The Citizen Solution

Replacing Dysfunctional Politics With Citizen Empowerment

Russell Blair

"With the current Article V amendment process becoming nonviable in today's climate, trust in the court system being at an all-time low, and the political divide consistently widening, if amending the amendment process is not now ripe for discussion, when will it ever be?"

Hon. Ivan L. R. Lemelle, US District Court, *Amending the Constitution: If Not Now, When?* Loyola Law Review Vol 69, p382 (Spring 2023)

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"Moreover, our reverence for the Constitution has kept us from seeing how much it has become the root of the problem."

Erwin Chemerinsky, *No Democracy Lasts Forever: How the Constitution Threatens the United States* (2024)

Introduction:
Amending Article V to Empower Citizens

When your car breaks down, you do not need a new driver. You need a mechanic. Both parties have only provided drivers. Neither has yet provided a mechanic. Candidates for President in 2028 need to be judged by a different standard than their predecessors. Policy positions will still matter, but their position on process reform will be critical to the restoration of a functional democracy.

Candidates need to avoid being seen as just another career politician climbing the greased pole. The best way to do that is to prominently include in their campaign a plan for citizen empowerment and fundamental structural reform of our increasingly dysfunctional system of governance. The Citizen Solution is a non-partisan plan that can, and should, be embraced by every candidate for President.

To show support for The Citizen Solution, governors who are interested in running for President can include the Concurrent Resolution for state parity, set out in §1.3, as part of their 2026 state legislative program. Members of Congress who are interested in in running for President can introduce the Article V amendment, (which is on the next page and is also part of that Concurrent Resolution in §1.3) and champion its adoption by Congress. If they succeed, or even try very hard, they may be able to inoculate themselves from the charge of having an "inside the Beltway" mentality.

> "It may be the case that Article V worked tolerably well in the early years of the U. S. Republic, but it is clear that, at present, it is a severe impediment to even thinking-and engaging in a national discussion-about the kinds of constitutional reform that may be necessary."
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> Prof. Sanford Levinson, U. of Texas *Article V After 230 Years: Time for a Tuneup*

The fastest way to orient the reader to The Citizen Solution is to begin with the core reform - amending Article V. The following text box contains a new Article V. This or similar language is the key to solving many of our most significant and intransigent political problems with citizen empowerment, including but not limited to the four items discussed in Chapters 2 and 3.

The Citizen Solution is like the Arab Spring and the Color Revolutions, which arose to replace autocratic governments with democracy. They were trying to institute democracy. The Citizen Solution is trying to save our existing but increasingly fragile democracy. It's the same fight. We don't need to lose our democracy before we rise to its defense.

The Citizen Solution is a plan for individuals to embrace and propagate. Social media is a powerful tool for those who are comfortable using it to amplify their voice. If that's you, then you can be an important part of The Citizen Solution without even leaving your keyboard.

Article V.

"Amendments to this Constitution may be proposed in any of three ways: 60% of the members in the two houses of Congress may propose amendments, 60% of the state legislatures may propose amendments by the adoption of concurrent resolutions, or 60% of the state governors may propose amendments. Proposals shall be submitted to the Archivist of the United States. When the 60% threshold is reached it is then the ministerial duty of the Archivist to advise the states of the language to be used in the ratification plebiscite.

Irrespective of which of the three methods for proposal is used, a proposals shall be valid to all intents and purposes, as part of this Constitution, when ratified by the nation's voters in a plebiscite held in conjunction with the next presidential election. A 60% supermajority of the votes cast nationally is required for ratification. In addition to the supermajority of votes cast nationally, voter ratification shall also require a majority of the votes cast in a majority of the several states.

In the event that multiple amendments are duly proposed on the same subject, all versions shall be submitted for ratification and the version receiving the most votes nationally shall, if its vote total is otherwise sufficient, be deemed the sole ratified version.

Any dispute concerning any aspect of the amendment process, including the voting process in the several states, shall be resolved by a majority of the members of the U.S. Supreme Court under its original jurisdiction. The Supreme Court shall have the necessary authority to correct any error or omissions so as to achieve the intent of the proposing authority. Only if it is manifestly necessary may the Court invalidate a proposal."

" Having witnessed the difficulties and dangers experienced by the first convention which assembled under every propitious circumstance, I should tremble for the results of a second …."

James Madison, in a letter to G.L. Tuberville dated November 2, 1788

Chapter 1
How to Fix the Article V Amendment Process

Both political parties want substantive constitutional changes, or at least say that they do, so they should be open to the amendment of Article V as proposed in The Citizen Plan. We need to replace the unused and unusable convention option by giving the states, through their legislatures and their governors, the same authority to propose amendments as is now the sole prerogative of Congress. It is a "state parity" amendment. We also need to reduce the thresholds for both proposing and ratifying amendments. Finally, we need the legitimacy conferring power of direct voter ratification.

> "As Congress has done less and less legislating, the executive branch has faced increased political pressure to address the problems facing the country. But the Constitution doesn't allow the executive branch to fill in as a substitute legislature-which is a large reason why so many executive orders and actions end up in federal court."
>
> James Lucas, *The Supreme Court versus the Constitution*, National Review. December 8, 2017

1.1 Ending the Congressional Monopoly With State Parity

Due to fatal defects in the constitutional convention option, the Article V provisions for amending the U.S. Constitution give Congress an unintended, *de facto* monopoly in proposing amendments. Even if Congress was not otherwise dysfunctional, it suffers from conflicts of interest with regard to some important reforms.

