Constitutional Reform 1.0 to Curb the Power of the President

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I. Introduction

The preamble of the United States Constitution identifies its goals, reading "to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence [sic], promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity." However, an inexorable shift of political power from the states to the federal government, and within the federal government from Congress to the presidency, leads me to conclude that the Constitution requires changes to meet these goals. And to avoid the US falling into totalitarianism and dictatorship.

The goal of this paper is to get these changes implemented. For that I need your help, since only you can force your Congressional representatives introduce and pass legislation required for Constitutional amendments.

Note that this paper presumes you are familiar with well known acronyms, names, and events, and therefore fails to expressly define them, as you normally find in an academics papers.

II. Petition your Congressional Representatives to enact these changes

Article V of the Constitution specifies that it can be changed by two thirds votes in favor in both the House and Senate, followed by approval by three fourths of legislatures of the states. Unites States code 1 U.S.C. 106(b) is titled "Amendments to Constitution." This law places administrative procedure over the processing of the amendments in the Archivist of the United States. Other laws and regulations govern how the Archivist administers the constitutional amendment process. The president plays no part and has no role in this process.

Your role in this process is to petition your congressional representatives to enact these amendments. You can find contact information for your congressional representatives here: https://www.congress.gov/members

In the next section I specify what should to be changed in the Constitution, why, and propose seven sets of constitutional amendment to do so. These proposals are numbered below.

There are additional editorial amendments to conform other wording to the proposed amendments listed here that could be made, but those are non-substantive and unrelated to the curbing the power of the presidency.

III. Seven sets of amendments to the Constitution to curb the power of the presidency and make a more perfect union

I list below seven subjects, the related portions of the Constitution, discuss the problems, identify solutions, and propose amendments to the Constitution that implement those solutions.

1. Executive power

Article I, section 1, reads:

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

Article II, section 1 reads:

> The executive Power shall be vested in a President of the United States of America.

Article II, Section 2, first paragraph now reads:

> The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

The executive power problem

All executive power vested in a single person is too great a power to vest in one person. This is so because the power can easily be used to subvert the wishes of the courts and congress, leading to dictatorship. For example, by ordering officers in the executive branch to indict and arrest judges, members of congress, and election officials, who could otherwise restrain the president's power, grant pardons to those following illegal presidential orders, and control agencies whose independence from politics currently provides substantial benefits to the United States.

The egregious prosecutorial power problem

Trump has in fact caused his justice department to investigate and indict those on his enemies list, including sitting US senators, state and federal prosecutors, and the former head of the FBI. Regulatory safeguards to presidential control over the DOJ were implemented after Watergate. But those safeguards were arguably unconstitutional and did not withstand Trump's onslaughts on justice. This problem is particularly dangerous because it facilitates slide into autocracy and dictatorship by suppressing political opposition and freedom of speech.

The egregious pardon and reprieve power problem

The pardon power and reprieve is particularly dangerous in the hands of a president because the president can use that power as incentive to induce others to commit crimes in exchange for personal or partisan gain, and reward rather than punish bad behavior.

Trump used this power to pardon people for his personal interests, including pardoning: corrupt officials, January 6 rioters, wealthy fraudsters, and anyone that supported Trump's presidencies. Biden used this power to pardon his own son. Ford used this power to pardon Nixon. George Bush used this power to pardon the Iran-Contra conspirators. All of these pardons

weakened the rule of law by allowing a President to use the power to pardon and reprieve for personal and partisan gain, contrary to the strong interest of the United States in upholding its rule by law.

The independent agency problem

Likewise, congress and the president have agreed via legislation over the decades to create certain agencies that are not subject to direct control by the president. These are called quasi independent agencies and they include the Fed, SEC, FCC, and NLRB. Trump has challenged the constitutionality of legislation preventing him from summarily firing the executives of these agencies. Regardless of the merits of Trump's legal argument, Congress and the presidents agreed to set up these agencies as quasi independent of the president for good reasons. Because that independence provides perceived benefit to the citizens of the United States. Therefore the questionably legality of quasi independent agencies is a problem.

