

# RESTORE THE CONSTITUTION

**Model Congressional Resolutions,  
Rules, and Legislation to Reclaim the  
Constitution from Unconstitutional  
Executive Supremacy to Benefit the  
Health, Safety, and Welfare  
of the American People**

**by Bruce Fein**

**“Then I have Article 2, where I have the  
right to do anything I want as president.”**

**—PRESIDENT DONALD TRUMP (July 23, 2019)**

## Praise for *Restore the Constitution*

“Bruce Fein is a no-BS constitutional textualist and originalist and, more importantly, an uncompromising constitutional patriot. He has been on the front lines of resisting the brutal Executive-branch usurpations and transgressions of the Trump presidency. In this remarkably comprehensive package, Fein offers provocative and impressive proposals not only to restore the much-trampled and much-surrendered powers of Congress but to restore the much-abused liberties and rights of the people.”

CONGRESSMAN JAMIN BEN “JAMIE” RASKIN was also a professor of constitutional law at American University’s Washington College of Law for more than 25 years and the author of several books on law and public policy.

“Bruce Fein has meticulously diagnosed the fissures in the American Constitutional edifice and prescribed workable repairs. He brings a lifetime of scholarship and intense study to this task, focusing on recent instances of how the careful balance of power between our federal branches has come undone. From war powers to executive orders to unilateral decisions not to enforce the laws passed by Congress, Presidents have amassed power the founders never intended, and our country has suffered accordingly. Fein has devoted his prodigious talents and energy to crafting specific laws Congress should pass to reclaim the authority the Constitution uniquely gave it. Seldom has a constitutional text combined extensive learning with such practical applications.”

TOM CAMPBELL is the former Dean of Fowler School of Law, Chapman University, former Professor of Law, Stanford University, former US Congressman, and lead plaintiff in *Campbell v. Clinton* (challenging President Clinton’s unconstitutional war in Yugoslavia).

“We all know that our constitutional system of checks and balances has come under enormous, even terrifying stress in recent years. Some of the strains in our system reflect the disruptions of the Trump presidency, others the multiple sources of hyper-partisanship and constitutional hardball that vex our politics. In this ambitious document, the Constitution Restoration Project addresses many of our constitutional dysfunctions. There is much to admire in the Project’s proposals, and much that many readers (myself included) would find problematic. But collectively, these proposals encourage us to consider major sources of constitutional rot that we can no longer avoid addressing.”

JACK NORMAN RAKOVE is the W. R. Coe Professor of History and American Studies and professor of political science at Stanford University, where he has taught since 1980. Professor Rakove won the 1997 Pulitzer Prize for History and the 1998 Cox Book Prize for *Original Meanings: Politics and Ideas in the Making of the Constitution* (1996).

“President Donald Trump has made clear that our that our democratic institutions are too vulnerable to assault. The next President and Congress will need to work together to repair the damage and restore those institutions so that a future President cannot put our democracy at risk. Bruce Fein’s ‘Restore the Constitution’ offers a concrete set of proposals across a wide range of issues and will help set an agenda for this essential discussion.”

OONA A. HATHAWAY is the Gerard C. and Bernice Latrobe Smith Professor of International Law and Counselor to the Dean at the Yale Law School. She is also Professor of International Law and Area Studies at the Yale University MacMillan Center, on the faculty at the Jackson Institute for International Affairs, and Professor of the Yale University Department of Political Science.

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CENTER FOR STUDY OF RESPONSIVE LAW

WASHINGTON, DC

DECEMBER 2020

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# INTRODUCTION

Year after year, under both Republican and Democratic Party control, the Presidency has acquired or seized more power at the expense of Congress. In addition, an enabling Judiciary has done little to deter overreaching by the Executive Branch. This undermining of the Founders' system of checks and balances has come about through worsening abdication by the Congress of its Constitutional duties and the egregious lawlessness of the Executive Branch, from the White House on down, regarding both domestic and foreign policies.

Donald J. Trump has turned the Office of the President into a blatant and intensifying, authoritarian operation by the month. Apart from the House impeachment on the Ukraine matter, Congress, including the House Democrats, has gone AWOL, failing to pursue at least eleven serious impeachable offenses that continue unabated to the present. (See: *Congressional Record – December-18-2019-HI2197-HI2199*)

Bruce Fein, a constitutional law specialist who has testified before Congress some 200 times and who has experience working in the Justice Department and the Office of Legal Counsel, presents this Constitutional restoration initiative. It is very specific, and contains model bills and resolutions directed toward restoring the role of Congress as the Constitution directs. The models include proposals to enhance Congress's plenary powers and strengthen internal mechanisms and authority to help Congress to hold the Executive Branch accountable. Attorney Fein believes that impeachment should be normalized against any "high official" in the Executive Branch committing "high crimes and misdemeanors." For this purpose, Fein proposes standing House and Senate Impeachment Committees. The impeachment power is more urgent today than when the Constitution was born in 1787, because the powers of the Executive have grown from a tiny acorn into a mighty oak in the interim.

A few impeachments and convictions might have served as a deterrence to outlaw officials now getting away with impeachable offenses daily under the Trump regime.