The Fatal Flaw of Article V: Inadequate Guidance. The Philadelphia Constitutional Convention in 1787 ("1787 Convention") was authorized without the Continental Congress establishing its rules and procedures. The delegates *ad libbed* and often ignored the few instructions that they received from the Continental Congress and their state legislatures. In turn, the 1787 Convention's cryptic Article V provides no guidance for the operation of a future constitutional convention, including the fundamental question of convention delegate apportionment.

The membership of the 1787 Convention was properly and, indeed, inevitably based on equal representation for every state. This reflected apportionment in the Continental Congress. It

also made sense in consideration of the need for ratification by 9 of the 13 member states of the Continental Congress. That logic, however, is not appropriate for an Article V convention to amend the U.S. Constitution.

Unlike in the Continental Congress, legislative authority is now divided between a Senate, in which each state is equal, and a House of Representative, with apportionment based on population. The President is chosen by an electoral college that gives partial weight based on population and partial weight based on state equality.

Should a future Article V convention follow the one-state, one-vote "precedent" of the 1787 Convention, or should it reflect the fact that California has over 68 times the population of Wyoming? California's population is greater than the combined population of the 21 smallest states. Must there be a bicameral convention, to reflect the bicameral structure of Congress and the election of the President by the hybrid Electoral College? Congress, which is now prone to gridlock on both important and quotidian responsibilities, will never agree on this fundamental question, so no Article V convention will never get off the ground. Nor should it.

> Justice Scalia: "I figured out at one time what percentage of the populace could prevent an amendment to the Constitution, and if you take a bare majority in the small states, by population, I think something less than 2% of the people can prevent a constitutional amendment."
>
> The Kalb Report: Justices Scalia and Ginsburg on the First Amendment and Freedom (C-SPAN April 17, 2014)"

Authority for State Legislatures to Propose Amendments. The states grant their respective legislatures the authority and responsibility for proposing amendments to the state constitution. This is precedent for the state legislatures to collectively assume the same role in amending the federal constitution. Like the current convention alternative, this ends the Congressional monopoly. It also gives the state legislatures collective parity with the federal legislature.

Gubernatorial Authority to Propose Amendments. In addition to giving the state legislatures parity with Congress, a revised Article V should grant a supermajority of the fifty state governors parity in proposing amendments. The governors are the closest analogy to the original drafters of the Constitution, who were the political elite of the thirteen colonies.

Many Governors have expressed support for amending the U.S. Constitution, even in the absence of authority to propose amendments. In 2016, Texas Gov. Greg Abbott suggested nine new amendments. They are titled "The Texas Plan." From the other end of the political spectrum,

California Gov. Gavin Newsom proposed a constitutional amendment, called the "Right to Safety" amendment, to modify the Second Amendment.

The governor of the third most populous state, Florida, has endorsed four constitutional amendments: 1) congressional term limits, 2) a balanced budget amendment, 3) a presidential line item veto, and 4) a constitutional provision to prohibit Congress from being excluded from the application of any federal law. In March of 2025, Governor DeSantis held joint press conferences with both Gov. Brad Little, of Idaho, and Gov. Gianforte, of Montana, supporting a balanced federal budget amendment.

The Moderating Effect of Diverse Proposals. With three independent sources proposing amendments there could be diverse proposals. Diversity would promoted compromise. For example, if Congress proposed an amendment to limit its members terms or to require a balanced federal budget, but did so cynically with proposals that would have little real impact, the state legislatures, the governors or both could propose more robust alternatives. In the absence of compromise at the proposal stage, voters would ratify their preferred option - instead of being forced to vote for or against a single Congressional proposal on a "take it or leave it basis." If more than one proposal met the threshold requirements for ratification, the alternative which received the most votes nationally would be ratified. Ranked choice voting would be an option. Otherwise, voters could be allowed to vote for more than one proposed amendment, to assure that the most broadly popular amendment would be ratified.

> "Accordingly, the only Americans alive today who have had a say in the proposal and ratification of any provision of our Constitution are those who were of voting age in 1971 … [and thus today are 75 or older.]"[1]
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> Prof. Jason Mazzone, University of Illinois A*mending the Amendment Procedures of Article V*

1.2 Citizen Ratification: The Importance of Democratic Legitimization

In establishing the threshold for both proposals and voter ratification, The Citizen Solution follows the thresholds used by states for voter ratification of amendments to the state constitutions. Ratification often requires a simple majority (19 states) or a 60% supermajority (10 states). The Citizen Solution adopts the higher figure of 60%, which is still an improvement over the current requirement that three-fourths of the state legislatures must ratify. The current ratification threshold

[1] The amendment to lower the voting age from 21 to 18, a change precipitated by the Viet Nam War draft of 18 year olds.

is grossly excessive and assures that only anodyne proposals will be ratified. Innocuous changes will not be sufficient for resolving the current constitutional crises or adapting our governance to the 21st Century's rapidly changing socio-political environment.

