

## 21<sup>st</sup> Century Constitution Design Rationale

This 21<sup>st</sup> Century Constitution is designed on the concept of sortition because it is manifestly clear that election-based systems of government fail to serve the interests of the governed. There are many reasons why government based on systems of voting fails. The online book “The Trouble with Elections” by Terry Bouricius identifies many of them, but in short, it comes down to the reality that human beings do not possess the mental capability to acquire the amount of information needed to make informed voting decisions in a modern society, get very little in return for the effort required to become informed, are subject to biases and peer pressure, and are subject to manipulation by persons with a vested interest in an election outcome. Election systems by their nature select for persons who are ill equipped or motivated to be decisionmakers on behalf of the governed, and in general devolve into oligarchies or plutocracies that serve the interest of the very wealthiest of society’s citizens. Furthermore, election-based systems of government fail badly at actually being representative. The Constitution of the United States of America is objectively undemocratic and unrepresentative of the citizens. The application of sortition in the proposed 21<sup>st</sup> Century Constitution guarantees the formation of a representative form of government that is of the citizens, by the citizens, and for the citizens. The following sections explain the rationale for the Articles, Sections, and Paragraphs in the proposed 21<sup>st</sup> Century Constitution.

### Article I, Legislative

Like in the current U.S. Constitution, the first Article establishes the legislative branch of the federal government.

#### Section I Appointment to Office

##### Paragraph 1

This paragraph establishes a minimum set of criteria for a citizen to be selected as a U.S. Representative, that they should have hopefully reached an age of maturity, are citizens in good standing, are literate, and have been citizens long enough to acquire an understanding of every day life in this country and have acquired an affiliation to it.

##### Paragraph 2

This sets the number of representatives that is consistent with the Reapportionment Act of 1929, is small enough to accommodate a meeting of all representatives in a single room in the Capitol and is large enough to create a representative cross-section of the general population.

### Paragraph 3

This ensures that being a U.S. Representative is a service and not a career by making it a single term and provides for job training prior to active service. Since there is no opportunity for training for Representatives of the first Congress under this Constitution, an exception is implied that foregoes the condition that the first year is non-participating.

### Paragraph 4

This creates turnover while preserving a degree of institutional memory. Turnover helps to prevent the formation of cliques, interpersonal dependencies, and an influx of citizens with varying sets of life experiences. A special condition is implied for the first Congress under this Constitution which is that half of the representatives will only server a two-year term.

### Paragraph 5

As technology for implementing random selection improves over time, Congress is directed to select the most reliable method for generating random numbers for the purpose of randomly selecting citizens for government positions. Currently, there are devices available that use quantum randomness for generating random numbers, a technique that may be difficult to improve since quantum randomness is the “gold standard” of randomness.

### Paragraph 6

Under this Constitution, there is no Senate. The Senate is extremely undemocratic in its composition, is based on geopolitical boundaries that are historical artifacts that server no purpose in a government that is designed to be composed of a cross section of the citizenry, has no supervisory role in a government where positions are filled on the basis of either random selection or merit (in the case of the Executive Branch positions excepting the Office of the President), and is functionally redundant with respect to the Legislative body’s one required function which is to fund the federal government.

### Paragraph 7

A Speaker of Congress is required because the citizen chosen for this position is a person who may become an acting president under the conditions of the Presidential Succession Act. It is also a position that may be assigned special authorities by Congress such as the authority to call Congress to order or to initiate a vote. This does preclude the possibility that other procedures such as random selection may be used to select an “Acting Speaker of Congress” for the purpose of calling the first Congress to order and

selecting a Speaker of Congress which may be used by the first Congress under this Constitution.

#### Paragraph 8

The intent is to ensure that Representatives are compensated at a rate that is high enough that all but a fraction of the upper 1% of the citizens would be financially inclined to accept the position of Representative (which is optional), that it would be high enough to provide fair compensation for the interruption in a citizen's employment career, that it would be high enough to dissuade the acceptance of bribes, by being paid in constant dollars is likely to ensure the same purchasing power over time, and is non-taxable to ensure that it is the same amount of compensation for all citizens accepting the position. By specifying constant dollars, pay will be automatically increased to match inflation as a mechanism for preserving purchasing power over time without having to enact legislation to increase compensation.

Since service is not required, the concern that there would be significant departures from random selection is largely allayed by making the compensation attractive enough that almost all selected citizens would be inclined to accept. It would be unjust to compel someone like a medical intern to forego their career in medicine because of a legal obligation to accept a random selection notification. There are many citizens who have similar life events that would prevent them from accepting even an opportunity as attractive as the one proposed. It is expected that only a small fraction of selected citizens would choose to decline the opportunity offered and the specified compensation. The departure from perfect randomness is expected to be insignificant, so self-selection bias is likewise not expected to be significant. By placing the selection constraints as specified in Article I, Section I, Paragraph 1, a departure from perfect randomness has already occurred out of necessity to perform the required functions. The job of Representative requires literacy for instance because the one task that is required of Congress is to fund the federal government, a task that requires literacy. This is not a deliberative function to make a few decisions by a group of people such as a citizen's assembly. It is a task of making hundreds to thousands of decisions that requires the reading of hundreds to thousands of pages of appropriations documents that contain line items that are in many cases a reference to a spreadsheet of spending details. The design of Article I is based out of necessity on qualified random selection. There is no reason to think that it will serve the interest of the citizens any less well than unconstrained random selection even when serving more in the manner of a citizen's assembly to establish new laws that are unrelated to appropriations. In the event that there is a departure from the interests of the citizens in the making of new laws, by limiting the authority of Congress to the making of bills, there is a final check on what bills become laws which is found in Article I, Section II, Paragraph 4.

