



## The NCC's Constitutional Convention Reports: The Proposed Amendments

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**[00:00:00] Jeffrey Rosen:** Hello friends. I'm Jeffrey Rosen, President and CEO of the National Constitution Center, and welcome to *We The People*, a weekly show of constitutional debate. The National Constitution Center is a non-partisan non-profit chartered by Congress to increase awareness and understanding of the Constitution among the American people. This summer, our Constitution Drafting Project met for a virtual constitutional convention. These were the three teams of scholars, libertarian, conservative, and progressive, who we brought together last year to draft amendments to the constitution in a state of Zoom. When they reconvened, it turned out that several of them had proposed similar looking amendments, and we thought it'd be useful to bring them together for a virtual convention. And all of us were surprised that within just a week or so, these remarkable teams of scholars of different perspectives were able to agree on the text of five proposed amendments to the Constitution. And I'm just so excited to share the results of the convention with you now.

**[00:01:09]** This is a panel with the three team leaders who came to the Constitution Center for Constitution Week to present their findings. Caroline Fredrickson led Team Progressive, uh, which also included Jamal Greene of Columbia Law School and Melissa Murray of NYU. Caroline is a distinguished visitor from practice at Georgetown Law Center and senior fellow at the Brennan Center.

**[00:01:28]** Ilya Shapiro led Team Libertarian, which also included Christina Mulligan of Brooklyn Law School and Timothy Sandefur of the Goldwater Institute. Ilya is senior fellow and director of Constitutional studies at the Manhattan Institute.

**[00:01:40]** And Ilan Wurman led Team Conservative, which also included Robert George of Princeton University, Michael McConnell of Stanford Law School, and Colleen Sheehan of Arizona State University. Ilan is associate professor of the Sandra Day O'Connor College of Law at Arizona State University.

**[00:01:57]** Uh, it's wonderful to share the report of the Constitutional Convention with you now, and if you want to follow along, there's a link to the report in the show notes. Enjoy the show and thank you to our delegates.

**[00:02:09]** Ladies and gentlemen, welcome to the National Constitution Center. Friends, this is a day of constitutional consecration because we are met to present the proposals of the

Constitution Center's virtual Constitutional convention. This is a remarkable project with a result that surpassed all of our expectations. Last year, we convened three teams led by the three distinguished scholars, uh, that you see here with us to propose amendments to the Constitution. And we were struck in comparing the amendments that some of them were the same, and in fact, for example, all three teams were open to aversion of term limits for Supreme Court Justices. So struck by this agreement, we suggested that all three teams convene together in a virtual convention. And with the leadership of all three team members and Ilan Wurman who made a list of the areas that he thought were most ripe for agreement, the teams met. And over the summer, uh, on the historic, uh, day in, uh, August, uh, that began the convention, in the space of two Zoom meetings and some further email exchanges, all three teams have now proposed five amendments to the Constitution.

**[00:03:27]** And as an observer, a silent observer and one of the many secretaries to the convention, I was struck by the extraordinary high quality of deliberations. Indeed, I felt like I was watching modern day founders, uh, to see the seriousness and sense of purpose, with which the three teams were able very quickly to agree on language, to compromise, and to present five amendments. Uh, it was an inspiring testament to the possibility of constitutional consensus in this polarized age.

**[00:03:55]** So, we're here to present to you the results of the convention and to send them into the world to see what their fate may be. Um, and now I'm just gonna jump right in and begin with you, Ilan Wurman, uh, head of Team Conservative. You were, as I said, in a sense the James Madison of the convention 'cause you made an initial list of possible areas of agreement. What struck you about the deliberations and what would you like our friends to know about the amendments that emerged?

**[00:04:23] Ilan Wurman:** Sure. First of all, uh, thanks to, uh, Jeff Rosen and the National Constitution Center for empaneling, uh, these teams and spending the time and energy on us. We were all pretty skeptical that we would be able to come to some kind of agreement. And I think we are all pretty much, I don't know if shocked, surprised, pleasantly surprised that we were able to come to this agreement. One thing that is obvious sort of from the get go, these are all structural provisions of the Constitution. Of course, libertarians, progressive, conservatives, everyone has their sort of preferred set of rights that they like. Rights that would maybe prefer to enshrine in the Constitution, that they would want to insulate from democratic control, from democratic politics. But we have a sort of a different set. I mean, there's a large shared agreement about fundamental rights, but there's also a different set.

**[00:05:11]** But what we could agree on is structural reforms, sort of these good government reforms to make government work better, to better secure the liberties that are already guaranteed in the Constitution, to better the democratic law making process itself. And so, it's not surprising, perhaps, that it was the structural provisions that we could agree to sort of behind this veil of ignorance. If you don't know who's in charge in four years or in twelve years, your political party or someone else's political party, are these amendments you could still stand behind? Uh, and those are the five sets that we were able to agree on.

**[00:05:46] Jeffrey Rosen:** Thank you so much for that and for your services to the convention. Caroline Fredrickson, head of Team Progressive. Team Progressive in its proposed amendments, uh, had a broad set of proposals that would've made it easier to amend the Constitution and would have made the Constitution more democratic. Some of those found their way into the final version. What struck you about the final amendments? Do you, do you agree that it was structural reform that was an area of convergence? And what do you want our friends to know about?

**[00:06:13] Caroline Fredrickson:** Mm-hmm. Absolutely. Well, first of all, I wanna echo Ilan in, in, in thanking you, Jeff, and the National Constitution Center for convening this great project. I, I, I, um, also want to thank Ilan who just really did a great job in herding cats, uh, the proverbial, h- herding of cats, and kept us on pace, and kept us going with people with many other commitments. And I'm really pleased that we're here and that, you know, we are here to be able to actually celebrate Constitution Day, uh, with some amendments that we were able to come to via consensus. Um, I am surprised and pleased. A couple things. I think you would think that, um, being able to have, you know, such a divergent set of people, um, agree to amendments would mean that the amendments themselves would be pretty anodyne and pretty meaningless. And I actually think some of the things that we came to agree on are very significant.

**[00:07:10]** Um, and one of the areas I wanted to highlight was the ability to amend the Constitution. We have a notoriously hard Constitution to amend. Um, the fact that there was a shared agreement that it needs to be easier was very significant, uh, and as well as the agreement, um, by the different teams that we needed to make it possible to change the composition of the Senate. Which, in the const- in the Constitution as it now exists, many people don't know this, uh, you can't change the equal representation of states, uh, in the Senate, through the article five amendment process. So, it's one of those things that is unchangeable, unamendable. Um, so I think that, for me, is really significant as well as the impeachment standard and, and some of the other provisions. But the fact that we were able to come together and form a consensus that the Constitution really, while a great and important document in American history, is not perfect, uh, needs to be improved, and one way it needs to improved is by making it easier to continue to improve it through the amendment process.

**[00:08:12] Jeffrey Rosen:** That's a wonderful way to put it. Um, Ilya Shaprio, in your initial proposed amendments, Team Libertarian had inserted, uh, a single sentence after a lot of the textural parts of the Constitution, "And we mean it." And, we had, uh, thought that that might make, uh, Team Libertarian resistant to further change, and yet you joined the other teams in supporting these structural amendments. Were you surprised by the degree of consensus?