Citizen Ratification by Plebiscite. The ratification of constitutional amendments, now a function of state legislatures, would be transferred to the ultimate source of democratic legitimacy - citizens. That said, it is important to note that The Citizen Solution does not reflect the practice of the 16 states that allow citizens to initiate constitutional amendments and then ratify their own initiatives.

Combining citizen initiative and citizen ratification is problematic in two relate ways: 1) the cluttering of state constitutions with provisions that more properly belong in a state statute, and 2) the co-option of the entire process by well financed special interests that were unsuccessful in the state legislature. The high cost of obtaining the required signatures, followed by an even more expensive campaign for ratification, has augmented the problem of money in politics.

Reasonable people can disagree with the preceding paragraph. It is only included to clarify that the The Citizen Solution regarding the U.S. Constitution is different from the "direct constitutional initiative" process in the 16 states, with which some are familiar from personal experience.

> "Thus, the *threat* of a convention can be seen as a more successful avenue for constitutional changes than movements for formal amendments, even without the convention needing to take place." (emphasis in the original)[2]
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> Willow Hasson, William and Mary Law School, T*he Article V Convention Threat Awakens: Looking Within Abroad, and Ahead ,* William and Mary Bill of Rights Journal Vol 33, Issue 3 (2024-2025)

1.3 Getting Congress to Propose the Article V Amendment

Congress will not welcome the competition, but it can be persuaded to accept state parity. All that is required is for 34 states to adopt a concurrent resolution that triggers a constitutional convention, *but which also contains a provision for automatic rescission of the convention request in the event that Congress proposes the parity amendment*. In other words, the price for avoiding a convention is Congress giving the states' legislatures and governors equal authority to propose amendments.

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[2] Congress proposed the Bill of Rights, the direct election of Senators, and the two term limit on the President under strong pressure from the states that it perceived as sufficient to generate a convention call if it did not act.

Given its current dysfunction and forced to choose between a convention debacle and a parity amendment, Congress will choose the less painful option. Unable to solve the apportionment issue and the many other procedural issues that will accompany a convention, Congress will replace the unused and unusable convention model with state parity.

If Congress Does Call a Convention. There are ongoing discussions among several state attorneys general about bringing a suit to compel a convention, asserting the required 34 requests for a convention have already occurred on the disputed basis of the number of request submitted for a balanced budget amendment or, alternatively, on the equally disputed basis that any call for a convention counts towards the two-thirds requirement, irrespective of diverse conditional language that attempts to narrow the scope of the convention. A successful state parity amendment to Article V would end this effort.

If Congress is forced to call a convention, or irrationally chooses to call one, it will be a disaster. Even in the difficult to imagine event that the procedural issues are resolved, the nation's current ideological rift assures chaos and failure. Congress will anticipate the chaos and avoid it by proposing the Article V parity amendment. Otherwise, they will have set the stage for a historic turnover in the following Congressional election.

The Necessary Concurrent Resolution and the New Article V

It is important that the requests for a constitutional convention to amend Article V be expressed consistently by the required 34 states and that they specifically allow Congress to avoid a convention by proposing the Article V state parity amendment to replace the convention option. To that end, a draft of the concurrent resolution follows:

Concurrent Resolution (Draft)[3]

Concurrent Resolution Asking Congress to Call a Constitutional Convention or, in the Alternative, For Congress to Propose a Constitutional Amendment That Both Replaces the Article V Convention Option With Authority For State Legislatures and Governors to Propose Constitutional Amendments and Also Provides for Ratification of Proposed Amendments in a National Plebiscite

Whereas Article V of the U.S. Constitution provides that two-thirds of Congress can propose amendments to the Constitution, which become effective when ratified by three-quarters of the state legislatures, and

[3] The proposed amendment is included within the body of the Concurrent Resolution.

Whereas Article V provides, as the sole alternative to congressional proposals, that two-thirds of the states can request a constitutional convention to propose amendments, which become effective when ratified by three-quarters of the states legislatures, and

Whereas the current Article V creates a *de facto* monopoly by Congress, due to concern that a constitutional convention would be either too dangerous (a runaway convention) or doomed to failure (a hyper-partisan convention), and

Whereas the lack of a viable alternative to the Congressional proposal of amendments deviates from the original intent to avoid a Congressional monopoly and has resulted in a failure to address critical constitutional issues, and

Whereas the best way to end the Congressional monopoly is to replace the convention option with a provision that gives state legislatures and governors the authority to propose amendments, in parity with Congress, thereby ending the Congressional monopoly and avoiding either a run away convention or a failed convention, and

Whereas, if an amendment to grant the states parity with Congress also provides for voter ratification it will, for the first time, give voters a direct voice in amending the U.S. Constitution, thus conferring on all successful amendments the ultimate democratic legitimacy:

Now Therefore Be It Resolved That the Sovereign State of_____, pursuant to Article V of the U.S. Constitution, does hereby request a constitution convention for the sole purpose of amending Article V, to read substantially as follows:

> "Amendments to this Constitution may be proposed in any of three ways: 60% of the members in the two houses of Congress may propose amendments, 60% of the state legislatures may propose amendments by the adoption of concurrent resolutions, or 60% of the state governors may propose amendments. Proposals shall be submitted to the Archivist of the United States. It is then the ministerial duty of the Archivist to advise the several states of the language to be used in the ratification plebiscite.
>
> Irrespective of which of the three methods for proposal is used, any proposals shall be valid to all intents and purposes, as part of this Constitution, when ratified by the nation's voters in a plebiscite held in conjunction a presidential election. A 60% supermajority of votes cast nationally is required. In addition to the supermajority of votes cast nationally, voter ratification shall also require a majority of the votes cast in a majority of the several states.