#### Paragraph 9

Congress has the power to remove members who have been convicted of a felony while in office. The procedure for doing so is up to Congress to decide. If a felony conviction occurs near the end of a Representative's term in office, it may make no sense to remove them which is why removal from office is optional.

#### Paragraph 10

The number of Representatives is large enough that if a few members leave office before the end of their term, the overall representative aspect of Congress will not be compromised. The number of Representatives will be restored to 435 (or nearly so) by new Representatives beginning their term in office.

#### Paragraph 11

Transition specifics from the Congress under the current Constitution to the first Congress under this Constitution.

#### Paragraph 12

This paragraph creates a separate legislative body whose function is to review bills created by the Congress for constitutionality and legal consistency, rejecting those bills that are determined to be either unconstitutional or legally inconsistent. Citizens who otherwise meet the conditions to serve on the Constitutional Council and have one or more felony convictions cannot be entrusted with the responsibility of the position.

#### Paragraph 13

The purpose is to establish turnover of half the members of the Constitution Council every 4 years to prevent the formation of cliques, interpersonal dependencies, and to ensure that new perspectives are represented though this is largely a legal analysis function.

#### Paragraph 14

Established a starting date.

#### Paragraph 15

The rationale is the same as that for Article I, Section I, Paragraph 8.

#### Paragraph 16

Provision is made for the replacement of members of the Constitutional Council for the conditions specified. It is implied that the citizen serving as a replacement member of the Constitutional Council shall be compensated at the rate specified in Article I, Section I, Paragraph 15.

#### Paragraph 17

A Chairman is needed for calling meetings of the Constitutional Council for the purpose of establishing an agenda for reviewing bills and legislation.

#### Paragraph 18

This ensures that as next in line to the President, the Speaker of Congress is briefed on issues of concern to the President in case the Speaker of Congress is required to serve as Acting President.

### Section II

#### Paragraph 1

Representatives create bills that are checked for constitutionality and legal consistency by the Constitutional Council.

#### Paragraph 2

The function and authority of the Constitutional Council with respect to bills passed by Congress is established, ensuring that all new laws are constitutional and consistent. Judicial review is removed from the Supreme Court. The lengthy and inefficient legal appeals process of laws suspected of being unconstitutional under the current constitution no longer exists.

#### Paragraph 3

The function and authority of the Constitutional Council with respect to existing law is established. Many existing laws will require change or removal because they are not consistent with this Constitution such as the Budget and Impoundment Act of 1974, the Reapportionment Act of 1829, and many others such as those that assign functions or constraints on the Senate.

#### Paragraph 4

A college of delegates is established with the function of reviewing bills determined by the Constitutional Council to be constitutional and legally consistent. This is a non-convening body of randomly selected citizens, one for every 10,000 U.S. citizens. This new entity is created to make the establishment of new laws much more democratic than under the current constitution, to remove the power of the veto from the Office of the President (which was a convulsion of a legislative function with an executive office that is extremely autocratic) and was introduced as a response to the antifederalists in the 1780s who asserted that representatives under the current constitution would leave their communities, move to far off Washington, D.C., and start serving their own interests instead of the interests of the community from which they came. The name "college of

delegates” is a little awkward but was selected as a variation of the name “college of electors” or “electoral college” where the term “college” denotes a collection of citizens. This name can be changed if a more descriptive one can be proposed.

#### Paragraph 5

The establishment of new law is vested in the constitutional council.

#### Paragraph 6

The responsibility of issuing a declaration of war is vested in the Congress. A 3/5ths majority of representatives present should be sufficient to express the will of the citizens to a given provocation. The President may request a declaration of war, but the Congress is under no obligation to make such a declaration. Congress must establish rules for making a declaration of war and may make a declaration of war without a presidential request. It is unlikely that this will ever occur because it pertains to provocations made by nation states. Hostile provocations are much more likely to come from organizations other than nation states, and in the event of nuclear war, will be responded to under conditions of the War Powers Act and be terminated before concluded before any action by Congress is possible.

#### Paragraph 7

There is no explicit delegation of the power to declare an end of war or armed conflict in general in the current constitution. Such decisions are properly made by the part of the federal government that represents the citizens.

#### Paragraph 8

Limits are placed on the power of the President to respond to provocations with a military force that do not rise to the level requiring a declaration of war, or against hostile entities that are not nation states.

#### Paragraph 9

The President may initiate the use of military force in accordance with treaties (such as President Truman did in the Korean conflict which was in accordance with the United Nations treaty). Congress can use the “power of the purse” to limit the use of military force in a conflict. Hostile acts against military bases, ships, or aircraft operating in accordance with treaties or international law as well as any possession considered to be part of the United States may be responded to with military force at the President’s discretion.

#### Paragraph 10

There is reason to believe that in the case of the Iraq conflict, Congress was given false information to justify military intervention. This paragraph mandates that Congress

verify the truthfulness and accuracy of information given by officers in the Executive Branch to justify military initiation of or intervention in an armed conflict.