Solution to these problems

The solutions to these defects in the Constitution are to strip the prosecutorial powers, and the pardon and reprieve powers from the president, and vest them in Congress, and also to vest congress with the power to strip any other executive power from the president and vest that power in Congress.

For example, Congress would be empowered to recreate the preexisting Department of Justice as an independent department having an attorney general that is not appointed by and cannot be dismissed by the president. Congress would be empowered to treat any other agencies of the US government that have any prosecutorial power similarly to the DOJ. Congress could strip from the president of any powers the president may now have over so-called quasi independent agencies so that they were in fact independent of presidential control. And Congress would have the power to delegate its new executive authority, for example the selection and governance of executives of all such departments and agencies in any manner Congress so chose. For example Congress could appoint an independent board to directly appoint executives of those agencies, to further remove Congress from the potential for partisan meddling.

Proposed amendments implementing these solutions

Proposed amendments to the Constitution that strips the prosecutorial power, pardon and reprieve powers, and any other power Congress decides to strip from the president, and conferring those powers on Congress, reads as follows:

Article I, section 1, replace "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." with "All legislative Powers herein granted, all powers to prosecute, all powers to pardon and reprieve, and all other executive powers that Congress strips from the president, shall be vested in a Congress of the United States. The Congress of the United States shall consist of a Senate and House of Representatives."

Article II, section 1 replace "The executive Power shall be vested in a President of the United States of America." with "The President shall have all executive power of the United States of America, except for the prosecutorial power, the power to pardon and reprieve, and any other executive power that Congress strips from the president."

Article II, Section 2, first paragraph, delete the clause ", and he shall have Power to grant

Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment".

2. Commander of US military forces

Article II, section 2, first paragraph reads:

> The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; he may require the Opinion, in writing, of the principal Officer in each of the executive Departments, upon any Subject relating to the Duties of their respective Offices, and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

Limited constitutional grant of power problem

The first clause is deficient because US military forces now consist of more than an army and a navy, including the army, marine corps, navy, air force, space force, and coast guard, and the president should clearly be the commander of all armed forces of the United States.

Solution to this problem

The solution to this problem is to formally clean up the language by referring to military forces.

Proposed amendment implementing the solution

A proposed amendment to the Constitution correcting this defect reads as follows.

In Article II, Section 2, first paragraph, replace "The President shall be Commander in Chief of the Army and Navy of the United States" with "The President shall be Commander in Chief of the armed forces of the United States."

3. Commander of State Militias

The term in Article II, Section 2, first paragraph's recitation "the Militia of the several States" refers any military force organized by a state to defend that state. The power granted to the president regarding these militias is that the president is their "commander... when called into the actual Service of the United States."

What it means to be "called into the actual Service of the United States" has no limit on the purpose for which they are called into service. This broad term provides no basis for a state to resist use of their own military force by the president.

The problem with unconstrained presidential command of state militias

This grant of power is undesirable because a power hungry president could abuse this power for example by having the state militias interfere with elections. For example, the president could call up the state militias to prevent the timely setup of certain polling places, to impose obstacles to voting, and to prevent certain classes of people from voting, and to detain and arrest opposition politicians. This power enables the president to prevent the collective will of the

people in choosing their representatives. Trump has abused this power by calling up state National Guard to police the streets of US cities against the wishes of the elected officials including mayors and governors for those cities.

Solution to this problem

A proposed amendment to the Constitution removes the president's unilateral power over state militias by limiting his power to command state militias only during declared wars and upon request of the governor of a state requesting assistance.

A proposed amendment implementing the solution

In Article II, Section 2, first paragraph change the recitation ", and of the Militia of the several States, when called into the actual Service of the United States" to ", and of the Militia of the several States from when Congress declares war until Congress declares the war has ended, and if a governor of a state in which the militia is to be deployed has requested their presence and only during the time the governor agrees to their presence".