**[00:08:38] Ilya Shaprio:** Well, let's just be clear that by consensus it doesn't mean every bit of the proposed amendment was unanimous. And indeed, in our various kind of micro votes and we had parts, sub-clauses and, uh, you know, Ilan, uh, was not just the James Madison, but also George Washington as kind of presiding over the convention. And he took d- you know, diligent notes of this. And we, we, the first thing we did at the convention, this is very interesting, perhaps, uh, uh, the first thing we had to do was adopt voting rules. You know, what, what could be a proposed amendment among our three groups? And, we decided, uh, that, uh, it had to be 6-

3 with at least one member of each team, uh, as part of, of that 6. And so some proposals, some of the provisions were indeed, you know, 7-2 or 6-3 or, or things like that.

[00:09:22] Um, and, I should say, Caroline left off by talking about the, uh, proposed amendment. Uh, in our proposed Constitution, we actually were left that alone because we thought, "Well, if we're creating the perfect Constitution largely by taking the current one and saying, "And we mean it," although we did make certain other tweaks, um, then why then allow it to be amended after that?" But, since what we are going to be compromising on was not the perfect Constitution, we said, "Okay, well this one should be easier to amend." And we, uh, specifically in our own proposal, did not contemplate really good government proposals. We thought, "Okay, our charge is to create a libertarian Constitution, fine." These, you know, nibbling around the edges of, uh, term limits or how many justices or these kind of technocratic things, we, we avoided that. And so we didn't have a counter proposal to those things when Ilan was looking through it, what there would be areas of agreement.

[00:10:15] But sure, for example, the Supreme Court term limits matched with fixing the set number, that would, that, that has the good government benefit of increasing public confidence in the court, even though it would not, and we can discuss this, uh, change kind of the political nature of things. In fact, it would enhance the role, uh, the court plays in presidential elections. But we were pleased, certainly, that a couple of our proposals made it into the ultimate amendments, uh, lowering the threshold for impeachment, allowing Congress to have a legislative veto over executive actions, uh, things like that. So not everything that was ultimately proposed was what we would consider to be mere good government things, there were substantive, uh, areas of change.

[00:10:55] **Jeffrey Rosen:** Thank you for that. Thanks for sharing the voting rules that you agreed on, for reminding us that not all the amendments were unanimous, and indeed you, if, if, uh, Ilan was the George Washington and Madison and, and Carolyn was the Gouverneur Morris we were saying, because of her important, uh, functions on the committee of style, you were the, you threatened to be the George Mason at times, because you, you o- opposed some of the, uh, amendments, uh, that won by a 6 to 3 vote, but always in the spirit that you just identified of compromise. And that was the most striking think about the deliberation, that all three teams were willing to put aside their notion of perfect amendments in the interest of reaching consensus, and it, that's why you heard all of us express surprise and, and great delight that these five amendments have emerged.

[00:11:40] Well let's now walk through them and, uh, folks who are, uh, listening along with us can find them online and can find the text. But the first amendment has to do with presidential eligibility, this is Amendment 28. Uh, no person shall be eligible to the office of President expect a person who's attained the age of 35 and been a citizen resident in the United States for 14 years. This removes the natural born citizenship require. Ilan, I think this amendment was not in your initial list. Tell us about how it emerged and how it passed.

[00:12:09] **Ilan Wurman:** It, this was kind of like Article III of the current Constitution, where at the very end of the summary, they're like, "Oh, shoot. We should provide for a judiciary," and

there wasn't very much discussion actually about Article III in the convention. As we were nearing the end of our deliberations, we had initially five proposed amendments. Uh, we were deliberating on the last one, which did not obtain sufficient consensus, and so we were about to call it a day, and at that point actually one of the members of, uh, Team Libertarian, Timothy Sandefur of the Goldwater Institute said, "Well, wait a minute. All three teams also agreed to get rid of natural born citizenship requirement for President." And we had slightly different, uh, ways we handled this in our respective Constitutions.

**[00:12:49]** For example, I think, uh, the conservative, I think we just got rid of the natural born citizenship r- requirement without putting much more thought to it, but then Team Libertarian said, "You have to have been 35 years a citizen," so at least 35 years, but o- old, but also 35 years a citizen. This struck I think Team Progressive as, "Whoa, that's way too much time." You know, so it's, if you move to the United States when you were 20, become a citizen ... That's, 35 years is, is not unnecessarily long, and so we ended up, uh, settling on, uh, if you are 14 years, uh, a citizen resident in the United States. You can't have been, um, you know, naturalized, I suppose, and, uh, or you couldn't have even been born in the United States. You can't be a natural born citizen for fewer than 14 years before you go off and live in France for the rest of your life, and you can't just come back and then run for President. If you haven't been a resident for 14, 14 years, and so that's how we came to relatively quick agreement. This was absolutely the fastest, uh, uh, provision.

**[00:13:49] Ilya Shapiro:** And, and now this means that I'm eligible in, in another six years, so ...

**[00:13:53] Ilan Wurman:** [laughs]

**[00:13:53] Caroline Fredrickson:** All right, well we should go back and review that then.  
[laughs]

**[00:13:56] Ilan Wurman:** [laughs] Right. Uh-

**[00:13:57] Ilan Wurman:** This, that was the advantage of the initial libertarian proposal for 35 years a citizen, is it would've kept Ilya Shapiro, uh-

**[00:14:03] Caroline Fredrickson:** [laughs]

**[00:14:03] Ilan Wurman:** ... From being eligible for a much longer period of time.

**[00:14:06] Jeffrey Rosen:** Caroline, thoughts on this consensus, and tell our friends what the final amendment deliberation was that didn't pass when this one emerged.

**[00:14:14] Caroline Fredrickson:** So this one was the easy one. It really was, because we of- we all recognize this is a very, um, you know, it, it doesn't make any sense, um, it's discriminatory, um, and it's keeping im- good people from running. And so, so there really wasn't a lot of ... It was just around these, these details. We had actually, in, in the progressive Constitution, actually had lowered the age of running for President to 30. Um, so, you know, as we kind of ... This really I think was one, one of the amen- ... Well they all were, had bits and pieces from the different, um, Constitutions, but this one was really a, uh, a, a really interesting process of taking a little bit from each one and putting it together and coming up with I think a

rational, uh, approach to, you know, what, what should be the requirements for somebody to run for President.

**[00:15:02]** Now where we didn't end up reaching consensus was on something that continues to be a, a major issue in American law and politics, which is, you know, how do we structure our Congressional districts? Um, and we, you know, would really very much have liked, on the progressive side, to have seen independent redistricting commissions required, um, as part of the, the, the process for constructing Congressional districts so that there would be no massive manipulations but elected, uh, officials protecting their own, um, control of the, of the, uh, of the office. Um, and so we, we, we thought maybe we could get there, but we couldn't, we couldn't quite get that one over the line. There were just a few, there was in principle, Team Conservative and Team Progressive agreed that we should be, you know, doing something about it, but the, the mechanisms weren't quite aligned.

**[00:15:54] Ilya Shapiro:** Whenever the conservatives and progressives agree, you know, watch your pocketbook.

**[00:15:57] Ilan Wurman:** [laughs]

**[00:15:58] Jeffrey Rosen:** Well that was the case here, Ilya, and, and Team Libertarian was the squeaky wheel when it came to the redistricting amendment as, as well as to Electoral College reform, which was an initial area of agreement among the conservatives and progressives, and, uh, but not the libertarians. But first tell us about, uh, the agreement about the natural born citizen requirement and the unanimous rejection of nativism that it represented, and then tell us about the disagreement about that redistricting amendment, which as initially proposed by, uh, Ilan, would have said, "Each state shall, pursuant to legislation, adopted in the year following the national consensus, allocate the state's representatives by drawing compact and contiguous districts of as nearly equal number of citizens as is feasible, provided the Congress made by a vote of 3/5 of both houses authorize other equitable methods of allocation." So tell us about those, those two things.