#### Paragraph 11

This paragraph establishes legal action to be taken against a president who has given misleading or false information to Congress for the purpose of initiating armed conflict. Such action is herein defined as a “high crime” that warrants impeachment. It is intended to serve as a constraint against the abuse of military force and against authoritarian motivations.

#### Paragraph 12

This paragraph establishes in Congress the “power of the purse”.

#### Paragraph 13

This paragraph mandates that appropriation bills be approved by a congressional majority. Congress has the freedom to establish rules for creating bills that do not require a vote of the full Congress with this exception due to its critical importance to the operation of the federal government.

#### Paragraph 14

Bills become law after receiving a majority vote of the Delegates in the College of Delegates. The time constraint is intended to prevent Congress from forcing a vote by the Delegates before they have had a reasonable amount of time to read and consider a bill.

#### Paragraph 15

This provision is intended to prevent the formation of “factions” as currently represented by political parties. “Factions” are inherently antidemocratic in nature because of the constraints they impose on citizens’ ability to participate freely and with an open mind in deliberative processes. A selected citizen who is a member of a political party may simply reregister as an independent or drop political party affiliation prior to accepting the offer to serve as a representative.

#### Paragraph 16

In the transition from the current constitution to this constitution, it is to be expected that many laws will need to be modified or discarded. At the top of the priority list are Acts such as the Appropriations and Impoundment Act of 1874 that established the current appropriations process. There are many references in this Act to the Senate that does not exist under this constitution. To enable a systematic transition from the current system of government to a new system of government, this task is given to the Constitutional Council. Without it, the court system would be overwhelmed with legal

challenges that question the legitimacy of laws under the new constitution. To avoid having two or more parts of government deciding on the constitutionality of laws, challenges to the constitutionality of state laws and provisions of state constitutions is delegated to the one organization that specializes in answering questions of constitutionality, the Constitutional Council.

#### Paragraph 17

This is essentially the same as in Article I, Section II of the current constitution. A Speaker is needed because the Speaker assumes the role of Acting President when presidential replacement is required. The Speaker of Congress calls Congress to order and acts in accordance with the legislative powers granted to it by the rules of order Congress adopts.

#### Paragraph 18

The concept of impeachment in this paragraph is a modification from Article I, Section III of the current constitution. Since there is no Senate, trials following impeachment of a President or Justices of the Supreme Court are conducted in Congress. The requirement for conviction has been changed from 2/3 to 3/5, a small reduction that still expresses a greater than simple majority ruling (to minimize act or appearance of partisan bias). The current constitution does not specify who should preside over the impeachment of the Chief Justice of the Supreme Court, an oversight corrected here. Congress is authorized to establish codes of conduct and codes of ethics for the Office of the President and Supreme Court Justices. So that these codes are taken seriously, consequences are specified for conduct and ethics regarded as unbefitting of these high offices. The current constitution does not prohibit a President from turning the White House into a bordello. It is hoped that the vast majority of citizens agree that this kind of conduct warrants removal from office. The codes of conduct apply to Justices of courts inferior to the Supreme Court (for consistency). A procedure is included for determining if conduct or ethics code violations have occurred. This is in marked contrast to the Supreme Court adopting its own code of ethics without any specified consequences for violations or procedure for determining ethics code violations. Currently, there is no concept of required compliance to conduct or ethics for the Office of the President.

#### Paragraph 19

This paragraph contains many of the provisions of Article I of the current constitution, all of which are necessary for legal consistency and a functional government. A provision to charter banks is new. The Supreme Court decided that chartering banks is an implied power of Congress. In the proposed constitution, it is enumerated. Changing compensation for Representatives, the President, and Supreme Court Justices is updated. One provision that has been excluded pertains to Letter of Marque and Reprisal. This is the legislative power to authorize piracy, also referred to as privateering. The last Letter of

Marque and Reprisal was issued in 1812 and is currently against international law. Though some may find its omission disappointing, it does not belong in a 21<sup>st</sup> century constitution.

#### Paragraph 20

Unchanged from the current constitution.

#### Paragraph 21

Unchanged from the current constitution.

### Section III Legislative Prohibition

Paragraphs 1 through 9 are carried over from the current constitution.

#### Paragraph 10

Legal discrimination on the basis of race, creed, color, sex, or national origin is constitutionally prohibited, as it should be in any civilized country.

#### Paragraph 11

It is prohibited to add content to appropriations bills that is often designed to excite one party's constituents and antagonize another political party's constituents, content that has nothing to do with funding the operations of the federal government. Should appropriations bills contain content that is unrelated to funding the federal government's operations, this paragraph authorized the Constitutional Council to reject the bills as unconstitutional.

#### Paragraph 12

This constraint is intended to prevent the creation of bills contain unrelated content such as a bill that provides funds supplemental military spending for the Ukraine and spending for new border control provisions.

#### Paragraph 13

The right to initiate or terminate a natural biological process is a fundamental human right. Governments do not have the right to regulate natural human biological processes. This is consistent with the Ninth Amendment of the current Constitution.

### Section IV Prohibitions on State Legislation

This Section is essentially the same as in Article I of the current constitution and is fundamental to the operation of a federal government.