4. Presidential privilege, immunity, and use of US military force

The Constitution grants Congress the sole power to declare war. However, since the end of WWII, Congress ceded more and more of this power to the president. As a consequence, the boundaries between war and peace have been blurred, and the president has repeatedly ordered the use of military force in ways that violated the letter and intent of the Constitution. The result has been legal chaos and untold costs in blood and treasure, wasted on wars the American people never approved including the second gulf war and Vietnam. During the same period, the Supreme Court has granted the president near total immunity to all official acts, no matter how criminal, or constitutionally unsound.

In 1974, the Supreme Court denied the president executive privilege for the Nixon White House Tapes. That denial of privilege ultimately led Nixon to resign, because it forced Nixon to produce the tapes showing he conspired to break the law by committing burglary of the headquarters of the Democratic party.

In 1982, the Supreme Court granted the president absolute civil immunity for official acts.

In 2024, the Supreme Court granted the president absolute immunity from criminal prosecution relating to official acts, and absolute executive privilege on evidence of those crimes.

The problem with these privileges and immunities is that they empower the president and his officers to commit illegal acts for any reason, and to order the US military to use force without a Congressional declaration of war.

The consequence of the president's unconstrained use of military force has been a huge cost to the US, by any measure. Consider for example the financial costs and outcomes of the larger uses of US military force, and how the power of the president evolved, since WWII.

Truman ordered US military action in Korea, but only after North Korea invaded, and promptly obtained support in the United Nations and funding for this war from Congress.

At its peak, the Korean war the annual cost the US was about 14% of GDP.

The outcome of that war was a draw. Both South Korea and North Korea exist. North Korea continues to attempt to threaten the US homeland will nuclear attack. As a consequence, the US has spent tens of billions of dollars for missile defensive specifically to counter North

Korean ballistic missiles. And the US spends annually about 0.01% of GDP for US military forces stationed in South Korea.

To our great detriment, however, the Korean war set a disastrous precedent for future substantial presidential use of military force without Congress declaring war.

Kennedy, Johnson, and Nixon all ordered use of US military action in Vietnam.

At its peak in 1968, the Korean war annually cost the United States 9.5% of GDP.

For the first Gulf War, in response to Iraq invading and conquering Kuwait in a territorial and resources grab, Congress did not formally declare a war, but it did pass an authorization for the first president Bush to use military force.

At its peak, the first Gulf War resulted in the US expending about 0.3% of GDP. However, that cost was mostly offset by financial donations to the US from other countries.

For the Afghanistan War, in response to Al Qaeda committing 9-11 and Al Qaeda being shielded by the Taliban government in Kabul, Congress did not formally declare a war on Afghanistan, the Taliban, or Al Qaeda, but it did pass an authorization to use military force therefore in 2001. That war cost on average 0.64% for the first few years, and then drifted down to about 0.24% by 2018.

For the second Gulf War, in response to arguments (which were not true), by the second president Bush, that Iraq was developing nuclear weapons and conspiring with Al-Qaeda to commit terrorism, Congress authorized use of military force against Iraq in 2002. The second Bush president ordered US military to use force against Iraq, toppling Saddam Hussein and standing up a local government. At its peak in 2008, this war cost the United States 1.0% of GDP.

I do not list the cost in blood, but of course each war had a cost, which US servicemen paid. And I am humbled by their service and sacrifice. The GDP related information was to quantify the costs to the United States of these undeclared wars.

The problem with privileges and immunities the Supreme Granted the president are that they empower the president to commit illegal acts for any reason, and to order the US military to use force without Congressional actually issuing a declaration of war. Congress in turn has avoided issuing a declaration of war, and likely would not have done so in the cases of Vietnam and the second Gulf war. Exactly because they were skeptical of the basis for these wars but were afraid to voice their skepticism by denying the president by a vote declining to declare war.

The consequence of the privileges and immunities granted to the president by the Supreme Court make the president tantamount to king. The president can and has commanded his minions to commit illegal acts with no regard for personal consequences. The president can and has extended beneficial policies and terms to US states, foreign countries, companies, and individual in exchange for kickbacks, without fear of consequence. The president can and has imposed blanket tariffs, contrary to law, and then cut deals which personally benefit him. All of these actions are anathema to a government for the people, bedrocked in the rule of law.