**[00:16:50] Ilya Shapiro:** I mean, it, it really just came about really quick when, when Tim Sandefur, as Ilan said, realized that there was one area of agreement that we could, that we come to and the, you know, we wanted to ensure that it wasn't, um, you know, some Manchurian candidate or something, but someone w- who actually had lived here for 14 years as a, as a citizen. Um, but, uh, other than that, there was no, you know, Alexander Hamilton that anybody wanted to avoid, uh, you know, becoming president or nobody I guess had, uh, antipathy to, uh, Arnold Schwarzenegger or anybody else, or, or me for that matter. Um, so that, that just came about because it, um, i- you know, if someone's been here as a citizen for, for 14 years, then, then that's, uh, that's enough. Um-

**[00:17:31] Ilan Wurman:** By the way, Ilya, if, if I may interject, there are many reasons that neither you nor Arnold Schwarzenegger should be president. But your foreign birth is not among-

**[00:17:40] Caroline Fredrickson:** [laughs]

**[00:17:40] Ilan Wurman:** ... Those reasons. [laughs]

**[00:17:41] Ilya Shapiro:** Fair enough, fair enough. Well, I mean, I couldn't even get elected to school board, so I don't, you know, I think for practical purposes, it was, uh, uh ...

**[00:17:47] Caroline Fredrickson:** Right. It's kind of a moot, a moot point.

**[00:17:48] Ilya Shapiro:** A moot point, indeed. Indeed. Um, on the redistricting, yeah, uh, or Electoral College reform, uh, we just thought that those are, you know, technocratic changes that are, uh, in search of a problem. Because at the end of the day, uh, the argument is that there's too much politics and the people can't govern themselves, we need these experts. Uh, you know, it's, uh, it's turtles all the way down, it's politics all the way down at certain point. We can't just have, apart from [inaudible 00:18:14] we know and in current times, independent districting commissions get captured by one interest or another. Uh, if you really wanna, you know, address the issue of, of large states being underrepresented, this is not a, a red or blue issue. You know, if you look at the 10 smallest states, I think half are blue, half are red. But, uh, if, if that's your concern, then, then my technocratic solution has always been to expand the House by some multiple to, that would also prevent, uh, House gerrymanderers. It was a increase the Electoral votes of larger states, et cetera. But anyway, uh, uh, that, that we felt just was not, uh, something that was, uh, that was indicated.

**[00:18:51] Jeffrey Rosen:** Thank you for that.

**[00:18:52] Caroline Fredrickson:** Well and I, we could always go back and revisit the size of the House, because I don't think that was one that we even had enough time to discuss. But I don't think we, Team Progressive would necessarily have any problems with that.

**[00:19:01] Ilan Wurman:** And, and of course, nothing prevents Congress from changing, I think, the size of the House today. It's just whether we compel them.

**[00:19:07] Ilya Shapiro:** Right. It hasn't since like 1921. Because it used to, as the population grew, it would, it would increase, but then it's been, it's been fixed.

**[00:19:14] Jeffrey Rosen:** One thing that's striking, you can hear from the quality of the debate among our, uh, delegates, it, it's the fact that all of them are so deeply immersed in constitutional history and learned and, and scholarly, I think, that allowed them to converge so quickly, 'cause they were an extremely, a remarkably well informed set of delegates and they thought deeply about these questions.

**[00:19:36]** Um, well now let's present and propose the remaining four amendments to the Constitution, uh, so that we the people of the United States can deliberate about them and consider them. Amendment 29 has to do with the legislative veto. Congress may by law provide for veto by majority votes in each of the houses of Congress of actions taken by the executive department, except actions adjudicating the applicability of a statute or regulation to a person. A failure by Congress to act pursuant to such a law shall not affect any judicial determination as to whether any law or any actions of the executive department are valid or enforceable. Ilan Wurman, tell us about the legislative veto amendment.

**[00:20:18] Ilan Wurman:** So some of you, some of the several hundred listening online I'm sure are law students or, uh, lawyers, have surely heard of the case *INS v Chadha*. This is a case ... So historically, the Congress, uh, legislated with more specificity. It also did less, but as the country grew, as the national economy grew, as federal intervention grew, there was only so much Congress felt that it could do, and it ended up delegating a lot of discretion, a lot of power to the executive, so today we have a much larger administrative state. And part of this initial deal, uh, arguably was Congress in the statutes delegating broad authority to the executive, often reserved what was called the legislative veto. So when we delegate authority to the president and the administration to execute the law in X, Y, and Z manner, but once you act pursuant to this statute, you must submit your action to Congress. And if the statute provided the legislative veto, Congress could then veto the executive decision.

**[00:21:16]** So in *INS*, uh, in *INS v Chadha*, the Supreme Court struck this down as violating the separation of powers. Uh, the Immigration and Nationality Act delegated authority to the Attorney General to withhold removal under certain conditions for an, uh, an illegal alien who, uh, otherwise was deportable but met certain conditions to be allowed to stay in the country. The Attorney General decided that Jagdish Chadha should stay in the United States, he met these criteria. It was submitted to the House of Representatives pursuant to a so-called legislative veto provision, and the House, without really any discussion, any vote on the word of the chairman of the subcommittee vetoed the decision to withhold the deportation, thereby forcing Jag- Jagdish Chadha to be removed from the United States.

**[00:22:00]** This almost certainly is unconstitutional under, uh, the current Constitution. Why? Because Congress can only make law. If it wants to change the discretion that it delegated to the President, it has to pass a new law limiting that discretion in the future. How does it pass a law? You need two houses of Congress to agree to a text and you need the President to sign that text. Where in the Constitution does Congress get to alter legal relations through vetoing the act of an executive? It, it almost certainly was a correct decision.

**[00:22:30]** Our amendment here overturns the general result of, or the general reasoning of *INS v Chadha*, but not actually the result of *INS v Chadha*. We permit in this a Congress to enact a two house legislative veto, the rationale being in the modern world with raw delegations to the executive, the executive is often engaged in policymaking, and it is consistent with separation of powers to principle to give Congress a say, a backend check on the legislative like power. I'm not gonna say the legislative power, but legislative like power that it gives to executive. When the executive makes a rulemaking, it should get the agreement of both Congress, uh, as well as the President, and this veto allows them this backend check. Uh, the administration keeps on going, but Congress could always step in, uh, in veto determination.

**[00:23:17]** But what Congress can't veto is any action adjudicating the applicability of a statute or regulation to a person. We did not want Congress to look that it was enacting ex post facto laws or bills [inaudible 00:23:30] or where it singled out individuals, uh, for particular treatment. So the case of *INS v Chadha* involved the applicability of a statute to a person, that result in that case would be the same. Congress could not give itself a power to veto individual



immigration decisions, for example. But this authorizes Congress more generally to enact a two house legislative, uh, veto provision in the future.

**[00:23:52] Jeffrey Rosen:** Thank you for all that. Caroline, Ilan talked about delegations to the administration state, which sounds like a more conservative concern, and yet progressives signed on to this amendment. And indeed, progressives, like conservatives, have expressed concern about unilateral executive action, from objections to President Trump building the wall, to objections to President Obama protecting the DREAMers. So, you know, tell our friends why it was that Team Progressive thought it was important to have a legislative veto.