All these proposals redound to the benefit of the health, safety, welfare, and equity for the American people. There is far less recognition of the need for these reforms on Capitol Hill than there should be. More open and regular advocacy efforts are necessary to push Congress to reclaim the role the Founders envisioned for the First Branch of government.

This report envisions wider public deliberation and public Congressional hearings to arouse an informed "public sentiment" in the words of Abraham Lincoln. The objective is to restore to the Republic its checks and balances, with its separation of powers, to reverse the monarchical concentration of runaway power in the Executive Branch so loathed by our Founders and Framers. They knew the dangers of a runaway Executive Branch, which is why they gave so many primary authorities to Congress. What they did not predict was that Congressional ambition would turn so decisively into Congressional abdication of those exclusive Constitutional powers so central to this institution's reason for being.

Ralph Nader  
December 2020

# CONSTITUTION RESTORATION PROJECT

DECEMBER 2020

“Then I have Article 2, where I have the right to do anything I want as president.”

—President Donald Trump (July 23, 2019)

## EXECUTIVE SUMMARY

The Constitution Restoration Project would extinguish our prevailing counter-constitutional unchecked executive power with a matrix of statutes, rules, and resolutions passed by Congress. The Project would restore Congress to its predominant constitutional role in fashioning the domestic and foreign policies of the nation. The Constitution made the legislature the First Branch because it is institutionally best suited to glorifying liberty and justice and preventing any one faction from oppressing others. The Project, however, will be mindful that public financing of elections is critical to prevent congressional capture by monied interests. Mark Hanna, Ohio Senator and President William McKinley’s campaign wizard, volunteered more than a century ago: “There are two things that are important in politics. The first is money and I can’t remember what the second one is.”

In 1878, British Prime Minister William Gladstone praised the United States Constitution as “the most wonderful work ever struck off at a given time by the brain and purpose of man.

Since then, the Constitution has crumbled like the Roman Colosseum. Under both Republican and Democratic administrations, the Executive Branch has drawn all authority into its impetuous vortex. Separation of powers, a structural bill of rights to protect citizens from oppression, has collapsed. The judicial branch has fortified rather than challenged executive power by abdicating to the President. The executive is invariably the first mover in clashes with Congress. Judicial abstention leaves the President in the driver’s seat, for example, in commencing war without a congressional declaration prescribed by Article I, section 8, clause 11.

We have neglected the legendary exchange between Mrs. Powell of Philadelphia and Benjamin Franklin at the birth of the Constitution:

MRS. POWELL: Well Doctor, what have we got, a Republic or a Monarchy?

DR. FRANKLIN: A Republic, if you can keep it.

Presidents for a century, irrespective of party affiliation, have flouted the Constitution. But President Donald Trump has taken scorn for the Constitution to an unprecedented level.

At present, the President initiates gratuitous multi-trillion-dollar endless wars that diminish our security on his say-so alone. Congress, in contrast, has authorized war in but five conflicts over 229 years and only after peace had already been broken by actual foreign aggression against the United States.



The President flouts congressional subpoenas on his say-so alone. Congressional oversight of the Executive Branch is urgent to discover, deter, and to remedy executive misconduct or deceit that flourish in secrecy, for example, the Teapot Dome scandal, the Fulbright hearings on Vietnam, Watergate, and the Church Committee hearings on crimes and abuses of the intelligence community.

The President spends billions of dollars in defiance of Congress on his say-so alone. Further, the Defense Department and Intelligence Community write their own extravagant budgets. Before Congress began to surrender the power of the purse to the executive in the Budget and Accounting Act of 1921, budget surpluses were the norm in peacetime.

The President conducts surveillance of the American people on his say-so alone under Executive Order 12333. Congress has been more protective of the cherished Fourth Amendment right to be let alone, for example, the Bank Secrecy Act of 1970, requires banks to notify customers before their bank records are surrendered.

The President nullifies legislation he has signed into law on his say-so alone. The presidential excisions result in statutes that Congress never passed.

The President makes and revokes treaties on his say-so alone. The constitutional requirement of Senate ratification safeguards against presidential missteps, like revocation of the Intermediate-Range Nuclear Forces Treaty.

The President issues executive orders in lieu of legislation on his say-so alone with no intra-branch checks on extremism. The bicameral Congress, in contrast, is driven towards the Aristotelian mean to accommodate multiple competing factions.

The President plays prosecutor, judge, jury, and executioner to kill any person on the planet based on secret suspicions on his say-so alone. Congress has never authorized such alarming contempt for due process of law.

The President appoints “acting principal officers” of the United States without required Senate confirmation on his say-so alone. Senate confirmation would block incompetent, corrupt, political cronies of the President.

The President asserts executive privilege or state secrets to block oversight from Congress or the courts on his say-so alone. As Justice Louis D. Brandeis advised, “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.” Transparency is the coin of the realm.

The President fails to take care that the laws be faithfully executed. British King James II was overthrown in 1688 by William of Orange for dispensing with the execution of laws passed by Parliament.

The President claims immunity from criminal prosecution on his say-so alone. Congress would never grant such immunity its Members do not enjoy. The United States Supreme Court lectured in *United States v. Lee*: “No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.”