In the event that multiple amendments are proposed on the same subject, all versions shall be submitted for ratification and the version receiving the most votes nationally shall, if its vote total is otherwise sufficient, be deemed the sole ratified version.

Any dispute concerning any aspect of the amendment process, including the voting process in the several states, shall be resolved by a majority of the members of the U.S. Supreme Court under its original jurisdiction. The Supreme Court shall have the necessary authority to correct any error or omissions so as to achieve the intent of the proposing authority. Only if it is manifestly necessary may the Court invalidate a proposal."

Be It Further Resolved That should Congress, pursuant to the Article V, propose a state parity amendment substantially the same as the preceding proposal, then this request for a convention shall be deemed null and void, *ab initio*, by its own terms, and

Be it Finally Resolved That certified copies of this Concurrent Resolution be sent to the Governors of all 50 states, the Senate President or President *Pro Tem* in all 50 States, the Speaker of the House in all 50 states, the Archivist of the United States, the President of the United States, and to each member of the Congress of United States.

"Not at the margins but at the core: the institution governing us - a democracy - lacks the basic integrity of such an institution: that the people rule… For a democracy to favor the elite over the people is to add insult to suffering. It is to betray the very promise at the core of the institution."

Lawrence Lessig, *They Don't Represent Us: Reclaiming Our Democracy* (2019)

Chapter 2
Only Empowered Citizens Can Resolve These Constitutional Issues

When institutional self-interest impedes reform, only empowered citizens can appropriately resolve the problem. Institutions will not reform themselves. This chapter looks at three reforms that can only be resolved after we have state parity in the proposal stage - the amendment of Article V that is the core of The Citizen Solution.

2.1 Congressional Term Limits: Changing the Engine Oil

Legislative service can be intellectually and emotionally rewarding and long-serving legislators can contribute genuine expertise and dedication. But legislating is a team sport. No single member is indispensable. Congress has hundreds of members, supported by professional staff, committee infrastructure, nonpartisan research bodies, and with access to executive-branch expertise. The loss of even the most seasoned legislator does not stall the machinery of governance. By contrast, the absence of renewal undermines democracy.

At the individual level, term limits are not a reflection on a "termed out" incumbents' performance. Term limits are like a periodic oil change in an automobile. The oil filter (elections) does not provide enough protection. We also change the car's engine's oil, periodically, as a proactive and prophylactic measure. We don't wait for the engine to seize up before we change the oil. (Congress has seized up.)

The Structural Problem of Indefinite Incumbency. The framers did not include congressional term limits in the Constitution, but they did not anticipate that legislators would serve for forty, or fifty years. In the early republic, a shorter life expectancy, arduous travel to the nation's capitol, and the absence of party structures limited tenure. Today, Congress is overwhelmingly composed of career legislators who are primarily motivated by a desire to preserve and advance their political career.

Research shows that long-term incumbency can reduce accountability due to: 1) insulation through gerrymandering, 2) incumbent fundraising advantages, 3) party gatekeeping, 4) committee capture, where legislators and transactional donors achieve a symbiosis based on legislative

committee assignments, 5) risk aversion, and 6) seniority, with the important positions concentrated among the oldest members, often well past peak cognitive and physical capacity, yet able to leverage their positions for electoral advantage. These are predictable results of a system that rewards careerists.

Elections are sometimes invoked as a sufficient remedy, generally by proponents of the *status quo*, but elections do not meaningfully counteract systemic problems. Incumbents win re-election at rates exceeding 90% in many cycles. Primary challenges are often discouraged or punished by party leadership. Voters cannot choose between renewal and stagnation, but only between heavily filtered options that were determined by party insiders, money, and gerrymandering.

Congress Will Not Fix Itself. The strongest arguments for constitutionally established term limits is necessity. Members of Congress will not impose meaningful limits on their own tenure. Despite widespread public support for term limits—often exceeding 70% in polling—Congress never seriously considers term limits. The Supreme Court decision in *U.S. Term Limits v. Thornton* (1995), barring states from imposing term limits on federal legislators, foreclosed state-led reform and placed the responsibility solely with Congress. Congress, having no incentive to reform itself, responded with silent intransigence.

Reasonable Limits. Reasonable people can and do disagree about the optimal limit for holding legislative office. In 1977, I introduced a bill to establish a modest term limit for Hawai'i legislators. (It did not pass.) It provided for a maximum of 12 years in the House and 8 years in the Senate. At the federal level, as an example, members of Congress could be limited to 10 years in the House and 12 in the Senate. Alternatively or supplementally, a total limit of 20-22 years could be established.

Term limits need not be draconian to be effective. Importantly. Even modest limits will: 1) dramatically increase the number of open seats in each election cycle, 2) reduce the iron grip of party leaders and committee chairpersons, 3) encourage policy diversity, 4) lower the average age of Congress without age discrimination, and 5) create clear career horizons that limit individual power accumulation.