**[00:24:19] Caroline Fredrickson:** Sure, and we, we did have a, a proposal in our progressive Constitution that would have provided for a, uh, a legislative veto, as you, as you mention. And part of that is because we do believe that Congress has the power to delegate to executive agencies. Um, the, uh, ability to fill out the contours of statutes, for example like the Clean Air Act, uh, or other statutes where Congress has anticipated that the agencies would do quite a, a, a lot of the work, the expertise that they have. But that also entails recognizing that Congress is the lawmaking authority, and if there are particular actions, uh, that are, um, uh, taken by the executive agencies, there should be an ability, uh, for Congress to review that.

**[00:25:02]** Uh, and the history was before Chadha, that Congress had regularly put in statutes the ability to have that kind of a legislative veto. And it was exercised sporadically. Um, and so what we preferred and what we like about this, this version is it's not a kind of a radical approach, which is a requirement of review of executive action every time there's new rulemaking, uh, expedited process like the Congressional Review Act, but is actually is good governance. We actually think that the Constitution should include, um, good governance, 'cause it is about governance, and this is a provision that seems to comport with that very much.

**[00:25:43] Jeffrey Rosen:** Fascinating. You know, yeah, there's a final sentence that says, uh, "The failure by Congress to act pursuant to this law shall not affect any judicial determination as to whether any law or action of the executive department are valid or enforceable. Uh, that allows the court still to hold that particular delegations are unconstitutional. Uh, was that important to libertarians and why did libertarians support the legislative veto?"

**[00:26:05] Ilya Shapiro:** That was absolutely important because there are, depending on how you use legislative history, there are canons of statutory interpretation that say if Congress acts or doesn't act or, you know, as proposed here, uh, that, uh, can lead a court to infer that, uh, Congress approves to some such extent, or at least doesn't disapprove of, of a given action. So that, um, sentence, which is a, a guide to the judiciary about what congressional, uh, inaction or, or decision not to use the legislative veto means in any, uh, given case. Uh, and we would have, uh, to use Caroline's, uh, terms, preferred a more radical version where certainly m- at least major rules and regulations would have to be, uh, approved by Congress, but, uh, uh, this was certainly moving the ball along.

**[00:26:51]** And I think even on progressive terms, and I have to commend Caroline, I think, for, for recognizing this, uh, if you care about, uh, democracy and, and, you know, accountability to, to, to the people's representatives, then you want, uh, Congress to have more of a say over these

things, uh, rather than, um, you know, this is perhaps when some progressive values are in tension, having the rule by the experts, uh, in the agencies. Uh, you know, Woodrow Wilson, the father of, of modern American progressivism, uh, you know, liked that German method of having the, the agency ... You know, we know what the best way of administering, I don't know, f- food regulation is and so we'll just let the experts do that. We don't need the, the dirty work of, of, of Congress. But I think in this age, certainly, of the ever growing imperial presidency and governance by the pen and phone and tweet, uh, it's, it's good to give Congress more power back to rebalance separation of powers and at least, uh, we would have preferred it to be enshrined constitutionally, rather than giving, uh, Congress a legislative option to create for itself, uh, a veto. Uh, it's good to give Congress that power to, to, to curb the executive as necessary.

**[00:28:00] Jeffrey Rosen:** Wonderful. Well, our next amendment is Amendment 30 to do with impeachment. It's long so I won't, uh, read the whole thing, and I will note that it makes it harder for the House to impeach but easier for the Senate to convict. Ilan, tell us more about what the impeachment amendment does.

**[00:28:18] Ilan Wurman:** Sure. And I'll let the others chime in here, because there really was a lot of collaboration on figuring out the components of the impeachment amendment. I do think, unless I'm mistaken, that this took up more deliberation than any other of the amendments. Though actually is a pretty narrow-

**[00:28:33] Caroline Fredrickson:** Mm-hmm.

**[00:28:34] Ilan Wurman:** ... Question that took up most of the deliberation, at least the contentious deliberation.

**[00:28:37] Ilya Shapiro:** It's also because it was the first one we took up and I think we all just had more energy and-

**[00:28:41] Ilan Wurman:** [laughs] That c- ... Yeah.

**[00:28:42] Ilya Shapiro:** ... Willingness to fight.

**[00:28:42] Caroline Fredrickson:** [inaudible 00:28:43]. No, but I did ... There was a lot more of, there ... Well it's long too, so there are a lot of different pieces to it.

**[00:28:48] Ilan Wurman:** And there were things that came up, which is like, okay, what about if the president or officeholder had just left office, are they impeachable then? We decided yes, up to six months, and conviction must be within a year for former officeholders. So the most important reform here is, again, making it harder to impeach but easier to convict by raising the majority vote threshold currently that exists for a House impeachment to 3/5 and lowering the conviction threshold in the Senate, which is 2/3, also down to 3/5. So 3/5 is the magic number. 3/5 to impeach and 3/5 to convict.

**[00:29:19]** Why is this important? We think there must be some bipartisan buy in to start an impeachment, but the 2/3 threshold makes it truly difficult to convict even genuinely malfeasant presidents. And so we think that this 3/5, 3/5 compromise is the most essential, and I will then just say, and I'll leave it to the others to flesh out the details, we, uh, the standard is clarified.

High crimes and misdemeanors, we say that these officers, President, Vice President, shall be subject to impeachment for serious criminal acts or for serious abuse of the public trust.

[00:29:51] From Team Conservative's perspective anyway, and maybe from the others, this merely clarifies the high crimes and misdemeanor standard, though it doesn't actually have to be a crime or a misdemeanor under the law, it can be a political crime, if you will, a political offense, an abuse of public trust. We think that's consistent with the current standard and it merely clarifies it. The key debate that we had was over, uh, especially, um ... Actually I think both Caroline and Ilya were on the side here of making it even easier of a standard to meet for impeachment, whether removing the word serious from criminal acts and abuse of the public trust, or adding a grounds for impeachment.

[00:30:26] **Ilya Shapiro:** W- we had that whole debate over synonyms for serious so as not to use it twice in the same sentence.

[00:30:30] **Ilan Wurman:** Well that, you know, well, we also had a committee of style, and was the question was can you say, "For serious criminal acts or abuse of the public trust," does serious modify only criminal acts or abuse of the public trust. Now, there was an argument here for strategic ambiguity. Why? Because certain members to my right-

[00:30:49] **Caroline Fredrickson:** [laughs]

[00:30:50] **Ilan Wurman:** ... Wanted, uh, it to be any abuse of the public trust, wanted it to be a lower standard. A- a-

[00:30:55] **Caroline Fredrickson:** Well if I could say, and, and, and it's really a reflection of the fact that, and this is I think an area we agree, right? That impeachment is a political process-

[00:31:03] **Ilan Wurman:** Yes.

[00:31:03] **Caroline Fredrickson:** ... And therefore the abuse of the public trust, if it's serious or if it's not, I mean, that's gonna be Congress initiates a, an impeachment proceeding based on the, the determination that there has been an abuse of the public trust. Putting the word serious in there didn't seem to us to do a lot of work. Um, it might make people feel better, but I, you know, I think generally, uh, that impeachments are brought because of, you know, at least the perception that they, that the abuse of the public trust is, um, is a serious one.

[00:31:30] But I'd, I would say that when we were very much in agreement with both teams, um, was that the, I, I think this is true, also have the libertarians, that, that frankly abuse of the public trust is what we understand already to be part of high crimes and misdemeanors, and that, uh, it, it's really a helpful clarification. There was a lot of muddying of the waters during, let's just say, the past two impeachment procedures that, um, were held, that, um, about whether something actually had to be technically a crime or not, and some of us thought maybe there were actually even crimes involved, but nonetheless, that didn't have to part of it. And it's historically and it's a matter of constitutional understandings even prior to our Constitution high crimes and misdemeanors had been understood in a much more broad sense.