President Trump proclaims: ***“Then I have Article 2, where I have the right to do anything I***

*want as president.*” Congress has never authorized such a monarchical doctrine, i.e., the King can do no wrong.

The President now exercises vastly more unchecked power over the American people than King George III did over American colonists, an oppression which provoked the American Revolution.

Extraconstitutional executive power has devastated the nation and the citizenry: a national debt soaring past \$25 trillion with staggering carrying costs; the lion’s share of discretionary spending on national security exceeding \$1 trillion annually; pointless perpetual wars that diminish rather than enhance national security; the migration of national genius from production to killing; the neglect of essential infrastructure like schools, hospitals, roads, bridges, clean drinking water, mass transit, airports, and prophylactic measures against all-encompassing climate disruption; tax loopholes for the 1 percent of the 1 percent but parsimony for the ill-housed, ill-clothed, or ill-fed; secret government and secret law in lieu of transparency; disregard of protective laws for consumers, workers, the environment, the disabled, and minorities; annihilation of the right to be let alone from government surveillance; secret dossiers on American citizens; and, the crippling of free speech through systematic presidential intimidation of critics, including firings or demotions of federal employees, inspector generals, United States attorneys, or official witnesses before Congress critical of Mr. Trump.

Fear of executive power abuses prompted the Constitution’s Framers to subject the President to impeachment and removal from office for “treason, bribery, and other high crimes and misdemeanors.” Over the ensuing 230 years, the Executive Branch has become a vastly more dangerous Leviathan necessitating much stronger institutional checks to restore the Republic and the Constitution. The President controls millions of federal employees and millions more federal contractors; armed forces capable of extinguishing the human race; an annual budget surpassing \$5 trillion; and, a sprawling, ubiquitous Big Brother intelligence community monitoring our movements and communications.

Of course, the Constitution Restoration Project will not succeed overnight. For it aims to roll back executive powers that have accumulated for more than a century. The multi-trillion-dollar military-industrial-counterterrorism complex will fiercely defend the *status quo*. And congressional spine requires public financing reforms.

But the daunting challenge argues for immediate action, not for despair. The following anecdote related by President John F. Kennedy speaks volumes:

The great French Marshall Lyautey once asked his gardener to plant a tree. The gardener objected that the tree was slow growing and wouldn’t reach maturity for 100 years. The Marshall replied, “In that case, there is no time to lose; plant it this afternoon!”

## INTRODUCTION

The Constitution Restoration Project is intended to strengthen Congress, place the Executive under the law, and promote government of the people, by the people, for the people. Compared with the White House, Congress is more accessible to ordinary citizens. Its proceedings are more transparent. And Congress represents a substantial cross-section of the American people, which encourages compromise and moderation, in contrast to the monolithic, sprawling corporatized Executive which fuels unilateral extremism. But if Congress is to escape capture by the monied interests which profit by speculating on public measures, public financing of elections is critical. No Member of Congress can serve two masters. Members cannot serve both the Constitution and the moneychangers.

The COVID-19 pandemic has brought into sharp focus alarming violations and deformations of the Constitution's separation of powers that has been eroding for a century. We now confront an executive Leviathan that has annihilated the rule of law with devastating direct and collateral damage to the health, safety, and welfare of the citizenry.

The American Revolution was fought to bury the slavish principle that the King can do no wrong. The law would be king; the king would not be law. The Constitution places the President under the law—even in times of claimed emergencies. The United States Supreme Court elaborated in *Ex parte Milligan* (1866): “The Constitution of the United States is a law for rulers and people, equally in war and in peace, and covers with the shield of its protection all classes of men, at all times and under all circumstances. No doctrine involving more pernicious consequences was ever invented by the wit of man than that any of its provisions can be suspended during any of the great exigencies of government.”

The High Court echoed in *United States v. Lee* (1882): “No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy and to observe the limitations which it imposes upon the exercise of the authority which it gives.”

President Donald Trump, nevertheless, asserted on April 13, 2020, during the COVID-19 pandemic: “When somebody's president of the United States, the authority is total.”

He issued an unconstitutional signing statement on March 27, 2020, regarding the \$2.2 trillion Coronavirus Aid, Relief, and Economic Security Act (CARES) declaring his intent to disregard provisions for congressional oversight of the unprecedented spending package necessary to prevent fraud, waste, or misuse for partisan political purposes.

He violated the Hatch Act, 18 U.S.C. 610, by directing Treasury Department employees to place his name gratuitously on U.S. Treasury checks to CARES beneficiaries to advance his 2020 presidential campaign. But Attorney General William Barr will do nothing to injure his White House benefactor and risk discharge by opening an investigation, which underscores the urgency of a revived Independent Counsel Act.

Mr. Trump probably violated the Impoundment Control Act of 1974 by withholding the expenditure of appropriated funds for the World Health Organization without the approval of Congress. 2 U.S.C. 683.