These benefits accrue even before considering secondary effects, such as diminished lobbyist leverage. Critically, term limits do not reduce the voters' power. Voters still choose among candidates. They will choose from among more candidates in a more regularly refreshed pool instead of a stagnant and manipulated pool.

"Trust in the Supreme Court has declined even more than trust in the courts in general. The judicial branch remains more trusted than the other two branches of the federal government, but its advantage in this regard has declined in recent years. And a majority of Americans believe that the courts favor the wealthy and judges don't set aside their personal political beliefs when making rulings."

The Withering of Public Confidence in the Courts, Annenberg Public Policy Center (APPC) in Judicature Vol. 108 No. 1 (2024)

2.2 Supreme Court Term Limits and Scheduled Vacancies

Whether the modern Supreme Court is actually more partisan than its predecessors is almost beside the point. Legitimacy requires not only objective impartiality, assuming that this can be established, but also the public's subjective perception of impartiality. A growing share of Americans view the Court as just another political institution—one whose decisions reflect ideological bias more than legal reasoning. That perception is corrosive. Courts lack either the legislative branch's power of the purse or the executive branch's massive resources, so they depend on a legitimacy which is based on the public's trust and support.

Life Tenure in a Modern Democracy. The U.S. Supreme Court is a striking outlier among advanced democracies—and also within the United States. Forty-nine states (98%) impose some form of rotation on their highest court judges, whether through fixed terms, mandatory retirement ages, or both. Only one—Rhode Island—grants life tenure, and Rhode Island limits the Governor to appointing a prospective Justice from a list of 3 to 5 potential nominees who have been vetted by a Judicial Nominating Commission.

Internationally, the contrast is even sharper. Constitutional courts in Germany, France, Italy, Spain, and the United Kingdom operate under fixed terms or age limits. No major democracy, other than the U.S.A. vests such immense power in a small number of individuals for life.

The American model of life tenure was not irrational in 1789. Life expectancy was shorter, the Court's docket was smaller, and judicial review as we now understand it had not fully emerged. Life tenure was designed primarily to protect judges from retaliation by the other political branches, not to create an ideological fortress.

Institutional design must evolve with changing circumstances. The modern Supreme Court routinely decides critical questions of national policy—abortion, voting rights, campaign finance, administrative authority, climate regulation—that shape the lives of hundreds of millions of people. As the stakes rose, the political pressures surrounding appointments intensified. Life tenure has turned each vacancy into a once-in-a-generation political and ideological prize.

> "Whereas the overwhelming majority of Americans believe that politics should not influence the court in its decisions, only a fraction of Americans believes that justices are doing a good job of exercising such restraint."
>
> Hon. Ivan L. R. Lemelle, Sr. Judge, US District Court for the Eastern District of Louisiana, *Amending the Constitution: If Not Now, When*?

An 18-Year Term. An 18-year term limit for Supreme Court justices, with one vacancy every odd-numbered year, allows each President to makes two appointments in each four-year term, and no president is deprived of equal appointment authority by chance or timing. A justice appointed in Year 1 completes their term in Year 19. If a justice leaves early due to death, unanticipated retirement, or disability, a replacement would serve the remainder of that term and would remain eligible for a full 18-year appointment later.

This structure has several positive effects. It eliminates a President's incentive to appoint a younger nominees, instead of prioritizing experience, judgment, and temperament, and it removes the temptation for a Justices to time their retirement in order to choose the president who will replace them. The Court will evolve gradually, while the staggered 18-year terms preserve continuity and historical perspective, without generational capture.

> "Due to the disuse of the formal Article V constitutional amendment process there has emerged an informal amendment process of 'judicial amendments' initiated through the federal judiciary, primarily the United States Supreme Court. While the Supreme Court cannot rewrite the Constitution, it may re-read it. In fact, the Supreme Court has become the primary method employed to adapt the Constitution to modern needs and complex issues, the Supreme Court's assumption of this role has resulted in appointments to this nation's highest court becoming highly contested, and in 'transformative judicial opinions that self-consciously repudiate pre-existing doctrinal premises and announce new principles that redefine the American people's constitutional identity.' …. The framers never anticipated or contemplated that the Supreme Court would become the sole usher of constitutional change."
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> Hon. Ivan L. R. Lemelle, Senior Judge, US District Court for the Eastern District of Louisiana, *Amending the Constitution: If Not Now, When?*

Judicial Independence. Judicial independence does not require permanence. It requires *security during service*. Fixed, nonrenewable terms accomplish that goal. A justice with a fixed and non-renewable term is no more politically vulnerable than a justice with life tenure.

Nearly every state has shown that judicial terms do not undermine independence. State supreme courts decide controversial cases without the legitimacy crises that now attend every U.S.

Supreme Court term. International experience reinforces the point. Fixed-term constitutional courts are the norm, not the exception.

An 18-year term will not advantage either party, as it distributes appointments evenly across presidencies. It should also lower the temperature of the regular confirmation hearings. In a democracy, institutions must be seen to be fair. Supreme Court term limits offer a path to a renewed perception of impartiality.