The problem with these privileges and immunities is that they empower the president to commit illegal acts for any reason, including self dealing, attacking political enemies, undermining free and fair elections, the judicial system, and the rule of law generally.

The remedy for defects in privileges, immunities, and warlike powers, is to strip them from the presidency.

A proposed amendment accomplishing these goals reads as follows.

Article II, Section 1, at the end of the section, add the following new paragraphs:

> The president shall have no privilege or immunity to civil or criminal proceedings. The president shall only have power to order the use of US military force against an enemy from the time Congress has issued a declaration of war on that enemy until Congress has issued a declaration that the war has ended.

5. Impeachment

Article I, section II, fifth paragraph provides for impeachment. It reads:

> The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Article I, section 3, paragraph 6 provides for conviction of an impeached Officer. It reads:

> The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Article I, section 3, paragraph 7 provides the consequences for conviction of an impeached Officer. It reads:

> Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Article II, section 4, provides the basis for removal of all officers of the US government by impeachment and conviction. It reads:

> The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

The problems with impeachment

The problems with impeachment as specified by the Constitution are that it is virtually impossible to achieve, and overly burdensome on Congress. And does not compensate the United States for harm caused by the crime. This is because the procedure is so burdensome, consuming

the time of the entire Congress, because the threshold for conviction is so high, and there is no provision for compensation. As a consequence, it is an ineffective remedy for the harms it is supposed to address.

There have been a total of 22 impeachments by the House of Representatives. 15 of federal judges, 4 of presidents, 2 of cabinet secretaries, and 1 of a US senator. Of these, only 8 federal judges were ever convicted, 3 other judges resigned before the senate reached a verdict, and 1 president (Nixon) resigned when impeachment and conviction were imminent.

The senate votes on the presidential impeachments, were as follow.

Andrew Johnson, for attempting to replace an appointed official without consent of the senate in violation of a law specifically requiring senate consent.

Clinton, 45-55 (guilty-not guilty) on perjury.

Clinton, 50-50 (guilty-not guilty) on obstruction of justice.

Trump, first impeachment, on abuse of power 48-52 (guilty-not guilty).

Trump, first impeachment, on Obstruction of Congress 53-47 (guilty-not guilty).

Trump, second impeachment on incitement of insurrection, 57-43 (guilty-not guilty).

The presidential impeachments show that, even when a majority vote to convict, the president remains in office. That is an undesirable outcome because there always exist some amount of purely partisan actors that will never convict one of their own party, regardless of proof of criminal activity. And knowing this, even senators that might otherwise vote to convict, fear doing so because of the anticipated personal repercussions in case there is no conviction. Therefore, the bar of a two thirds super majority is too high.

Proposed solutions to make impeachment effective and a proper remedy

These defects can be removed by providing Congress the power to delegate impeachment and conviction of junior officers (anyone other than the president, vice-president, and cabinet secretaries), to reduce the threshold for conviction to a mere preponderance of the voting members, and to provide for compensation to the United States in cases where the convict profited from their abuse of power of the US government.

Proposed amendments implementing this solution

A series of proposed amendments to the Constitution that implements these changes read as follows.

> Amend Article I, section II, fifth paragraph, to read "The House of Representatives shall chose their Speaker and other Officers; and shall have the sole Power of Impeachment. Congress may pass laws enabling the House of Representatives to delegate this power for impeachment of junior officers."

Amend Article I, section 3, paragraph 6 to read as follows:

> The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside over the trial. Congress may pass laws enabling the Senate to delegate this power for trying impeached junior officers. Conviction requires concurrence of more than half the present members of

the Senate, or more than half the present members of any tribunal trying a junior officer.

Amend Article I, section 3, seventh paragraph reads:

> Judgment in Cases of Impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law. Except, in case of a finding of pecuniary gain by the convict as a consequence of the convicted crime. When such a finding is made, the tribunal will determine, or will delegate determination of the amount of pecuniary gain, and the tribunal will collect or delegate collection of that amount, which collection will become property of the United States.