These examples are but the tip of the iceberg of Executive Branch lawlessness that has metastasized like a cancer for a century with the acquiescence or complicity of Congress, an irresponsible docility in violation of the Members' oaths of office. *The urgency of arresting presidential supremacy, which alarmed the Constitution's Framers is vastly greater today than in 1789. In the interim, the Executive Branch has grown from a tiny acorn into mighty oak featuring a multi-trillion-dollar military-industrial-security complex, millions of federal employees, millions more federal contractors, and armed forces brandishing weapons that could destroy the world as we know it.*

Ending chronic, permanent, unconstitutional presidential wars would save tens of millions of lives and multiple trillions of dollars. Brown University's Watson Institute of International and Public Affairs estimates the costs of unconstitutional and illegal presidential wars since 2001 at \$6 trillion and climbing. That staggering sum and more could be reallocated for infrastructure and assisting the ill-housed, ill-clothed, and ill-fed if the war power were restored to Congress as the Constitution requires. Congress has never voted to declare war in 230 years except in self-defense to actual or perceived foreign aggression. Wars not in self-defense initiated by the President have always given birth to greater national security dangers than they have extinguished.

Ending presidential wars is necessary to restore liberty as the nation's glory. In times of war, the law is silent. The Fourth Amendment right to be let alone from government surveillance has been pulverized since the 9/11 surge in unconstitutional presidential wars. James Madison, father of the Constitution, presciently warned at the constitutional convention, "The means of defense agst. foreign danger have been always the instruments of tyranny at home."

Former National Security Advisor John Bolton, who closed the National Security Council Directorate for Global Health Security and Biodefense in 2018, would have been denied Senate confirmation if the Appointments Clause of the Constitution had been enforced. Despised by many Republicans, Mr. Bolton had previously been rejected by the Senate as U.S. Ambassador to the United Nations. Bolton's closure order disarmed the federal government in responding to the COVID-19 pandemic with devastating multi-trillion-dollar health and economic consequences that continue to mushroom.

President Trump has expended billions of dollars on a wall at the Mexico-U.S. border with funds not appropriated by Congress for that purpose.

President Obama, exhorted and cajoled by Secretary of State Hillary Clinton, initiated a catastrophic unconstitutional presidential war of aggression against Libya in 2011 that reduced the nation to a wilderness, spewed conventional weapons throughout North Africa and the Middle East, and occasioned a staggering migration that caused the ranks of neo-Nazis or xenophobic bigots in the European Union and the United States to swell. Mr. Obama funded the Libyan unconstitutional continuing debacle through the Offshore Contingency Operations Fund without any authorizing congressional statute or appropriated funds earmarked for that purpose.

Supreme Court Justice Louis D. Brandeis observed, "Sunlight is said to be the best of disinfectants; the electric lamp the most efficient policemen." Secrecy emboldens all the worst instincts of the human heart.

By unconstitutionally invoking state secrets, executive privilege, or simply ignoring

congressional demands, President Trump has concealed from Congress and the American people, among other things, his tax returns, efforts to obstruct the Mueller investigation, the terms of the “Afghanistan Peace Accord” with Taliban, the national security justification for assassinating Iranian general Qasem Soleimani (which moved us closer to military conflict with Iran), and the intelligence community’s evidence of Saudi Arabian Crown Prince Mohammed bin Salman’s complicity in the Jamal Khashoggi assassination. Government by the consent of the governed requires informed consent. Such consent is incompatible with presidential secrecy. John Adams instructed: “Liberty cannot be preserved without a general knowledge among the people, who have a right, from the frame of their nature, to knowledge . . . but besides this they have a right, an indisputable, unalienable, indefeasible, divine right to that most dreaded and envied kind of knowledge, I mean of the characters and conduct of their rulers.” Unconstitutional assertions of presidential secrecy did not originate with President Trump. Every president since at least World War II has attempted to shield the executive from congressional scrutiny—even in confidential executive session—despite the superior congressional history of keeping secrets.

Like his predecessors going back to the Reconstruction Finance Corporation, President Trump has been endowed with limitless legislative discretion unconstitutionally delegated by Congress. He has employed such powers opportunistically to reward political friends and punish political adversaries through trade tariffs and quotas coupled with waivers worth trillions of dollars under the Trade Expansion Act of 1962, the International Economic Emergency Powers Act of 1977, and companion surrenders of the congressional power over interstate and foreign commerce.

The examples of a monarchical presidency could be multiplied endlessly.

Congress, however, will not reclaim its constitutional authorities by spontaneous combustion. Many Members and staff are virtually clueless about the Constitution. Congress has no intellectual infrastructure to compete with the Executive Branch. House Speaker Newt Gingrich inaugurated an aggrandizement of the Speaker’s Office with steep cuts in congressional budgets. The result was a vertical plunge in the professional credentials of committee staffs and congressional offices. (At present, many senior staff are young law school graduates with little experience or knowledge of the history of congressional-executive relations.) Gingrich’s successors have embraced his inheritance to safeguard against Member challenges to the Speaker’s monopoly of power.

President Grover Cleveland’s first inaugural is our citizen inspiration:

“Every citizen owes to the country a vigilant watch and close scrutiny of its public servants and a fair and reasonable estimate of their fidelity and usefulness. Thus is the people’s will impressed upon the whole framework of our civil polity—municipal, state, and federal; and this is the price of our liberty and the inspiration of our faith in the Republic.”