Proposed Amendment to Article III: Supreme Court Term Limits Amendment

Article III, Section 1 of the Constitution is amended to read as follows:

"Section 1. *Justices of the Supreme Court shall hold their Offices for a nonrenewable term of eighteen years, subject to the provisions of this Article. Judges of the inferior courts shall hold their Offices as provided by law."*[4]

Section 2. *A vacancy on the Supreme Court shall occur in each odd-numbered year. Upon the occurrence of such vacancy, the President shall nominate, and by and with the Advice and Consent of the Senate, shall appoint a Justice to serve the eighteen-year term prescribed in Section 1.*

Section 3. *In the event of a vacancy caused by death, resignation, retirement, or disability, the President shall nominate a Justice to serve for the remainder of the unexpired term. A Justice appointed under this Section may subsequently be appointed to a full eighteen-year term.*

Section 4. *At the conclusion of a Justice's term, that Justice may continue to perform judicial duties on lower federal courts as permitted by law, but shall no longer participate in Supreme Court decisions.*

Section 5. *The Congress shall have power to implement and enforce this Article by appropriate legislation, including legislation to establish transitional provisions necessary for the orderly implementation of the term limit system."*

> "What the Government spends the public pays for. There is no such thing as an uncovered deficit."
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> John Maynard Keynes, *A Tract on Monetary Reform* (1923)

2.3 Fiscal Responsibility: Stop Kicking the (Gasoline) Can

The problem is not ideological. Both parties have supported deficits, though for different reasons. The problem is that members of Congress pay no political price for decisions that impose

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[4] Under this section, Congress could establish age limits or term limits for lower courts. It could also provide for sanctions and even removal without the need for Congressional impeachment and conviction. Congress would provide a more open and responsive system than is now provided by a self-regulating Judiciary.

severe long-term costs, but they are rewarded for providing unfunded tax breaks and unfunded programs. Congress cannot function properly if avoiding accountability is its most substantial bipartisan achievement

The economic case for deficit spending is well known. John Maynard Keynes argued that, *during a recession*, the government should borrow and spend in order to sustain aggregate demand at a level sufficient to avoid a depression and alleviate a recession. But Keynes was explicit on a point that Congress ignores. In normal economic times, Keynesian theory calls for budgetary discipline—running surpluses or at least stabilizing debt levels to rebuild fiscal capacity for the next downturn. Deficits are rational as a counter-cyclical tool, but not as a permanent feature of the government budgeting process.

> "PWBM estimates that … financial markets cannot sustain more than the next 20 years of accumulated deficits projected under current U.S. fiscal policy. Forward-looking financial markets are, therefore, effectively betting that future fiscal policy will provide substantial corrective measures ahead of time. If financial markets started to believe otherwise, debt dynamics would "unravel" and become unsustainable much sooner.
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> *When Does Federal Debt Reach Unsustainable Levels? Penn Wharton Budget Model (PWBM)*, University of Pennsylvania, October 6, 2023

The consequences can no longer be deferred and compounded. Simply paying the interest on accumulated debt is crowding out core governmental functions. The federal government spends more servicing its debt ($882 billion) than it spends on national defense ($874 billion).[5] This is a serious warning sign. According to the University of Pennsylvania's Penn Wharton Budget Model, financial markets cannot support another generation of deficits. If confidence continues to erode, the unraveling will occur sooner—and the result will be severe tax increases and painful cuts to core programs. This will produce a rapid decrease in aggregate demand, causing a severe recession which is what countercyclical debt financing is intended to prevent.

Statutory Responses Failed. For decades, Congress experimented with fiscal rules and statutory fiscal controls.[6] These attempts failed because Congress waives them, redefines them, or exempts itself from them when they become inconvenient. Congress cannot bind itself by statute, because a simple majority can undo what a simple majority enacted. When fiscal discipline collides

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[5] These are 2024 figures.

[6] The Gramm-Rudman-Hollings Balanced Budget and Emergency Deficit Act of 1985, the Balanced Budget and Emergency Deficit Control Reaffirmation Act of 1987, the Budget Enforcement Act of 1990 (PAYCO 1990-2002), House PAYGO rules (2007-2010) and the Statutory Pay-As-You-Go Act of 2010.

with electoral incentives, fiscal discipline loses. That is why fiscal responsibility must be a constitutional requirement. The goal is not austerity. The goal is transparency in the justification to increase accountability and, ultimately, to establish greater Congressional responsibility.

Fiscal Responsibility With Emergency Exceptions. A Fiscal Responsibility Amendment need not—and should not—take the rigid form of a "balanced budget amendment." Absolute balance is neither realistic nor desirable in a complex, shock-prone economy. Wars, pandemics, natural disasters, and recessions require flexibility.

A flexible approach would require Congress, before passing legislation that increases the deficit, to adopt a separate resolution—by recorded roll-call vote—certifying that the deficit increase is justified by specified exigent circumstances. The resolution would be required to state: 1) the nature of the exigent circumstances (e.g., recession, military conflict, public-health crisis), 2) the anticipated duration of these circumstances and size of the deficit increase, and 3) a plan for the liquidation of the additional debt with future surpluses.

This would not prohibit deficit spending. but would increase transparency and accountability. Members of Congress would no longer be able to say that they "had to vote for a budget." When members know that their votes will be tied to an explicit justification, they will behave differently and voters will be better able to hold them accountable.