## Section V Delegates

This establishes what is collectively referred to as the “College of Delegates”, a collection of randomly selected citizens who are tasked with voting on bills to become law. Suggestions for a better label than “College of Delegates” are welcomed. The College of Delegates serves several purposes. It establishes a significantly more democratic process for enacting law than is provided by the current constitution. It establishes a process that by sheer numbers conveys legitimacy to new laws. It replaces a fundamentally undemocratic process, the presidential veto. Finally, the College of Delegates is a response to antifederalist criticism in the 1780s that representatives under the proposed (now current) constitution would travel to far off Washington, D.C. where they would forget about the needs and concerns of the people in the communities from which they came and instead seek to aggrandize themselves. Many today would acknowledge the legitimacy of the antifederalist concern. This is sortition writ large. While the number of Delegates is far larger than is required mathematically to ensure proportional representation of almost any citizen category (about 30,000+ in today’s population), it is intended to bring democracy through sortition into every community, and the number of Delegates is affordable.

## Section VI Continuity of Laws Passed Under the Previous Constitution

This Section is required to ensure that the transition from the current constitution to the proposed constitution does not result in a legal chaos of constitutional legal challenges and that the functions of government are not disrupted.

## Section VIII Selection of Representatives, Delegates, Presidents, and Supreme Court Justices

The Section establishes the process for initiating sortition by specifying when random selection will take place, and for all subsequent random selection events.

## Section VIII Meetings of Congress

This section provides a modern update regarding how and when meetings of Congress take place, grants the power to self-regulate and discipline members of Congress, and keeps a record of its proceedings for public review. The most notable innovations are participation by telecommunication systems and the self-regulation of members of Congress so as to ensure that the vital work of Congress is conducted with minimal disruption from an occasional member.

## Article II Executive

## Section I Selection and Compensation

### Paragraph 1

Some basic qualification constraints are established for the Office of President. The one constraint that may be debated is the upper limit on the age at which a citizen may be selected to serve, a departure from the current constitution that does not have an upper age limit. The reason for including an upper age limit is to provide some protection against physical and mental decline in a citizen who is entrusted with the almost God-like power of being able to end human life on this planet through the initiation of nuclear warfare. Recruits for military service are screened for a dozen or so classes of mental illness and are rejected if found to have any of them because they cannot be trusted to operate deadly weapons or weapon systems in an authorized and disciplined manner. If such constraints are applied for the lowest level members of the armed forces, there is no reason to question why similar constraints need to apply to the Commander in Chief of the armed forces. While the age of 60 is subjective, it is simply a fact of human biology that it is common for citizens who reach that age to begin experiencing the deleterious effects of aging on the body and mind despite advances made in medical technology and practice. The rationale for including a college education requirement is to ensure that the selected citizen has demonstrated a capacity to learn significant amounts of new information in a relatively short time. Additional constraints were considered and rejected because the design intent is to place no more than the minimum number of qualification constraints needed to ensure that the selected citizen is capable of function in the Office of the President to maximize the selection pool of citizens and minimize the selection bias.

Other methods of selecting a citizen to serve as President have been proposed such as selection by a citizen's assembly or similar committee who would review candidates based on a review of resumes. The problem with these selection methods is that the citizens with the best qualifications are almost always going to be those who were high ranking military officers, generals and admirals. While several of our presidents have been distinguished military commanders, and many current military commanders would make acceptable presidents, it is the intent of this constitution to preserve the concept that it is preferable to have civilian oversight of the military. Regarding citizens who have risen to prominence as chief executive officers or presidents of corporations, while they have the appearance of leadership capability, their experience makes them psychologically unsuited for being a president. They have spent many years in organizations that exist to serve the interests of the owners and executive officers. They develop a sense of always knowing what is best and attribute organizational success overly much to their decision-making rather than to the commitment of the many people who work in the organizations. The Office of the President and government in general is designed to serve the interests of the citizens. It is dangerous to have a President who thinks they know best in many if not all situations, and sometimes make decisions base on "gut feel" rather than considered deliberation of the facts and alternative actions. In short, it is improbable that any such selection process will outperform the qualified random selection process specified in this constitution in selecting citizens for the Office of the President.

### Paragraph 2

Most presidents have served two or more four-year terms. A four-year term is undesirable because it would require transitions in office that are too frequent. It would not give the leaders of foreign governments enough time to establish any sense of continuity or report with the President. Eight years in the Office of the President is a very long time for a citizen to carry the responsibilities and stresses of the job, and to separate a citizen from their families, friends, and everyday life. So, a single six-year term as President seems like a reasonable compromise.

#### Paragraph 3

A starting time and transition of office from the current constitution requires specification.

#### Paragraph 4

The intent is to ensure that the successor to the presidency is informed on the issues and concerns of the day and has had the time to consider and prepare for the position. Transition times are times of vulnerability. The intent of this provision is to minimize the vulnerability that occurs at a transition in the holder of the Office of the President.

#### Paragraph 5

This provision requires the last president under the current constitution to brief the first president under this constitution prior to the first president under this constitution becoming president. This is required for the same reasons written for Article II, Section I, Paragraph 4.

#### Paragraph 6

The oath of office specified under the current constitution for the Office of the President serves no purpose because what constitutes a violation of the oath is subjective, and consequently any assertion that a violation of the oath of office has occurred is considered political attack. There is no specified procedure to determine if a violation of the oath of office has occurred, and no specified consequences if a determination is made that a violation of the oath of office has occurred. Therefore, the oath of office for the President has been changed to the protocol that is like that which is used when a change in command of a Navy capital ship or base occurs.