Time is of the essence. Baron de Montesquieu, mentor to the Constitution’s Framers, emphasized this cardinal principle, “There can be no liberty where the legislative and executive powers are united in the same person. . . .”

# 1. WAR POWERS

## 1.1 HOUSE-SENATE CONCURRENT RESOLUTION

**To** define and to condemn an unconstitutional presidential war as an impeachable high crime and misdemeanor justifying conviction in the Senate and removal from office.

**Whereas** Article I, section 8, clause 11 of the Constitution (Declare War Clause) vests Congress with exclusive responsibility for taking the nation from a state of peace to a state of war, leaving to the President power to respond to sudden attacks against the United States that have previously broken the peace;

**Whereas** systematic United States provision of funds or other resources to materially assist the military capability of a belligerent makes the United States a co-belligerent to the conflict subject to legitimate military attack by the enemy;

**Whereas** that understanding of the Declare War Clause was universal among the Constitution's Framers;

**Whereas** President George Washington expressed the consensus view of all participants in the making of the Constitution in declaring: "The Constitution vests the power of declaring War with Congress, therefore no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject, and authorized such a measure." (33 *The Writings of George Washington* 73);

**Whereas** James Madison, father of the Constitution, explained that the President could not be trusted with the war power because of the temptation to contrive excuses for war to aggrandize executive authority: "In no part of the Constitution is more wisdom to be found, than in the clause which confides the question of war or peace to the legislature, and not to the executive department . . . [T]he trust and the temptation would be too great for any one man . . . The strongest passions and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honourable or venial love of fame, are all in conspiracy against the desire and duty of peace." (6 *The Writings of James Madison* 174 (Gallard Hunt, ed., 1900–1910));

**Whereas** wars not in self-defense in response to actual or imminent foreign aggression constitute crimes against peace according to the United States–sponsored post–World War II Nuremberg Tribunal;

**Whereas** the costs of illegal and unconstitutional presidential wars since 9/11 has soared past \$6 trillion;

**Whereas** illegal and unconstitutional presidential wars create more enemies than they extinguish;

**Whereas** illegal and unconstitutional presidential wars have been chronic for more than a century irrespective of the President’s party affiliation;

**Whereas** illegal and unconstitutional presidential wars commonly feature industrial scale violations of human rights and civil liberties, including torture during the Spanish–American War, suppression of free speech during World War I, and racist detention camps for Japanese Americans during World War II;

**Whereas** illegal and unconstitutional presidential wars divert the nation’s collective genius from production satisfying civilian needs to proficiency in killing;

**Whereas** James Madison warned that, “No nation can preserve its freedom in the midst of continual warfare.”;

**Whereas** the Constitution prohibits delegation of the war power to the President, which would defeat the purpose of the Declare War Clause as elaborated by James Wilson, delegate to the Constitutional Convention: “This system will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large.”;

**Whereas** illegal and unconstitutional presidential wars can inflict vastly more damage on lives and liberties at home and abroad than in 1787 because of the huge advances in weaponry and the birth of a multi-trillion-dollar military-industrial-security complex;

**Whereas** the Constitution’s Framers contemplated that subversions or attempted subversions of the Constitution would be treated as impeachable high crimes and misdemeanors under Article II, section 4;

**Whereas** the President’s required oath of office requires him “to preserve, protect and defend the Constitution of the United States.”;

**Whereas** the impeachment powers of Congress were intended as a civilized and measured substitute for tyrannicide; and

**Whereas** the law should warn before it strikes: Now, therefore, be it

*Resolved,*

**SECTION I. DEFINING AN ILLEGAL AND UNCONSTITUTIONAL PRESIDENTIAL WAR.** The House of Representatives (the Senate concurring), declares that for purposes of this Concurrent Resolution, an illegal and unconstitutional presidential war means (1) the President’s offensive use of the United States Armed Forces without a prior declaration of war by Congress or statutory authorization for reprisal proportionate to a foreign attack on

the United States or its citizens; or (2) the President’s systematic provision of funds or other resources to materially assist the military capability of a belligerent without a prior declaration of war by Congress.

**SECTION 2. DEFINING ILLEGAL AND UNCONSTITUTIONAL PRESIDENTIAL WARS TO BE IMPEACHABLE HIGH CRIMES AND MISDEMEANORS.** The House of Representatives (the Senate concurring) declares that a presidential war as defined in section 1 shall constitute an impeachable high crime and misdemeanor under Article II, section 4 of the Constitution. A presidential war should oblige the House to vote a corresponding article of impeachment to send to the Senate for prosecution, and for the Senate to vote for conviction of the President and removal from office.

**SECTION 3. EFFECTIVE DATE.** This Concurrent Resolution shall take effect on January 20, 2021.

## 1.2 HOUSE-SENATE BILL

To make criminal illegal and unconstitutional presidential wars.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Criminal Prohibition of Presidential Wars Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

(1) Article I, section 8, clause 11 of the Constitution (Declare War Clause) vests Congress exclusive responsibility for taking the nation from a state of peace to a state of war, leaving to the President power to respond to sudden attacks against the United States that had previously broken the peace.