[00:32:18] Um, but the, the amendment that we, we drafted, and we did spend a lot of time. We spent a lot of time on the word serious, um, and we spent a lot of time talking about ability to do the job, basically what happens if a, if someone becomes incapacitated, and is that something that we should have been addressing in impeachment. Um, some of you are aware of the 25th Amendment that allows the Cabinet to have some role in removal of the President, uh, if there is a understanding of incapacity, but we really, we really had a lot of debate over whether Congress should have some ability to intervene. Because at least there was the question raised about whether the, the Cabinet would be, um, uh, implicated, would, would be un- unwilling to go in a different direction from say the base of their party or do something that's politically problematic, um, in order to prevent a President who's incapacitated from remaining in office. And we just couldn't resolve that one, so that will remain to come back to. I mean, there were some people who thought the 25th Amendment was just fine.

[00:33:23] **Ilan Wurman:** And can I actually, before we jump to Ilya, just defend the ultimate result here, uh, is we're gonna get to this next, uh, in the appointments and confirmation amendment, we do provide for a mechanism within the judiciary, for the judiciary branch to remove judges for inability and incapacity. Notice the structural parallels now, if of course this is adopted, which it should be. The 25th Amendment allows the executive department, through the Vice President and the Cabinet and through this, uh, uh, process that involves the Cabinet, but the executive department to police itself. The judicial department, under our proposal, will be able to police itself when it comes to incapacity and inability.

[00:34:05] And, by the way, this is not just a moot point. Very early on, in 1790, 1791, it turns out there was a senile federal district court judge in New Hampshire, and the question is what do you, what do you do? They have lifetime tenure, you can't remove them. And they came up with s- a way to just give these unimportant cases to that judge and they reassigned ... It, it was weird. So we wanted a mechanism, and Congress, of course, can expel its own members and can be the judges of the qualifications of its own members. There was sufficient agreement, uh, at least among the three teams, that that process allowing each branch to sort of police inability and incapacity among its own members was the most structurally sound. They're the best guarantors of the integrity and the reputation sort of of their-

[00:34:45] **Caroline Fredrickson:** I, I, I don't know that we agreed on that, Ilan, actually. I think we just couldn't ... I mean, from our perspective, we just couldn't get agreement on the incapacity.

[00:34:51] **Ilan Wurman:** Right, there, there, there was no agreement to give Congress-

[00:34:54] **Caroline Fredrickson:** Because I think-

[00:34:54] **Ilan Wurman:** ... A say over the President's incapacity and inability.

[00:34:55] **Caroline Fredrickson:** Because I think the disagreement we have is, at least from our perspective, is that the members of the Cabinet are appointed by the President, chosen by the President. The judiciary doesn't function that way, so it's n- it's not quite comparable. So we would have still been interested in a c- ... And it wasn't because-

**[00:35:10] Ilan Wurman:** Yeah, in, in fact what-

**[00:35:11] Caroline Fredrickson:** ... We thought it was a structurally better approach.

**[00:35:12] Ilya Shapiro:** I think one of my teammates ended up voting against the whole amendment, uh, because he couldn't get that provision about, uh, addressing, uh, executive incapacity.

**[00:35:21] Caroline Fredrickson:** Mm-hmm.

**[00:35:21] Jeffrey Rosen:** I- Ilya, let me ask you to give Team Libertarian's perspective on this debate, and several of the provisions were unanimous, including those that would have increased the voting threshold to 3/5 and lower the conviction threshold to 3/5, and giving Congress a subpoena power, but two of them were not, and you were in dissent on some of them including the one clarifying the impeachment standard and also permitting convicted office holders from not holding federal and state office, which gave rise to a fascinating debate about whether it would blow off steam to allow convicted officials to hold state office. Um, but tell us, Ilya, um-

**[00:36:02] Caroline Fredrickson:** [laughs]

**[00:36:02] Jeffrey Rosen:** ... What it was that, uh, led to the disagreement and, and, and why ultimately you, your team supported the amendment.

**[00:36:09] Ilya Shapiro:** Right. Um, well this was a case where, uh, to paraphrase John Kerry, I voted against it before I voted for it. Uh, the, uh, the impeachment standard, uh, uh, in our proposed, uh, I- Team Libertarian's Constitution was, uh, just unfit for office. However the Senate or any individual senator wants to define unfit, it's a political judgment, and impeachment inherently is. They should be able to, to vote based on that, whether that means physical incapacity, whether it means someone who's breached the public trust, committed a crime, just, you know, incompetent, what, what, how, whatever case you want to make that you then have to take to the people to justify, uh, we thought that was enough.

**[00:36:47]** And, and this serious abuse of the public trust, so just milquetoast abuses of the public trust are okay? I mean, we didn't think so. Uh, and that's why, I, I, I voted against, uh, that phrasing, although ultimately, uh, I voted for the amendment as a whole because it does move the ball in a, in a positive direction from, from my perspective or, or, or our perspective.

**[00:37:09] Jeffrey Rosen:** Great. Well let's turn to our next ...

**[00:37:11] Ilan Wurman:** Oh, can I say one ... Just to-

**[00:37:12] Jeffrey Rosen:** Sure.

**[00:37:12] Ilan Wurman:** ... How, how nitpicky we were about things, we did make kind of these two clarifications. There's a question, at least ... I don't know how many people believe this, of whether officers of the United States refers just to appointed officers like Secretary of State, whether that covers President or Vice President under the current Constitution. You could impeach a President who's then disqualified from holding an office under the United States. And so there's a question of whether that c- covers future President or Vice President. We clarified

that, and under the current Constitution, the Chief Justice pro- presides when the President is tried but not when the Vice President is tried. Right, the President of the Senate is p- the presiding officer. Well the Vice President is the President of the Senate, raising this possibility that if the Vice President is impeached, the Vice President will preside over his or her own impeachment.

**[00:38:00] Jeffrey Rosen:** [laughs]

**[00:38:01] Ilan Wurman:** We clarify all these little things about what are officers, what are ... So we, we took this very seriously.

**[00:38:06] Jeffrey Rosen:** [inaudible 00:38:07].

**[00:38:06] Ilya Shapiro:** We also fixed the punctuation and the, uh, over-capitalization. I don't know whether that was a Germanic influence in the original drafting of committee of style, but, uh, yeah, it reads better.

**[00:38:16] Caroline Fredrickson:** Just shows you that originalism really can't explain a lot things.

**[00:38:19] Ilya Shapiro:** [laughs]

**[00:38:19] Caroline Fredrickson:** You know, we did do some additional work.

**[00:38:22] Ilya Shapiro:** Which we're doing right here.

**[00:38:23] Jeffrey Rosen:** Excellent. Uh, well Amendment 31 has to do with appointments. Again, it's not short and it's, uh, carefully, um, drafted. But the first section says that the President shall have with the Senate to make treaties, provided that 3/5 of the senators concur and w- and it has to do with nominations. It makes ... The nominations amendment is significant because it says that nominations shall be deemed to have receive the advice and consent of the Senate unless disapproved by majority vote within three months of the nomination, but any senator shall have the right to bring any nomination to the floor for debate and vote prior to that time, and an- any nomination with, made within the last three months of the President's term shall laps at the end of that term unless sooner approved by the Senate.

**[00:39:07]** And then Section II is extremely important and has to do with term limits for Supreme Court Justices, which led to a very vigorous debate, and you agreed on a term limits amendment. Ilan, tell us about Amendment 31.