#### Paragraph 7

This is a restatement of the 25<sup>th</sup> Amendment to the current constitution to be consistent with the changes made to the legislative branch. By virtue of being human, presidents are subject to all the circumstance that can mentally and/or physically limit a person's capacity to function. This provision establishes a process for responding when such an event has occurred to the president. It is essential that someone is always in a position to act as Commander in Chief so that military force can be used to respond to imminent military threats.

#### Paragraph 8

To make a provision for the case where the Speaker of Congress is unwilling or unable to assume the duties of Active President, a procedure is specified for choosing a representative from Congress to assume the role. This is necessary so that there is always someone who is entrusted with acting in the role of Commander in Chief who has the authority to use military force in the event of an imminent military threat.

#### Paragraph 9

The compensation for the President is designed to be fair compensation for accepting a significant interruption to a citizen's career and alteration in family life. It is made in non-taxable constant dollars so that it possesses approximately the same purchasing power over time and is the same for all citizens over time. It is also intended to minimize the number of selected citizens who would otherwise be inclined to reject the offer to serve. It is intended to be compensation that is large enough to dissuade the acceptance of bribes. The President is prohibited from receiving emoluments (compensation) from state and local governments or foreign governments, similar to Article II, Section I of the current constitution for the same reasons, to avoid attempts to unduly influence decisions made by the President. Other sources of income for the President shall be taxed in accordance with the law.

#### Paragraph 10

This is essentially the same as Article II, Section IV of the current constitution, terminology that is subject to interpretation for justifying the removal of a President from office. It is inappropriate for a constitution to contain a list of specific offences for which the President may be removed from office which likely would take many pages and still be incomplete. The specification that the President is not immune from prosecution for alleged crimes is a statement of the principle that no person is above the law. Under the current constitution, a President may continue in office from a prison cell while serving time for criminal convictions if not impeached and removed from office by a two-thirds vote in the Senate. Under the proposed constitution, the impeachment and trial would both occur in Congress since there is no Senate, but like the current constitution, does not preclude the possibility that a President will serve in office from a prison cell.

#### Paragraph 11

Executive privilege has been asserted to block Congressional subpoenas of members of the executive branch of government from testifying before Congress, clearly demonstrating that the so called "checks and balances" does not apply between the legislative and executive branches of government under the current constitution. Executive privilege is not a provision of Article II of the current constitution. This paragraph prevents the assertion a court may make that executive privilege is an implied power by explicitly stating that it is not. The intent is to restore the "checks and balances" between the legislative and executive branches of government.

### Section II Duties and Responsibilities

#### Paragraph 1

Article II, Section II of the current Constitution begins: "The President shall be Commander in Chief of the Army and Navy of the United States, and the Militias of the several States when called into service of the United States; ....". One would think that a constitutional amendment would be required to grant the President the authority to be Command in Chief of the Airforce and the Space Force, at least if one's legal philosophy demands "a strict interpretation" of the Constitution. The authors of the Constitution could have used more general terms such as "Commander in Chief of the Armed Forces of the United States" if they intended the President to be Commander in Chief of armed forces other than the Army, Navy, and State Militias.

Article II, Section II, Paragraph 1 generalizes the language used to identify over which military forces the Commander in Chief has authority in case Congress creates through legislation new military organizations under the Department of Defense. The paragraph also specifies when the President is Commander in Chief, specifically, in times of conflict. In times other than conflict, the command of the military is under the command of the Secretary of the Department of Defense. The expression “times of conflict” is subjective. It can reasonably be interpreted as a time when any attack is made against the military of the United States, the United States, or its allies.

#### Paragraph 2

This paragraph explicitly grants Presidential authority to seize assets of governments or non-governmental organizations that initiate conflict with the United States. The Current Constitution does not grant this authority, though it has been used a number of times in the past, such as when the ships of the German owned Hamberg America Line were seized at the conclusion of the First World War as spoils of war. Asset seizure may include financial assets. This is an improvement over an implied authority which can be subject to legal challenge.

#### Paragraphs 3-11

These are the same authorities included in Article II of the current Constitution. No change was required.

#### Paragraph 12

Current events have shown that it is profoundly unwise to permit a President to distribute information on national secrets that by disclosure jeopardize the security of the United States. Currently, the President has broad latitude to declassify information for any reason at all. The current Constitution places no restrictions on how, when, to whom, and for what reason the President may distribute highly classified information. This constraint is intended to prevent the President from distributing classified information to persons or governments that have or may have an adversarial relationship with the United States. It is reasonable to consider removing from the President the authority to declassify information. This may be done by legislation. A separate government office could be created and delegated sole authority to declassify information, subject to Congressional oversight. If this is determined to be preferable, then Article II, Section II, Paragraph 12 will be rewritten to deny the President the authority to declassify information.

#### Paragraph 13

A restatement of a clause in Article II, Section III of the current Constitution, though what the words “faithfully execute” mean is subjective. It is unclear who would decide that the President was not faithfully executing the laws of the United States, though under this Constitution, information may be collected and presented to Congress to determine if impeachment was warranted.

## Article III Judiciary

### Section I Judicial Authority

This is the exact wording as is in the first sentence of Article III, Section I of the current Constitution. No change was required.

### Section II Establishment of the Supreme Court

#### Paragraph 1

The time delay provides time for the selection of justices for the first Supreme Court under this constitution.