(2) Systematic United States provision of funds or other resources to materially assist the military capability of a belligerent makes the United States a co-belligerent to the conflict subject to lawful military attack by the enemy.

(3) That understanding of the Declare War Clause was universal among the Constitution’s Framers.

(4) President George Washington expressed the universal view of all participants in the making of the Constitution in declaring: “The Constitution vests the power of declaring War with Congress, therefore no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject, and authorized such a measure.”



(5) James Madison, father of the Constitution, explained that the President could not be trusted with the war power because of the temptation to contrive excuses for war to aggrandize executive authority: “In no part of the Constitution is more wisdom to be found, than in the clause which confides the question of war or peace to the legislature, and not to the executive department . . . [T]he trust and the temptation would be too great for any one man . . . The strongest passions and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honorable or venial love of fame, are all in conspiracy against the desire and duty of peace.”

(6) Wars not in self-defense in response to actual or imminent foreign aggression constitute crimes against peace according to the United States–sponsored post–World War II Nuremburg Tribunal.

(7) The costs of illegal and unconstitutional presidential wars since 9/11 has soared past \$6 trillion.

(8) Illegal and unconstitutional presidential wars create more enemies than they extinguish.

(9) Illegal and unconstitutional wars have been chronic for more than a century irrespective of the party affiliation of the President.

(10) Illegal and unconstitutional presidential wars commonly entail industrial-scale violations of human rights and civil liberties, including torture during the Spanish American War, suppression of free speech during World War I, and racist detention camps for Japanese Americans during World War II.

(11) Illegal and unconstitutional presidential wars divert the nation’s collective genius from production to satisfy consumer needs to proficiency in killing.

(12) James Madison warned that, “No nation can preserve its freedom in the midst of continual warfare.”

(13) The Constitution prohibits delegation of the war power to the President, which would defeat the purpose of the Declare War Clause as elaborated by James Wilson, delegate to the Constitutional Convention and speaking at the Pennsylvania Ratification Convention: “This system will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large.”

(14) Illegal and unconstitutional presidential wars can inflict vastly more damage on lives and liberties at home and abroad than in 1787 because of stunning advances in weaponry and the birth of a multi-trillion-dollar military-industrial-security complex.

(15) The President's required oath of office requires him "to preserve, protect and defend the Constitution of the United States."

**SECTION 3. CRIMINALIZING ILLEGAL AND UNCONSTITUTIONAL PRESIDENTIAL WARS.**

Title 50 of the United States Code shall be amended by adding the following section 4624:

"An illegal and unconstitutional war conducted by the President of the United States shall constitute a felony subject to imprisonment for up to five (5) years or a fine commensurate with the human and material costs proximately caused by the violation.

**SECTION 4. DEFINING AN ILLEGAL AND UNCONSTITUTIONAL PRESIDENTIAL WAR.** The House of Representatives (the Senate concurring), declares that for purposes of this Act an illegal and unconstitutional presidential war means (1) the President's offensive use of the United States Armed Forces without a prior declaration of war by Congress or statutory authorization for reprisal proportionate to a foreign attack on the United States or its citizens; or (2) the President's systematic provision of funds or other resources to materially assist the military capability of a belligerent without a prior declaration of war by Congress.

**SECTION 5. EFFECTIVE DATE.** This Act shall take effect on January 20, 2021.

**1.3. HOUSE-SENATE BILL**

To prohibit the expenditure of any monies of the United States to support an illegal and unconstitutional presidential war.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the "Prohibition of Funding Presidential Wars Act of 2021."

**SECTION 2. FINDINGS.** Congress finds as follows:

(1) Article I, section 8, clause 11 of the Constitution (Declare War Clause) vests Congress exclusive responsibility for taking the nation from a state of peace to a state of war, leaving to the President power to respond to sudden attacks against the United States that had already broken the peace.

(2) Systematic United States provision of funds or other resources to materially assist the military capability of a belligerent makes the United States a co-belligerent to the conflict subject to lawful military attack by the enemy.

(3) That understanding of the Declare War Clause was universal among the Constitution's Framers.

(4) President George Washington expressed the universal view of all participants in the making of the Constitution in declaring: "The Constitution vests the power of declaring War with Congress, therefore no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject, and authorized such a measure."

(5) James Madison, father of the Constitution, explained that the President could not be trusted with the war power because of the temptation to contrive excuses for war to aggrandize executive authority: "In no part of the Constitution is more wisdom to be found, than in the clause which confides the question of war or peace to the legislature, and not to the executive department . . . [T]he trust and the temptation would be too great for any one man . . . The strongest passions and most dangerous weaknesses of the human breast; ambition, avarice, vanity, the honorable or venial love of fame, are all in conspiracy against the desire and duty of peace."

(6) Wars not in self-defense in response to actual or imminent foreign aggression constitute crimes against peace according to the United States sponsored post-World War II Nuremburg Tribunal.

(7) The costs of illegal and unconstitutional presidential wars since 9/11 has soared past \$6 trillion.

(8) Illegal and unconstitutional presidential wars create more enemies than they extinguish.

(9) Illegal and unconstitutional wars have been chronic for more than a century irrespective of the party affiliation of the President.