**[00:39:18] Ilan Wurman:** Sure, so the easiest part of this amendment is the treaty ratification process.

**[00:39:23] Caroline Fredrickson:** [laughs]

**[00:39:23] Ilan Wurman:** We're replacing the appointments clause, which includes the treaty ratification, and we're replacing sort of Article III, Section I, the judicial power. And so like look, we're already doing this, let's make it easier to ratify treaties. Currently 2/3 of the Senate have to concur, which is extraordinarily difficult, so what do we have? We have imperial presidency, we

have executive agreements where executives make technically nonbinding legal agreements of, of great importance that every four years or eight years, when there's a new President, the new President can just abrogate on his or her own. And we just thought, let's make it easier to make treaties, the law of the land that can't just change from presidential regime to presidential regime. So that was the easiest part.

**[00:40:00]** Okay. The hard part. What do we do with the Supreme Court? There was a raging battle that, uh, Caroline and other members of her team and other members of my team have been involved in. Actually, me too, 'cause I provided testimony for the Supreme Court Commission, Michael McConnell, Robbie George, you, Jamal. So almost, so we have a lot of participants in the actual ongoing debate over how to reform the Supreme Court.

**[00:40:23]** So what does the amendment do? The compromise is we fix the number of Supreme Court Justices at nine, so no possibility of court packing or changing the number save a future Constitutional amendment, but we impose 18 year staggered term limits. That's the deal. Right now, the conservatives, we're, you know, we're happy. We have six, I'm not gonna call them originalists because that would be contradicting what I said on Friday when I was here for that session, uh, but, you know, a mix of o- conservative originalist judges. They can stay all, they can stay as long as they want, right, from the conservative perspective. But there is something to loose here, because court packing, although politically improbable, is not impossible and is likely to become more probable over time if there is discontent with the court, so there was some room to give there.

**[00:41:07]** And of course, uh, the, uh, progressives, uh, would have probably, uh, preferred not fixing the Supreme Court Justices at nine, but certainly they agree lifetime tenure isn't, is not a good idea. Uh, and so that was the compromise. We fix it at nine, and we have 18 year staggered term limits.

**[00:41:23]** This is what we're c- ... And I'm, I'm sure Caroline and Ilya and gonna have a lot more to say about this, so let me just say, how does this connect to confirmation? What's the point of 18 year staggered term limits? That every presidential term there are two appointments. That's it. We know like clockwork there are gonna be two appointments, it reduces the temperature of presidential confirmation battles. But this means that the President's nominee has to pass, has to be approved, right. If you have a Republican Senate but a Democratic President for four years, what's to stop, uh, just a four year vacancy of, you know, two vacancies on the court and then a p- a Republican President gets elected, and then you have three, uh, according to this.

**[00:41:59]** Every two years the nominee has to be approved, but we don't wanna get rid of a senatorial check altogether. We think advice and consent is good, it has a salutary effect on presidential appointments, moderating effect on presidential appointments, so what was the solution? As Jeff said, we make confirmations automatic within three months, but the Senate, like the veto, it's another legislative veto actually, may, within the three months, vote down the nominee if they want, or sooner approve the nominee.

[00:42:28] What does this mean? Merrick Garland may not have been approved, but he would've gotten a vote. And then if he had been disapproved, the President would have put someone else up who would've gotten another vote. And at some point, the political cost, of disapproving of every nominee to the Supreme Court, uh, would be politically catastrophic for the party doing it, because that's the deal that we're doing here every two years. And so that's how the confirmation process goes hand in hand with Supreme Court reform.

[00:42:55] **Jeffrey Rosen:** Thank you for that. Caroline, this was a remarkable debate to hear. There are many moving parts in this amendment. Team Progressive did make some compromises and, and also, uh, converged around the final version. Tell us about it.

[00:43:07] **Caroline Fredrickson:** Well we, we did make some compromises, and, uh, clearly the current Constitution does not set the size of the Supreme Court. Uh, we believe it's better to allow it to grow, actually, um, even outside of the current debate about what's going on with the Supreme Court. Um, and simply that's a reflection of the fact that our Supreme Court is very small relative to other countries' highest court, and so it's anomalous to have it have so few members deal with such major questions that affect so many areas of our lives and be so unrepresentative. And so for us, having a larger court, again, even outside of the current debate and discussion about some of the concerns with the Supreme Court, it is important.

[00:43:51] However, there were two parts to this. We also believe that term limits are good government. Um, you know, I know, um, Ilya doesn't think that's a particularly appropriate thing for a constitution, I think that's what a constitution is about. It's about our government and, and our governance and it's completely anomalous in the world, uh, except for a very few, a hand, probably could count them on one hand countries that have life tenure for their, uh, highest court. Uh, even in the United States, I think it's only the state of Rhode Island, uh, that has life tenure. This is nor a prevailing model for a lot of reasons. It just doesn't make any sense to have somebody be able to be, um, in the kind of position, especially with the way judicial review works in the United States, and the, and the immense power that the Supreme Court has to determine the direction of our lives for, um, now, for, for generations.

[00:44:42] Uh, and so for us, it makes a lot of sense. We did have a proposal for term limits. It was quite similar with the idea of 18 year terms, every President gets two appointments. Uh, and the think the mechanism that we came to, um, which is basically a constitutional abolition of the filibuster for nominations. And, you know, you all, I'm sure, are aware that, that by its own rules, the Senate has a limited filibusters with respect to Supreme Court and lower court nominations, um, but this would ensure that they couldn't restore it, because they can always put the rules back, uh, if they would like to. So this makes sure that there will actually be a process of moving forward within the three months, they can approve or disapprove.

[00:45:26] Um, and the other reason why we decided that we would agree with this, despite the fact that it sets the court at nine, uh, is that we fixed the, um, or at least we addressed to some extent, the process of amending the Constitution, and therefore, for us, this is something that could be revisited through another constitutional amendment now that it's easier, uh, to amend the Constitution.



**[00:45:49] Jeffrey Rosen:** Thanks for that. Uh, Ilya, according to this article, after the article is ratified, the senior most judge currently serving on the Supreme Court, calculated by time served on the court, shall retire by the next Presidential Inauguration. Uh, I guess that would be Justice Thomas if that were to pass. Tell us why the libertarians thought that it was okay to have the senior most justices retire and why you were able to converge on those 18 year term limits.

**[00:46:14] Ilya Shapiro:** If you didn't start or, or enshrine, uh, retirements, then you would have, for the cu justices, they would leave as they would leave otherwise or they would die. And so you wouldn't, uh, start the, uh, have a full complement of term limited justices until some haphazard time in the future. Now, some academics have proposed a system where this would happen, and for a period you might have even up to, I don't know, 17 justices while everyone's not fully retired or one goes or w- ... I mean, it, it would be very, it's chaotic, so for practical purposes.

**[00:46:49]** Now, whether it has to be before the next Inauguration Day or five years down the line or nine years down. You know, whenever, whatever the ultimate political compromise, uh, would be, that can get worked out. I think that's, that's less important to contemplate. But to, to have this structure in place of 18 years, nine justices, of vacancy every two years. And I, you know, that, that's, that's how you, uh, implement it. And in, um, I have a whole chapter on the term limit debate in my book, uh, Supreme Disorder: Judicial Nominations and the Politics of America's highest court.