#### Paragraph 2

These reasonable qualifications for becoming a Supreme Court Justice exceed the qualifications of many Supreme Court Justices selected under the current Constitution. Random selection will not produce a Supreme Court that is a cross section of the general public but will prevent judicial bias to some extent. It will tend to create a court that reflects the median on the spectrum of judicial philosophy at the time while preventing biasing from external interests.

#### Paragraph 3

The size of the Supreme Court is increased to minimize the effects of a given Justice's judicial biases on rulings. For any given case, one or more Justices may be recused or unable to render a decision. The number of remaining Justices is expected to reflect a decision that is minimally biased, judicial biases tending to average out to the judicial median.

#### Paragraph 4

Lifetime appointment of Justices to the Supreme Court is autocratic in the extreme. It violates an essential characteristic of democratic government identified by Thomas Jefferson, that each generation of citizens constitutes a new country as new adults mature into a new world that is different from the world of the past generation. Laws, technology, new citizens from other parts of the world, and the distribution of resources all change the country significantly from one generation to the next. Turnover in the court enables to some degree court decisions that are compatible with generational change. A fixed term of service is required to enable turnover, and an eight year term is a reasonable length of time to balance the virtues of judicial continuity with the virtues of judicial progressiveness.

#### Paragraph 5

The procedure for turnover of Justices on the Supreme Court is initiated by specifying varying lengths of services for the Justices on the first Supreme Court under the proposed Constitution.

#### Paragraph 6

Every two years after the first Supreme Court is established under the proposed Constitution, five Justices will replace Justices who have completed their terms of service. These five Justices will serve eight-year terms. Replacement Justices will serve out the term in office of the Justice being replaced. This process is designed to ensure a progression of judicial philosophy that though lagging, at least follows generational progression of the country. It is expected to minimize the characterization of a given Supreme Court as either progressive or conservative, or by any other characterization by the media and general public.

#### Paragraph 7

Continuity of judicial function will not be lost in the transition from the Supreme Court established under the current Constitution to the Supreme Court established under the proposed Constitution.

#### Paragraph 8

Reasonable compensation is established in constant, non-taxable dollars to ensure the Justices receive the same purchasing power over time and is an amount that is large enough to dissuade potential bribery attempts.

#### Paragraph 9

Generational turnover is established for courts inferior to the Supreme Court by random selection for the same reasons as given for Justices on the Supreme Court. Compensation is established by Congress for Justices on courts inferior to the Supreme Court and continues at whatever level has been established by law at the time of adoption of the proposed Constitution.

#### Paragraph 10

The current Constitution does not require Justice to provide an explanation for their rulings, so there is nothing that prevents a Justice from simply giving a “thumbs up or down”, nor does it preclude justices from claiming judicial inference or consistency from an unrelated court case to disguise judicial bias. By establishing this requirement, a means is made available to detect judicial bias.

### Section III Scope of Responsibility

#### Paragraphs 1-3

This is taken almost unaltered from Article III, Section II of the current Constitution. No change was warranted in the statement of judicial authority.

### Section IV Trials

#### Paragraphs 1-3

This is taken almost unaltered from Article III, Section II of the current Constitution. No change was warranted in the statement of judicial authority.

#### Paragraph 4

Under the current Constitution, citizens appearing before a grand jury are deprived of their constitutional rights. A person may be forced to give testimony against themselves. A person appearing before a grand jury may be imprisoned indefinitely if accused of withholding evidence. People compelled to give testimony before a grand jury do not have the right to have an attorney present. An episode of the television series “The Rockford Files” was created to highlight the injustice that may occur. In the episode, the character, Jim Rockford, a private investigator, receives a summons to appear before a grand jury. He had received a phone call from a gangster who misdialed and called him by mistake. Rockford had no knowledge of the person who placed the message on his answering machine. The police had traced the call to Rockford’s phone and confiscated the file from his answering machine. The prosecutor at the grand jury accused Rockford of withholding evidence of contact with the gangster and had Rockford imprisoned. The provision in this paragraph is specified to prevent this kind of injustice.

#### Section V Treason

This is a modern restatement of Article III, Section III of the current Constitution. The most significant difference is the generalization of applicability from war to conflict. In the modern world, wars occur between nations and from attacks by non-governmental organizations without the niceties of war declarations. The act of treason needed to be updated accordingly.

#### Recusal of Supreme Court Justices and Justices of courts inferior to the Supreme Court

Though not a constitutional issue, consideration needs to be given to when a Justice should be recused from hearing a case before the court. Leaving recusal to personal judgement is absurd. As an alternative, legislation could be created to establish a council that reviews cases to be heard by the court that has the authority to require Justices to be recused due to conflict of interest, or the appearance of conflict of interest. Members of such a council should be randomly selected from qualified citizens to minimize the possibility of biased judgements. Details on participant qualifications, length of service, and compensation must be included in the legislation. They must also have access to pertinent personal information such as financial investments of the Justices, the occupations and investments of family members, business contacts, and any source of potential judicial bias.

#### Article IV Citizens and Their Rights

##### Paragraph 1

The current Constitution is ambiguous in identifying to whom citizenship belongs. Geographical considerations for citizenship are irrational where at least one parent is a citizen. These

geographical constraints have been removed. Children adopted below the age of 12 by citizens are regarded no differently from a newborn who has a parent that is a citizen. The age of 12 is somewhat subjective, but it is about the age at which maturation has occurred in the child to the point where they begin to acquire associations with and awareness of community that extends beyond family and friends. The intent is to prevent unwarranted discrimination against adopted children.