(10) Illegal and unconstitutional presidential wars commonly entail industrial-scale violations of human rights and civil liberties, including torture during the Spanish-American War, suppression of free speech during World War I, and racist detention camps for Japanese Americans during World War II.

(11) Illegal and unconstitutional presidential wars divert the nation's collective genius from production to satisfy consumer needs to proficiency in killing.

(12) James Madison warned that, "No nation can preserve its freedom in the midst of continual warfare."

(13) The Constitution prohibits delegation of the war power to the President, which would defeat the purpose of the Declare War Clause as elaborated by James Wilson,

delegate to the Constitutional Convention and speaking at the Pennsylvania Ratification Convention: “This system will not hurry us into war; it is calculated to guard against it. It will not be in the power of a single man, or a single body of men, to involve us in such distress; for the important power of declaring war is vested in the legislature at large.”

(14) Illegal and unconstitutional presidential wars can inflict vastly more damage on lives and liberties at home and abroad than in 1787 because of stunning advances in weaponry and the birth of a multi-trillion-dollar military-industrial-security complex.

(15) The President’s required oath of office requires him “to preserve, protect and defend the Constitution of the United States.”

(16) James Madison maintained in Federalist 58, “This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.”

**SECTION 3. PROHIBITION ON FUNDING ILLEGAL AND UNCONSTITUTIONAL PRESIDENTIAL WARS.** Title 50 of the United States Code shall be amended by adding the following section 4625: “No monies of the United States shall be expended to support an illegal and unconstitutional war conducted by the President of the United States.

**SECTION 4. DEFINING AN ILLEGAL AND UNCONSTITUTIONAL PRESIDENTIAL WAR.** Congress declares that for purposes of this Act an illegal and unconstitutional presidential war means (1) the President’s offensive use of the United States Armed Forces without a prior declaration of war by Congress or statutory authorization for reprisal proportionate to a foreign attack on the United States or its citizens; or (2) the President’s systematic provision of funds or other resources to materially assist the military capability of a belligerent without a prior declaration of war by Congress.

**SECTION 5. EFFECTIVE DATE.** This Act shall take effect on January 20, 2021.

## **2. ABOLISHING PRESIDENTIAL IMMUNITY FROM CRIMINAL PROSECUTION AND RE-CREATING INDEPENDENT COUNSELS**

### **2.1. HOUSE-SENATE BILL**

To abolish putative immunity of sitting Presidents from criminal indictment or prosecution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Abolition of Presidential Criminal Immunity Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

- (1) The American Revolution was fought to repudiate the doctrine that “the King can do no wrong.”
- (2) The President’s oath of office requires, among other things, that he take care that the laws be faithfully executed. Article II, sections 1 and 3.
- (3) That oath is violated if the President violates the criminal laws of the United States.
- (4) The Office of Legal Counsel (OLC), a mouthpiece of the President, has twice opined despite the glaring conflict of interest that a sitting President is immune from criminal indictment or prosecution.
- (5) The OLC opinions are unconvincing and contrary to the President’s constitutional obligation to take care that the laws be faithfully executed.
- (6) The United States Supreme Court declared in *United States v. Lee* (1882): “No man in this country is so high that he is above the law. No officer of the law may set that law at defiance with impunity. All the officers of the government, from the highest to the lowest, are creatures of the law and are bound to obey it. It is the only supreme power in our system of government, and every man who by accepting office participates in its functions is only the more strongly bound to submit to that supremacy and to observe the limitations which it imposes upon the exercise of the authority which it gives.”
- (7) Endowing sitting Presidents with immunity from criminal indictment or prosecution encourages presidential crimes and invites every man or woman to become a law unto themselves.

**SECTION 3. DENYING PRESIDENTIAL IMMUNITY.** Notwithstanding any other provision of law, a sitting President shall not be immune from criminal indictment or prosecution under the laws of the United States.

**SECTION 4. EFFECTIVE DATE.** This Act shall become effective January 20, 2021.

## 2.2 HOUSE-SENATE BILL

To establish an independent counsel to investigate and prosecute crimes in circumstances likely to compromise the President in discharging his constitutional duty to take care that the laws be faithfully executed.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Independent Counsel Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

- (1) Entrusting the Attorney General, appointed by the President with the advice and consent of the Senate, with responsibility for investigating or prosecuting crimes committed by Executive Branch colleagues violates the venerated principle that a man cannot be a judge in his own case.
- (2) History more than amply corroborates that principle, for example, Teapot Dome and Watergate.
- (3) Political contributions or spending carries a similar temptation to compromise the President’s duty to take care that the laws be faithfully executed. President William McKinley’s campaign genius and Ohio Senator Mark Hanna quipped: “There are two things that are important in politics. The first is money and I can’t remember what the second one is.”
- (4) The influence of money in politics has mushroomed since the United States Supreme Court decision in *Citizens United v. Federal Election Commission* (2010).
- (5) Unblemished character is the most important qualification for public office.
- (6) Public confidence in the evenhanded administration of justice is a cornerstone of the rule of law.
- (7) Justice requires the appearance of justice. That principle requires the appointment of independent counsels by a division of the United States Court of Appeals for the District of Columbia Circuit appointed by the Chief Justice of the United States to investigate alleged crimes in which the Department of Justice or the President may reasonably be perceived as having a conflict of interest.
- (8) Previous independent counsel statutes, 1978–1982, 1983–1988, 1988–1992, and 1994–1999, strengthened public confidence that two systems of justice do not operate in the United States: one for the rich or powerful and one for the poor or weak.

