

## Part 1: Reforming American Government for the 21st Century



*How might we reform American government to meet the needs of the 21st century? How might this be accomplished by—and require—amending the U.S. Constitution? Provide participants with copies of the U.S. Constitution. Depending on participants' background knowledge of the U.S. Constitution, discuss what the Constitution is and its role in American government and life. If possible, speak with teachers or community leaders before this Dialogue to assess participants' knowledge of the Constitution. Discussion should focus on how the Constitution has been and can be amended. Article V of the U.S. Constitution lays out the constitutional amendment process.*

### Discuss with participants:

The Constitution provides a process for its own amendment. There are currently 27 amendments to the U.S. Constitution, with the most famous being the first 10 that comprise the Bill of Rights. The Constitution may be amended by two different means, including by calling a convention.

When was the last constitutional convention in the United States? Why do you think there has never been another one? What does it mean to amend the U.S. Constitution? How do we amend the U.S. Constitution? Can you name one of the amendments to the U.S. Constitution?

*Participants may need additional background. Offer explanation as needed before proceeding into the scenario. The 1787 constitutional convention was the one and only constitutional convention in the United States. The Constitutional Convention of 1787 convened from May 25 to September 17, 1787, in Philadelphia to address problems with government under the Articles of Confederation following the Revolutionary War. Fifty-five delegates represented all of the states and elected George Washington president of the convention.*

*Though delegates planned only to revise the Articles of Confederation, James Madison and Alexander Hamilton advocated for the creation of a new constitution. Gouverneur Morris is credited with drafting most of the final document, which was signed by thirty-nine of the delegates and then sent to the individual states for ratification.*

*In this scenario, participants are asked to serve as delegates at a 21st century constitutional convention and consider two issues as possible reforms to American government.*



### Introduce the scenario to participants:

Congress generally considers one proposal to amend the Constitution at a time, but a convention could consider many. So we are going to imagine that we will convene a constitutional convention. All of you have been selected as delegates to attend the convention and vote on two amendments that could significantly change American government for the 21st century.

### Issue 1: Should the U.S. Constitution be amended to permit any American citizen to hold the office of president of the United States?

*Refer participants to Article II, Section 1, Paragraph 5 of the U.S. Constitution, via Power Point® or reading aloud.*

No person except a natural-born Citizen, or a Citizen of the United States ... shall be eligible to the Office of President; neither shall any person be eligible to that Office who shall not have attained to the Age of thirty-five Years, and been fourteen Years a Resident within the United States.

### Ask participants:

What restrictions does the Constitution place on who may become president? Why do you think these restrictions on who may hold the office of president were included in the Constitution? Who might be affected by these restrictions? What does it mean to be “natural born?”

“Natural born” is typically interpreted as being born an American citizen. This could include those born to American citizens outside the United States. Immigrants to the United States who are naturalized citizens, therefore, would be ineligible. Examples of prominent Americans in this category include former secretaries of state Henry Kissinger and Madeleine Albright, California governor Arnold Schwarzenegger, and Michigan governor Jennifer Granholm. Historically, the first ten U.S. presidents were not “natural born,” but rather, British subjects, so they were “grandfathered” under the Constitution. The first “natural-born citizen” to be president was Martin van Buren.

Restate Issue 1, and facilitate discussion acknowledging arguments for and against the issue. As participants argue for and against reform, follow with additional questions:

Do you think the U.S. Constitution should be amended to permit *any* American citizen to hold the office of president of the United States? If you think some eligibility requirements should be in place, what would they be? Why would they be appropriate or justified?

Question 1 is purposely phrased to be broad and inspire discussion. Use of the word **any** is meant to draw attention to not only the natural-born eligibility requirements for the presidency in the U.S. Constitution, but also the age and residency requirements. Participants could consider the possibility of immigrants, teenagers, and new American residents being eligible for the U.S. presidency. Participants will probably agree that some eligibility requirements are necessary, even if different from the current ones. Discuss what those requirements might be, and why they might be established or adopted.

## Issue 2: Should the U.S. Constitution be amended to expand federal lawmaking to include the use of a national referendum?

Introduce the second issue, the use of referenda to allow voters, rather than elected representatives, to directly determine federal policy. Distribute the handout “Understanding the Referendum.”

Are you familiar with the term “referendum”? A *referendum* is a direct popular vote in which the public is asked to either accept or reject a particular policy proposal. Twenty-four states in the United States allow for direct voting on important issues through referenda, but there has been no provision to do so at the national or federal level. Congress traditionally makes federal laws.

Ask participants if they can name places where referenda are used. Discussion should include California and Switzerland.

Restate Issue 2, and facilitate discussion acknowledging arguments for and against the issue. Participants could debate the use of referenda and may consider time, money, logistics, voter turnout, and civic engagement in their arguments.

### Ask participants:

How do the processes differ between referenda and congressional representation? Which process is more deliberative? Which process is more democratic? Do you think what the majority decides is always democratic? Why or why not?

James Madison warned about “tyranny of the majority.” What do you think he meant by this? How might referenda contribute to, or prevent, the “tyranny of the majority?” To conclude, bring participants’ discussion back to the questions of reforming American government. End by asking participants whether they think the U.S. Constitution will meet our needs for the 21st century, including the next 90 years.

## Resources

Balkin, Jack, and Reva B. Siegel, eds. *The Constitution in 2020*. New York: Oxford University Press, 2009.

Herlihy, Sarah. “Amending the Natural Born Citizen Requirement: Globalization as the Impetus and the Obstacle.” *Chicago-Kent Law Review*, Volume 81, Number 1, pp. 275–300. <http://www.cklawreview.com/wp-content/uploads/vol81no1/Herlihy.pdf>

Sabato, Larry. *A More Perfect Constitution: 23 Proposals to Revitalize Our Constitution and Make America a Fairer Country*. New York: Walker and Company, 2007.

Steinhauer, Jennifer. “Top Judge Calls California Government ‘Dysfunctional.’” *New York Times*. October 10, 2009. [http://www.nytimes.com/2009/10/11/us/11calif.html?\\_r=1&scp=1&sq=california%20referendum&st=cse](http://www.nytimes.com/2009/10/11/us/11calif.html?_r=1&scp=1&sq=california%20referendum&st=cse)

## Handout for Participants



## Understanding the Referendum

**Referendum:** a direct popular vote in which the public is asked by the governing legislature to either accept or reject a particular policy proposal.



### California

The constitution of the state of California has provided for referenda, or “the people’s vetoes,” since 1849. State legislators, instead of voting on important issues, will put it on a ballot and directly ask voters for their opinion—“yes” or “no.” If an issue, such as a proposed state constitutional amendment, garners 50 percent or more of the popular vote, then it becomes law.



### Switzerland

The nation of Switzerland frequently uses referenda to make decisions about significant legislation, including laws, international treaties, taxes, and government spending. The referendum is a central part of Swiss political life. Voting on referenda typically takes place on Sundays, three or four times annually.

### Supporters Say

- The referendum is more democratic because voters decide directly on issues that affect them.
- The referendum encourages voters to learn about issues, express opinions, and vote, leading to higher voter turnout, civic engagement, and overall happiness.
- Referenda are quick and easy to implement, compared to standard elections.

### Critics Say

- The referendum leads to policy votes based on personal, rather than public, interests that may be detrimental to effective government.
- The referendum is less deliberative because lawmakers, rather than debating, ask voters to make decisions.
- Referenda are expensive and time-consuming and contribute to government inefficiency.