#### Paragraphs 2 and 3

These paragraphs specify that rights specified in the proposed Constitution apply exclusively to individual human beings and to organizations, animals, plants, or other parts of the natural world to whom some may wish to ascribe rights. These paragraphs were in part a response to the Supreme Court's decision and Justices' opinions in the trial "Citizens United vs the Federal Election Commission" that assert that organizations have constitutional rights.

#### Paragraph 4

This is an enumerated privacy right of citizens that prevents the government from doing blanket surveillance of citizens and may only be suspended (and not revoked) by a warranted criminal investigation. This is an update to the rights specified in Amendment IV of the current Constitution.

#### Paragraph 5

Citizens' rights cannot be terminated by law or executive order. They may not be revoked but may be suspended if specified in the proposed Constitution as in Article IV, paragraph 4.

#### Paragraph 6

The enumerated right of freedom of speech in the current Constitution has been updated and generalized to freedom of communication in the proposed Constitution. This prevents having to interpret what is meant by "free speech" in an internet world.

#### Paragraph 7

This is extracted from the First Amendment to the current Constitution. This fundamental right is preserved in the proposed Constitution.

#### Paragraph 8

This is also extracted from the First Amendment to the current Constitution. This fundamental right is preserved in the proposed Constitution. It is worth noting that under the current Constitution, this right has been abridged, not by law but by byzantine procedures. As a result of the established procedures for filing a petition to Congress, it is nearly impossible to bring such a petition before Congress.

#### Paragraph 9

This is a more constrained interpretation of the Second Amendment in the current Constitution than was rendered by the Supreme Court in the case “*The District of Columbia versus Heller*”, but a broader interpretation of the right than was likely intended by the authors. The following passage is from “*The Annotated U.S. Constitution and Declaration of Independence*, pages 226, 228 by Jack N. Rakove and is given here for historical perspective:

‘The amendment originated in Anti-Federalist concerns that Congress might misuse the powers of “organizing, arming, and disciplining the Militia” to neglect it entirely. The militia might be disarmed, George Mason warned the Virginia ratifying convention, not by federal confiscation of private firearms but simply by Congress’s failure to keep militiamen adequately equipped (or “well regulated” in eighteenth century usage). That neglect in turn, would make it easier for the “standing army” Congress would control to trample the reserved rights of citizens and states.

In recent decades, the National Rifle Association and its supporters have waged a vigorous campaign to argue that the amendment was intended to protect a personal right to keep and bear arms for purposes of individual self-defense, and that the preamble to this did not limit its purpose to the militia alone. Though the historical evidence for that view is tenuous, the Supreme Court sustained the individual-rights reading in its decision in *District of Columbia v. Heller*, overturning a broad prohibition on the private ownership of handguns in the nation’s capital. The Court reached this conclusion by largely ignoring the actual debates that led to the adoption of the amendment. Corresponding provisions in numerous state constitutions now assert an individual right to own and use firearms in language much more explicit than the much-disputed formula of 1789.’

*District of Columbia v. Heller* is an example of a biased Supreme Court ruling, biased by choosing to ignore the context of the times in which it was written in order to cater to the National Rifle Association, its supporters, and the gun lobby. Article IV, Paragraph 9 of the proposed Constitution is a compromise between advocates of a total ban on private ownership of firearms and advocates of unrestricted private ownership of firearms by explicitly stating that citizens have the right to possess firearms, but that states, counties, and cities have the right to impose sensible restrictions on the kinds of firearms permitted in their state and conditions for gun ownership. Hunters should have the right to own and use hunting rifles in regions where there is game to be hunted, but cities should have the right to deny citizens the right to carry firearms openly since it is a local where there is no game to be hunted (they may be permitted to carry firearms in containers so that firearms may be transported from shops where firearms are sold or repaired). For those concerned about a President using the authority of Commander in Chief to order the army to suppress the constitutional rights of citizens, then states should establish and train militias to whom would be entrusted the use of weapons of lethal force capable of defending a state against such an abuse of Presidential authority.

Paragraphs 10 – 14

These are extracts from the Bill of Rights amendments to the current Constitution as rights that require enumeration, e.g. explicit statements.

#### Paragraph 15

Citizens who have enlisted or been conscripted into military service retain all of the rights specified in the proposed Constitution, but when accused of crimes, shall be tried in military courts instead of civilian courts.

#### Paragraph 16

States may not abolish constitutions and establish authoritarian forms of government.

#### Paragraph 17

This is a restatement in contemporary language of the Ninth and Tenth Amendments of the current Constitution that asserts that just because a citizen's right is not listed here does not imply that the right does not exist. Citizens of a state may choose to grant non-enumerated rights to the state.

### Article V Non-Citizens and Their Rights

The current Constitution grants limited rights to some non-citizens under the 5<sup>th</sup> and 14<sup>th</sup> Amendments with exceptions being made for "time of War or public danger", whatever that might mean. Non-citizen undocumented persons do not have the right to a government appointed attorney for immigration hearings. They are entitled to legal assistance at their expense at immigration hearings. The rights of non-citizens implied by the 5<sup>th</sup> and 14<sup>th</sup> Amendments are enumerated in the proposed Constitution.

