document does not solve all problems*

If we are going to amend our constitution, why not make clearer our civil liberties? Why not clarify a right to privacy? Why not require a balanced budget? Why not eliminate the debt ceiling? Just as passing more limited changes will leave us with government that will not be able to live up to the challenges of the day, so will overburdening the process lead to disappointment.

If we try to solve all our problems through amending our constitution, we will solve none of them. To fix our government, we must stay focused on making the ideals of good governance a reality. As elected officials are realigned with the voters they serve, they will once again act in the voter's best interests and will be far more likely to fix problems with civil liberties, taxation, government services, and more in a way that truly reflects the needs of the voter.

### *We must act now*

Every day that goes by, another voter becomes disenfranchised, our institutions become frailer, and the specter of autocracy becomes more real. We must be clear to our elected officials that we don't want our government fixing the problems of the day until it fixes itself.

Therefore, we need to find the politician who will put our new Constitution first on the agenda, who understands that anything passed by the current corrupt system will not serve voters, and who will stop at nothing until the ideals put forth here become reality.