Congress must look more closely at the actual performance and cost/benefit ratios of the government operations and programs which it funds, not merely fund them based on inertia and the good intentions that motivated their initial establishment.[7] As long as members of Congress can avoid making hard choices by running deficits in the normal course of business, not just in response to legitimately exigent circumstances, Congress will over rely on borrowed money. Congress has "kicked the (gasoline) can down the road" for too long - especially for the welfare of the generations whose futures are being mortgaged for current consumption.

The European Union's Stability and Growth Pact historically set reference benchmarks of a government deficit below 3% of GDP and public debt below 60% of GDP, though recent reforms

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[7] Any increase in spending for oversight should more than pay for itself. My own experience was at the state level. At various times I was the Chair of the Consumer Protection and Commerce Committee in both the House and the Senate. This gave me the first pass on the budget of the State Office of Consumer Protection. Legislative oversight was inadequate, as neither I nor the Chair of the Finance or Ways and Means Committee had the time or the staff to look beyond the information provided by the Administration. Years later, when I was appointed Director of the State Office of Consumer Protection, I got a much closer look. Although an advocate for strong consumer protection laws and their enforcement, I cut the budget of the office 30% after adopting a more cost effective approach to enforcement.

have altered the mechanics of the debt criterion. How do these compare with the the annual deficits and debt totals in the United States?

In FY 2025, according to CBO estimates, the federal deficit of the United States was about $1.8 trillion (≈6.1% of GDP) and interest payments on the national debt have now risen above $1 trillion per year. Under current law baseline projections, the annual deficit is forecast to climb to about 7.3% of GDP by 2055.

Total federal debt recently surpassed $38 trillion; measured as debt held by the public, it is near 100% of GDP, while gross federal debt including intra-governmental holdings is somewhat higher. CBO long-term projections indicate federal debt held by the public could reach more than 150% of GDP by 2055 under the extended baseline, and alternative policy scenarios could push it higher.

In contrast to the federal government, all 50 states operate under explicit or *de facto* balanced budget requirements. While states differ in enforcement and accounting practices, state budgets are balanced. States respond to recessions, but they must do so with a greater institutional recognition of the tradeoffs. The federal government's unique borrowing power does not excuse its unique lack of discipline. If anything, it heightens the responsibility.

Congress Will Not Reform Itself. Like congressional term limits, fiscal responsibility is a reform that Congress cannot reasonably be expected to impose on itself. Members benefit from the current system. Deficits allow them to provide benefits without reflecting their cost. This self-serving dishonesty is precisely why fixing Article V is essential. Once the Article V amendment process is no longer a *de facto* congressional monopoly, fiscal responsibility is one of the most important areas that will be subject to public debate, deliberation and change.

"It is one of the happy incidents of the federal system, that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country,"

Justice Louis D. Brandies, *New State Ice Co v. Liebmann*, 285 U.S. 262 (1932)

Chapter 3
Campaign Financing and Spending Reform

There is no right more important in a democracy than freedom of speech. Consequently, when a conflict arises between free speech and a properly functioning democracy, the damaging consequences of failing to find a proper balance are enormous. *Citizens United v FEC* 558 U.S. 310 (2010) conflated money with speech, creating just such a conflict. Wealthy individuals and entities can and do give hundreds of millions of dollars to influence the outcome of elections and their contributions are often transactional.[8]

Donald Trump, with characteristic bluntness, illustrated the transactional nature of large contributions when, in 2024, he remarked at a rally, "I am for electric cars… because Elon Musk endorsed me very strongly." The candor was unusual. The transactional nature of the donation was not. The current system rewards candidates who align their policy positions with their large donor's preferences.

The practical consequences are not subtle. Candidates do not show that they are viable by attracting voters. They show that they are viable by attracting large donors or being very wealthy. Super PACs and "dark money" organizations, formally independent but functionally aligned with campaigns, dominate a transactional system that favors incumbents and the wealthy.

The influence of money does not end on Election Day. Members of Congress fundraise continuously, devoting hours each week to asking for money. Many significant legislative decision are influenced by a mental calculation: will this vote anger the big donors who keep my campaign solvent? Much of Congress's inertia—bills dying quietly in committee and reforms never reaching the floor for a public vote—is best understood as silent compliance with donor preferences. Maintaining the current advantages embedded in the *status quo* is often the highest priority for vested interests.

> "[*Citizens United*] … obscures the very real injustice and distortion entailed in the phenomena of some people using other people's money to support candidates they have

[8] In 2024, Elon Musk donated ≈ $275 million dollars and Tim Mellon, another billionaire, donated almost $200 million. Two people gave almost half a billion dollars!

made no decision to support, or to oppose candidates they have made no decision to oppose."

Professor Lawrence Tribe, SCOTUS blog (January 24, 2010).

The Problem Is Structural. It is tempting to frame campaign finance as a question of corruption or character. That framing is comforting—and wrong. The problem is structural. When the rules of politics reward donor-driven behavior, donor-driven behavior is the outcome. Appeals to virtue are no substitute for institutional design. Democracies do not endure because elected officials are exceptionally virtuous, but when democratic institutions make extraordinary virtue unnecessary and vice less profitable.