6. Disqualification from office

The fourteenth amendment, section 3, reads as follows:

> No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Problem with the disqualification provision

In December 2023, the Colorado Supreme Court held that Trump was ineligible for the presidency because he had committed insurrection, pursuant to the fourteenth amendment, section 3. However, in 2024, the Supreme Court reversed that ruling, holding that states could not determine eligibility for federal office under this Section 3 of the Fourteenth Amendment. As a consequence, Trump remained on the ballot in Colorado.

This Supreme Court decision allows an adjudged insurrectionist to run for federal office, even when a court of competent jurisdiction has found as a matter of fact the person committed insurrection. This decision strengthens the presidency, and increases the chance that insurrections, like the one that Trump instigated, will reoccur.

Solution to the Supreme Court's neutering of the disqualification provision

This defect can be fixed by overruling the Supreme Court by Constitutional amendment. A proposed amendment fixing this defect and clarifying that this provision applies to the president, while preventing a ruling in a state court from being effective in all states, reads as follows.

Replace the fourteenth amendment, section 3, with the following:

No person shall be President, Vice-President, a Senator or Representative in Congress, an elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. Congress may by a vote of two-thirds of each House, remove such disability.

The finding of a court of a state that a candidate has committed insurrection disqualifies that candidate in that state, from appearing on a ballot in that state for any state or federal office, and from holding any office of that state.

7. Advice and consent required to initiate and to terminate Treaties and Officers

The Constitution, Article II, Section 2, second paragraph reads:

> He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

The problems with advice and consent

The Constitution requires advice and consent of the senate for making treaties with foreign nations, appointing Ambassadors, Ministers, Consuls, and Judges of the Supreme Court. But the Constitution contains no provision requiring the advice and consent from the senate in breaking treaties or firing Ambassadors, Ministers, Consuls. Consequently, Ambassadors, Ministers, Consuls serve at the pleasure of the president, which means policy implementation changes every time we elect a new president, and because the Ambassadors, Ministers, Consuls have a reason to be more loyal to the president personally than to the Constitution. This cause instability in US policy and action and subverts fealty to the Constitution.

These defects are a major factor in instability in the government of the United States. Every time a new president comes in to office, federal agencies are hamstrung because their executives are automatically lame ducks, subject to immediate dismissal. And replacements, due to the vetting process and delays in Senate votes, consumes substantial time. That results in at least a temporary vacuum of power in the US government.

The Supreme Court previously ruled that laws limiting the president's power to fire senior officers were unconstitutional. Therefore, the only mechanism to address that defect is by constitutional amendment.

Proposed solution, requiring advice and consent of the senate to break treaties and to fire senior officers

The solutions are to require senate approval. Requiring Senate to approve the US withdrawal from a treaty will provide certainty in the eyes of other nations and in this nation that treaties into which we enter are enduring. Requiring Senate approval for dismissal of senior officers would provide for continuity of government when administrations change, and also prevent executives in the US government from being more loyal to the president than to the US Constitution.

Proposed amendment implementing these solutions

A proposed amendment correcting these defects reads as follows.

Revise Article II, Section 2, second paragraph, as follows:

He shall have Power, by and with the Advice and Consent of at least two thirds of the present members of the Senate, to make, to modify, and to terminate Treaties.

He shall have Power to nominate or recommend dismissal, and the senate the power to appoint or dismiss by a concurrence of a majority of the present members of the senate, Ambassadors, Consuls, and Ministers.

He shall have Power to nominate, and the sent the power to appoint by a concurrence of a majority of the present members of the senate Judges of the supreme Court and all lesser courts.

He shall have Power to delegate nomination of all other inferior Officers of the United States, except for those Appointments herein otherwise provided for in this Constitution, and those Appointments established by Law.

Appointment and dismissal of those nominated to be inferior officers requires concurrence of a majority of the present members of the Senate, unless Congress has by Law vested the Appointment and dismissal of such inferior Officers, in the President, in the Courts, or in the Heads of Departments.