#### Paragraph 1

This grants non-citizens the right to be brought to court if they have been imprisoned so that the court can determine if the imprisonment was lawful if the non-citizen was imprisoned without trial.

#### Paragraph 2,3

Legal protections are not granted to non-citizens who are acting as enemy combatants. Instead, enemy combatants who are captured shall be treated in accordance with the Geneva Conventions regarding the detaining of enemy combatants.

#### Paragraph 4-11

The rights granted to citizens in the Bill of Rights under the current Constitution are granted to non-citizens because these are fundamental human rights that are not limited to citizens.

#### Paragraph 12

It only makes sense that non-citizens who have joined the military of the United States should be treated in the same manner as citizens in the military who are accused of committing a crime.

## Article VI General Prohibitions

### Paragraph 1

This is a restatement of the Thirteenth Amendment to the current Constitution. Its necessity in any Constitution of the United States is self-evident.

### Paragraph 2

This is a generalization of Article IV, Paragraph 4. This prohibits governmental entities such as the National Security Agency from using modern technology to record telephone and internet correspondence among citizens. The gathering and recording of citizen communications is only permitted as part of a warranted criminal investigation.

### Paragraph 3

So that citizens may have confidence that the government is secular and not biased in favor of any particular religion or creed (or against a particular religion or creed), no object that is a symbol or reference to a religion or creed is permitted on government property.

### Paragraph 4

This is an updated version of the Third Amendment of the current Constitution. It makes sense to keep it.

### Paragraph 5

This is a restatement of the last clause in the Fifth Amendment of the current Constitution. It is retained to protect the property rights of citizens but recognizes the necessity of having eminent domain.

### Paragraph 6

Government powers and authorities are enumerated powers in the proposed Constitution. Government powers and authorities do not exist by inference.

### Paragraph 7

This is a restatement of the first clause in the First Amendment of the current Constitution. So that the government is secular and unbiased towards citizens by systems of belief, the establishment of religion or the prohibition of religion is not permitted.

### Paragraph 8

Being in a state of conflict or rebellion does not permit the government to suspend or constrain the rights of citizens.

## Article VII Amending the Constitution

### Paragraph 1

The Fifth Amendment process in the current Constitution is so constrained that only the most trivial of amendments have a chance of being approved. In correspondences, Thomas Jefferson expressed the realization that in a sense, every generation creates a new nation of adult citizens, and so proposed that there should be a Constitutional Convention every generation to make updates to the Constitution to account for changes in society, technology, and the world in general. In his correspondences, Jefferson suggested several time intervals, the longest being 20 years. That recommendation has been enacted here, preferring a dynamic Constitution to a Static Constitution for the reasons Jefferson expressed. The practice of having Amendments ratified by state constitutional conventions is replaced by the College of Delegates who by virtue of having one member selected for every 10,000 citizens is far more democratic.

#### Paragraph 2

Proposed amendments are submitted by Representatives for a constitutional consistency check to the Constitutional Council, the legal experts on the Constitution. Members of the Constitutional Council are the best prepared to determine if a proposed amendment would lead to legal conflicts. Representatives serve as Delegates to the Constitutional Convention.

#### Paragraph 3

In the current population, there would be approximately 30,000 Delegates who are randomly selected citizens from the general population who meet the qualifying criteria. Given the seriousness of amending the Constitution, something larger than a simple majority vote is needed to ensure general acceptance by the citizens, so a three-fifths vote for acceptance was selected as a number that would be large enough to represent the will and interest of the majority. This is as close to direct democracy as is feasible to enact in a representative democracy the size of the United States in population.

#### Paragraph 4

Seven days is a reasonable amount of time for a Delegate to consider the merits of a proposed constitutional amendment. Delegates are free to consult with family, friends, and others whose opinions they respect. This indirectly expands the number of citizens who have input on the amendment vote, making the process even more democratic.

#### Paragraph 5

In the happy event that there the Constitution is thought to be in no need of change, then there is no need to convene a Constitutional Convention.

#### Article VIII Assumption of Debts and Obligations

This is essentially the same as in Article VI of the current Constitution. To prevent an earthquake in the financial sector, it is essential that the debts incurred by the government under the current Constitution will be assumed by the government under the proposed Constitution.

#### Article IX Rights of States

##### Paragraph 1

This is a restatement of Article IV, Section IV of the current Constitution. Its need in the proposed Constitution is self-evident.

##### Paragraph 2

This is a restatement of Article IV, Section 2 of the current Constitution. Its need in the proposed Constitution is self-evident.

##### Paragraph 3

This is a restatement of Article IV, Section 1 of the current Constitution. Its need in the proposed Constitution is self-evident.

#### Article X Formation and Admission of New States

This is essentially the same procedure as specified in Article IV, Section 3 of the current Constitution, and no reason was found to change it.

#### Notes:

- (1) There is no presidential veto.
- (2) The Supreme Court no longer has the power of judicial review - its task is to decide which laws and constitutional rights take precedence when in conflict.
- (3) There may be a need to create different delegate vote majorities depending on the kind or class of law in a bill under consideration.
- (4) Consider adding an upper age limit on selected representatives.
- (5) The President no longer has the power to pardon given how it has been blatantly abused. Pardoning is essentially a judicial function and should never have been a power of the Executive branch of government.
- (6) There are no oaths of office since there is no procedure for determining if a violation of an oath of office has occurred or specified consequences for violating an oath of office if it is determined that a violation has occurred.