**[00:47:21]** L- let's be clear that having term limits and f- you know, preventing court packing, uh, will not somehow, you know, fix the politicization of the court or turn down the heat on our confirmation battles. Uh, in fact, as I said at the outset, this would make the court and, and nominations even more part of presidential and Senate campaigns, but it would eliminate arbitrary or politically timed retirements, morbid health watches over octogenarian justices, you know, appointments of, you know, 23 year olds so they can serve for 80 years, and, and, and those sorts of things that detract from public confidence in the court as an institution. So I don't view this as a, you know, if, if you're, if you think the court is illegitimate because it's political or, you know, Republicans are all illegitimate or, or whatever, uh, this is not gonna fix that. Uh, but, uh, I think it's salutary to have people have more confidence in the court.

**[00:48:14]** Uh, nor, by the way, do I, uh, agree with Caroline's characterization of getting rid of the filibuster, 'cause as Ilan said, it just calls for a vote every three months. And then if the President keeps, uh, nominating radical nominees, well that's up to the people. Is it the Senate that's being, uh, obstructionist by voting them down every three months or is the President, uh, nominating unrealistic people? That becomes part of this political dance that ... Uh, again, more politics. You can't avoid politics. As I learned in writing my book, even George Washington, the first President, had a nominee rejected for political reason. So you can't avoid politics, but this at least regularizes, uh, and makes clear the stakes, uh, when we're talking about Supreme Court nominations.

**[00:48:58] Ilan Wurman:** This also applies to executive, uh, appointments. So again, Trump deserved his Cabinet swiftly in place, as did Biden. They both did. But this still preserves the

senatorial check. Someone could always bring the, them to a vote and vote them down, but if they don't do that, then you can't just delay interminably. After three months, they will be in, they will be in place.

**[00:49:20] Caroline Fredrickson:** And I do, I just do wanna, um, add one more piece to, um, to what Ilya was saying, or perhaps not add but subtract, um, which is to say I think there is a very big difference between, uh, the ability to vote down a, a nominee and the ability to, to obstruct endlessly. Because, you know, I spent 10 years in the Senate, and I know what a filibuster looks like, and it looks like nothing. Because if you look at the Senate floor, nothing is happening, nobody has to own up to it, it's just an objection, nothing happens, nothing goes forward. If they actually have to vote and vote down, then they're accountable.

**[00:49:52] Jeffrey Rosen:** Wonderful. Well we have one last amendment to discuss and it has to deal with future amendments. It makes it easier to amend the Constitution, but just by a bit. Uh, broadly, uh, the current system requires 2/3 votes to trigger a convention or a proposal, and 3/4 to ratify. And this amendment would have a 3/5 vote to propose and a 2/3 to ratify. Remember, friends, uh, I had to do the math, um, because it appears so frequently here, 3/5 is 60%, 2/3 is 66%, so it's not a complete transformation, but it is a bit easier. Um, Ilan, tell us about the future amendments amendment.

**[00:50:35] Ilan Wurman:** That's the reality of the situation is if you have a really hard Constitution to amend, then judges are gonna do more updating through judicial opinions, which we don't necessarily want. And to be clear, both on the right and the left this would happen, whether through an open, living constitutionalist system that the progressives have generally advocated over the last several decades, or a faux kind of originalism in which judges sort of update it through, uh, you know, capacious, more capacious terms in the Constitution or just bad originalism. It's just human nature. You're going to want to bring it up to speed based on your sort of modern day predilections and, and preferences, and it would just be better to be able to amend the Constitution more often. James Madison said in a famous Federalist paper, this is sort of responding to this Jeffersonian argument, you know, that the earth belongs to the living. Every 19 years we should have a new, have a new constitutional convention, and James Madison said, "No. Stability is important to bestow veneration on the Constitution, right. And so he thought that we should not have too frequent amendments, and he's largely right about that.

**[00:51:44]** Because we want stability, we want veneration, we don't want a constitutional revolution to often, but it shouldn't be too hard to amend. Because if it's too hard, it's like a, a Laffer Curve. Do people still know what a Laffer Curve is, like in economics? Like the, the ideal tax rate to make the most amount of money. If you're below it, you're just not making as much as you could, but if you go above it, people hide their money and so you're also not making as much as you could. There's just an ideal amendment process. We don't know whether we've reached it, but you don't want it too easy and you don't want it too hard. I suspect most people agree that the current system is a bit too hard, uh, and so we're making it s- just slightly easier.

**[00:52:22]** I will say, in one respect, this project, if it succeeds, if these four amendments sans the future amendments are enacted, it sort of actually takes the winds out of the sail of the

making the amendment process easier, uh, but nevertheless, I don't think a situation like ... You know, I mean, look, it's not like it's that probable that this will be enacted, though I h- I hope it has a non zero chance, which is really all we can hope for.

**[00:52:43] Caroline Fredrickson:** [laughs]

**[00:52:43] Ilan Wurman:** Um, but so overall, again, we're trying to get closer to that point, uh, that, that, of maximization of, in terms of vener- veneration and capability.

**[00:52:51] Jeffrey Rosen:** Caroline, whether you call it a Laffer Curve or a Goldilocks standard or Madisonian deliberation, there is m- this a moderate amendment. Uh, it doesn't meet the desire of some progressives that the Constitution be much easier to amend, uh, but it does make it a bit easier. And it also allows for states representing 2/3 of the population-

**[00:53:11] Ilan Wurman:** 3/4. 3/4 I think we said.

**[00:53:13] Jeffrey Rosen:** I'm reading, "A majority of the several states or by state's representing 2/3 of the population according to the latest National Census shall propose amendments to the Constitution.

**[00:53:22] Ilan Wurman:** Ah.

**[00:53:22] Jeffrey Rosen:** Um-

**[00:53:22] Ilan Wurman:** But 3/4 to ratify.

**[00:53:24] Jeffrey Rosen:** But 3/4 to ratify.

**[00:53:25] Ilan Wurman:** Okay.

**[00:53:25] Jeffrey Rosen:** Yeah, let, let's read it, 'cause this is important, and this was part of the deliberation. It says that on application of the legislatures of 2/3 of the states or if states representing 3/4 of the population, there's a general convention. So it was 3/4 to call a convention and 2/3 of the population to propose an amendment in Congress. Caroline, t- t- this is pretty technical parsing, tell us about the different, uh, ratios about, and, and the significance of allowing states that represent a certain proportion of the population to act.

**[00:53:57] Caroline Fredrickson:** Well, and this, this does, this also took a, a while to hammer out. Um, but for us it was really important that, uh, a small minority of the, of the public couldn't thwart, um, a broadly supported amendment to the Constitution. And therefore, we wanted to make sure that there was a population, uh, aspect to it as well as a states. I mean, we, all of you are aware, I'm sure, of the Electoral College and how, um, in so many of our recent elections, the person who won the popular vote has not actually become the President, and so this is a similar kind of idea that we, we wanna make sure that there is a broader engagement and a b- broader, um, ability for, uh, the population of the United States to amend our Constitution and not have, um, this, um, small minority of states, um, that is getting excessive amount of representation, uh, to thwart what we all want and see as so important for the future of our country. So that was really important to us.

**[00:54:54]** This wasn't, a- you know, a perfect amendment by any means for us. We would've made it easier, but, you know, again, in the spirit of compromise, our, as I said earlier, our Constitution now is, it's not impossible to amend but let's say it's more than zero. You have more than zero percentage of amending our Constitution, so that's where we stand right now with these proposed amendments, but it's not that much higher. And so we did recognize that this a very important reform to our Constitution to bring it at least sort of limping into the modern era.

**[00:55:24] Ilan Wurman:** And we have three tiers, by the way, so now I've re- reread this, which is good. Uh, to ratify, you need 2/3 of the states or 3/4 of s- or, or of states representing 3/4 of the population, or if you're changing the composition of the Senate, 3/4 of the states [inaudible 00:55:42]. So there are three sort of tiers, uh, of amendments, just for clarification.