"The Supreme Court has handed lobbyists a new weapon. A lobbyist can now tell any elected official: if you vote wrong, my company, labor union or interest group will spend unlimited sums explicitly advertising against your election."

D. Kirkpatrick, New York Times Editorial (January 21, 2010).

State-Led Reform. The best way forward is one that the framers of the U.S. Constitution understood and appreciated more than we do today: let the sovereign states design their own solutions. Sometimes, the "one size fits all" model just does not fit. The fifty states—long celebrated as the "laboratories of democracy" are better positioned to resolve this issue. Reform does not always require a single national solution. After state parity is established, an amendment could shift authority to the states.

Sixteen states have already called for a constitutional amendment to reverse *Citizens United*, and hundreds of municipalities have passed resolutions urging reform. Some states—California, Illinois, and Vermont among them—have gone further, formally petitioning for an Article V convention

Allowing different states to establish different campaign finance systems would encourage diversity in the search for solutions. Some states would impose strict limits on campaign contributions and expenditures. Other states would regulate campaigns less aggressively and might rely on more robust disclosure and transparency. Crucially, no state would be forced to adopt a model inconsistent with its values. The point is not uniformity, but pluralism. Over time and with experience, successful models would emerge and could be adopted more widely.

An Amended 1st Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people

peaceably to assemble, and to petition the Government for a redress of grievances. However, each state may enact legislation to limit contributions to candidates or to individuals or organizations which support or oppose a candidate. Each state may also enact reasonable expenditure limits by candidates and candidate controlled organizations, including expenditure by a candidate of the candidate's own assets." (new material is underlined)

Federalism as Democratic Strength. The genius of American federalism is not that it produces consensus, but that it supports diversity. Campaign finance and spending is precisely the kind of issue where this diversity is an asset rather than a liability.

States differ enormously in size, media markets, political cultures, and levels of inequality. A campaign finance system that works in Vermont may be ill-suited to Texas. What succeeds in California may not work well in Wyoming. Allowing states to tailor "bespoke" solutions will acknowledges differences rather than pretending they do not exist.

From this diversity, best practices can emerge. Successful models can spread horizontally as other states adopt proven approaches. Over time a *de facto* national consensus can emerge. Not imposed from above, it would evolve from state experimentation and actual evidence.

"Nobody makes a greater mistake than he who does nothing because he could do only a little."

Edmund Burke

Chapter 3
Conclusion: Your Critical Role as a Citizen in a Democracy

The Citizen Solution is like the Arab Spring and the Color Revolutions, both of which arose to replace autocratic governments with democracy. The Citizen Solution is trying to save an existing but increasingly fragile democracy, but it's the same fight. We don't need to lose our democracy before we rise to its defense.

> "We must dissent from the indifference. We must dissent from the apathy. We must dissent from the fear, the hatred and the mistrust. We must dissent from the poverty of vision in the absence of moral leadership. We must dissent because America can do better, because America has no choice but to do better."
>
> Justice Thurgood Marshall, acceptance speech on receiving the Liberty Award July 4, 1992

Democracy is not just elections. Even autocratic government hold elections. If you were not concerned about the health of our democracy, you would not have read this far. Thank you for caring. The next step is to virally spread the message of citizen empowerment in order to reduce the increasing political dysfunction. An informed and focused electorate is the necessary predicate for change and the 2026 and 2028 elections will be critical. If things continue to deteriorate in the next two election cycles, we may pass a tipping point.

Social media is a powerful tool for those who are comfortable using it to amplify their voice. If that's you, then you can be an important part of The Citizen Solution without even leaving your keyboard. Let's celebrate the 250th anniversary of the Declaration of Independence by staging a non-violent revolution. The Citizen Solution is not an organization and does not collect dues. It is an idea that will be as powerful as you make it.

This essay is available free of charge at blairessays4free.com. You may attach a copy to your own emails, so long as you do not charge for it.

Appendix:
About the Author

I was a constitutional law practitioner, but not an academic. As a state legislator from 1974 to 1993, I proposed several amendments to the Hawai'i State Constitution that were enacted by the legislature and ratified by the voters.

In addition, I filed legal challenges to the actions of other elected officials, based on the state constitution, over legislative redistricting, failure to strictly follow the requirements for proposing an amendment, and the misapplication of a "resign to run" requirement..

As a Honolulu Deputy Prosecuting Attorney in the Appellate Division, I responded on behalf of the State to appeals from criminal convictions. These often alleged violations of a defendant's constitutional rights. Later, as a Honolulu District Court Judge, I ruled on the occasional constitutional arguments that were raised in cases assigned to me.

As a legislator, a lawyer and a judge, I learned to appreciation the crucial role of our federal and state constitutions in establishing the process legitimacy that is necessary for democratic governance. This essay arose from a simple insight: fix the process first. Only when the process is optimized are optimal outcomes possible.

The Article V amendment proposed in this essay will give both conservatives and progressives an equal opportunity to offer solutions to important problems and will let the voters make the final decision. The voters' decisions will reform the process of governance and resolve critical issues, substantially reducing the zero-sum, ideological warfare that has become the standard operating procedure in Congress. Voter decisions have undeniable legitimacy and they are sticky. That's democracy!