**[00:55:46] Jeffrey Rosen:** Well, Ilya, final word on the future amendments amendment, and then we'll have brief c- closing thoughts.

**[00:55:51] Ilya Shapiro:** Both-

**[00:55:51] Jeffrey Rosen:** Again, libertarians were initially, "We mean it," and you did agree to this modest, uh, amendment making it easier to amend and also allowing the unamendability of the Senate to be reconsidered. Tell us why you agreed.

**[00:56:05] Ilya Shapiro:** With th- this particular provision and also, uh, with the idea of an Article V constitutional convention more broadly, uh, I've never been afraid of, uh, runaway conventions or, you know, amendments that are proposed because ultimately they have to be ratified currently by 3/4 of the states, here by 2/3 of the states, or 3/4, uh, of the people. If those kind of metrics can be met to ratify something truly crazy, well then we're past the point of no return anyway.

**[00:56:37] Caroline Fredrickson:** [laughs]

**[00:56:37] Ilya Shapiro:** And, uh, you know, with Justice Kavanaugh, I, I like to live on the sunny side, on the, uh, the sunrise side of the mountain, uh, and, and hope that we are not past the point of no return.

**[00:56:49] Jeffrey Rosen:** Thank you for that. Well, I, I think brief closing thoughts would be helpful. I'm struck, friends, first of all, but the extraordinary quality of this debate. And let's now just pause and express, uh, gratitude and wonder for the, the rigor and Madisonian spirit of compromise that produced these important amendments as a civic symbol of the possibility of consensus and deliberation. It's, it's hard to think of a, of a, a more galvanizing project. At the same time, it, it took us an hour to walk through them. They're, they're complicated, they're technical, they don't fit on the back of a bumper sticker.

**[00:57:23] Caroline Fredrickson:** [laughs]

**[00:57:24] Jeffrey Rosen:** And you as a convention will decide what to do next, what the next steps are. But now is the time for you to make the case to the American people for why these amendments should be ratified. So just brief, a, a paragraph or two from each of you to, uh, send us off into Constitution Week, um, and the first statement from Ilan.

**[00:57:43] Ilan Wurman:** All I'll say about this is I know it's just the National Constitution Center. I mean, it's pretty serious, we're not Congress. But when are you gonna get together serious libertarian, conservative, and progressive scholars under serious auspices, right, like the National Constitution Center, to deliberate about the structural forms of the Constitution and propose amendments for which all three teams, not, wasn't unanimous, but there was agreement among all three teams. That means a supermajority supported these, and at least, uh, some part of the libertarian team, some part of the conservative team, and some part of the progressive team had to, to do this.

**[00:58:20]** If I had, you know, my perfect Constitution kind of like the Libertarian Congress Ilya Shapiro was talking about, would I want the Senate to be amended? No, I like the Senate. I think it's good. I think it promotes federalism. If you wanna do stuff with the ... Y- you know, do it at the local level. California can do its crazy stuff and impose it on Californians and Texas can do its crazy stuff and impose it on Texas. I think it's good. But is this proposal better than the current proposal where it's far too hard to amend generally, which leads to disrespect for the Constitution. I'm happy with the current crop, for the most part, of Supreme Court Justices. Would I be maybe more pleased with lifetime tenure and fixing the justices at nine or just leaving things alone and, you know, rolling the dice with future court packing? May- maybe.

**[00:59:04]** The point is behind a veil of ignorance, these are good reforms that people from all political perspectives, uh, can agree to and agree is better than the relevant provisions in the current Constitution. And that's all one could really hope for when talking about constitutional conventions and constitutional amendments. And so we really think these are worth serious study and consideration among Congress and the American people.

**[00:59:27] Jeffrey Rosen:** Thank you so much for that. Caroline Fredrickson, head of Team Progressive, why should we the people ratify these five amendments?

**[00:59:33] Caroline Fredrickson:** Well, so I just wanna start by saying that the Team Progressive wrestled really a lot at the beginning of this project with how should we approach coming up with a Progressive Constitution. And we really thought a lot about starting from scratch. Um, but we came to this approach because we wanted something that was actually going to be relevant in the current conversation. We really, we could have written the perfect constitution for us. It would not have looked like the one that we, that even our Progressive Constitution, um, the, the final product that we came out with. It would've been quite different. But we really wanted to actually engage in this process of deliberation and hopefully present something where there could be the prospect for change.

**[01:00:19]** Um, and so what I'd like to think, um, is that the idea that, um ... You know, I think we're all frustrated, um, and upset by the polarization and bitterness in the United States right now in our politics. The idea that we could actually come together and produce some ideas with broad consensus that are plausible amendments to our Constitution makes me think that maybe we could get beyond this moment. We could still, and we will, still have our fundamental disagreements about the direction of this country, but if we can agree on some of these ideas for moving forward and improving our Constitution, I think we owe it to our country to try. Because

I'd like to see us back in the ... Back, or at some point in the future, in, in the world where we could just have debates about the best policy and not be stuck in our corners unable to talk to each other at all.

**[01:01:10] Jeffrey Rosen:** Thank you very much for that. Ilya Shapiro, head of Team Libertarian, last word to you. Why should we the people ratify these five amendments?

**[01:01:18] Ilya Shapiro:** I'm for any reform in general that at least does no harm, uh, and yet increases popular confidence in our system of government, in the, uh, integrity of our systems, uh, in, uh, trust in, in societal institutions. And we're at a moment of low social trust, uh, of declining confidence in institutions. And I think these amendments can help with all of that. Are they a panacea? Uh, no. Uh, are they, you know, everyone's, you know, best wish of how to reform even each of these areas? Not necessarily. Uh, but I think that if you move the ball in this direction on impeachment, on appointments, on the size and length of, of court duties, uh, all these different things, the, the, the legislative, uh, uh, veto, rebalancing separation of powers. I think that would, uh, increase confidence, uh, in, un, in America.

**[01:02:16]** Um, you know, I, I did not agree to anything just for agreement's sake. I did not go into the constitutional convention, the amendments convention, with an eye to hold hands and sing Kumbaya. Uh, but the fact that we, uh, did agree on these things and that they're all, uh, I think, uh, o- objectively a, a positive step, um, is, is a good thing. And, uh, I'm grateful to Jeff and the National Constitution Center for empowering in that way the better angels of our nature.

**[01:02:46] Jeffrey Rosen:** Better angels is an excellent way to put it. And dear delegates, on behalf of the National Constitution Center, it is an honor to thank the three of you for your services to the constitutional convention and providing America with a model of what thoughtful Madisonian deliberation and compromise can look like. You have inspired all of us to meet the better angels of our nature and I look forward to seeing the response of a grateful nation to these thoughtful proposed amendments to the n- to the Constitution. Please join me in thanking the delegates.

**[01:03:22]** Happy Constitution Week.

**[01:03:27]** Please rate, review, and subscribe to We the People on Apple Podcasts and recommend the show to friends, colleagues, or anyone who is eager for a weekly dose of constitutional debate and constitutional consensus, as we learned this week. And always remember, that the National Constitution Center is a private non-profit. It was philanthropy that made the Constitution Drafting Project possible and your donations of any amount keep us going and are so very much appreciated. Please support the mission by becoming a member at [ConstitutionCenter.org/membership](https://ConstitutionCenter.org/membership) or give a donation of any amount to support our work at [ConstitutionCenter.org/donate](https://ConstitutionCenter.org/donate). On behalf of the National Constitution Center, I'm Jeffrey Rosen.