**SECTION 3. REAUTHORIZING INDEPENDENT COUNSELS.** The Independent Counsel Reauthorization Act of 1994 is hereby reenacted with the following amendments:

- (a) The **SHORT TITLE** is deleted;

(b) The persons to whom the Act applies is expanded by adding a paragraph (8) to 28 U.S.C. 591 (b) to provide: “Any person who has made \$750,000 in political contributions or expenditures in aggregate during a single calendar year to a political party or in connection with election campaigns for federal office.

**SECTION 4. EFFECTIVE DATE.** This Act shall become effective on January 20, 2021.

### **3. ABOLISHING STATE SECRETS AND EXECUTIVE PRIVILEGE**

#### 3.1 HOUSE-SENATE BILL

To abolish state secrets or executive privilege before Congress and in federal courts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Abolition of State Secrets or Executive Privilege Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

(1) State secrets or executive privilege are commonly invoked by the Executive Branch to conceal violations of the Constitution and laws of the United States, unethical and abusive behavior, or mismanagement.

(2) Supreme Court Justice Robert Jackson wrote in *United States ex rel Knauff v. Shaughnessy* (1950): “Security is like liberty in that many are the crimes committed in its name.”

(3) Among other examples, state secrets or executive privilege were wrongly invoked by the President in *New York Times v. United States* (1971) and *United States v. Reynolds* (1953) to conceal presidential lies about the Vietnam War, and government negligence in the crash of a military aircraft, respectively.

(4) In *Reynolds*, the Supreme Court blindly accepted the Executive Branch’s false assertion that an accident report contained state secrets and surrendered independent judicial judgment. That precedent has expanded at great cost to individual liberty and constitutional government.

(5) State secrets or executive privilege are not rooted in the Constitution but are creatures of presidential assertions or judicially fashioned common law under section 501 of the Federal Rules of Evidence.

(6) State secrets or executive privilege regularly occasion shocking miscarriages of justice

by denying victims of unconstitutional Executive Branch assassinations, torture, or kidnapping redress in judicial proceedings.

(7) State secrets or executive privilege thwart effective congressional oversight of the Executive Branch and the enactment of necessary laws to prevent and to punish Executive Branch lawlessness.

(8) Congress sports a superior record of protecting state secrets or confidential communications than does the Executive Branch. Both have been amply protected by taking congressional testimony in executive session or otherwise exercising congressional discretion under Article I, section 5 to keep parts of its journal secret “as may in their Judgment require.”

(9) Abolishing state secrets or executive privilege will prevent miscarriages of justice, strengthen the rule of law, and avoid disastrous Executive Branch deceptions of Congress and the American people.

(10) No credible historical evidence suggests that abolishing state secrets or executive privilege will weaken national security or the Executive Branch. In civil litigation, the Executive would still be permitted to withhold state secrets or confidential communications material to the Plaintiff’s claim, but at the price of a default judgment against the government.

**SECTION 3. ABOLITION OF STATE SECRETS AND EXECUTIVE PRIVILEGE.** Notwithstanding any other law, neither state secrets nor executive privilege shall be recognized as a justification by the Executive Branch to withhold information from Congress or federal courts.

**SECTION 4. EFFECTIVE DATE.** This Act shall become effective January 20, 2021.

## **4. PRESIDENTIAL ASSASSINATIONS**

### **4.1. HOUSE-SENATE BILL**

To prohibit and punish assassinations by Presidents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Prohibition of Assassinations by Presidents Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

(i) The history of liberty has significantly been a history of procedural safeguards against injustice.



- (2) Legitimate ends do not justify tyrannical means.
- (3) The Fifth Amendment prohibits the federal government from depriving an individual of life without due process of law.
- (4) Due process requires notice to a defendant not engaged in active war hostilities and an opportunity to be heard before the imposition of punishment, including death.
- (5) Section 2.II of Executive Order 12333 prohibits assassinations by Presidents. It originated in an earlier Executive Order by President Gerald Ford in the aftermath of hearings by the Senate Select Committee to Study Government Operations With Respect to Intelligence Activities disclosing probable presidential complicity in attempts to assassinate several foreign leaders.
- (6) The War Crimes Act of 1996 and Common Article 3 of the Geneva Conventions prohibit violence against persons not actively engaged in hostilities during times of war.
- (7) Presidential assassinations entail the President playing prosecutor, judge, jury, and executioner to kill any person on the planet based on secret, unsubstantiated suspicion that the target may threaten national security on the President's say-so alone with no review by Congress, the courts, or the American people—the very definition of tyranny according to James Madison in *Federalist 47*.
- (8) Presidential assassinations provoke blowback against Americans and undermine national security.

**SECTION 3. PROHIBITION.** The President of the United States is prohibited from killing or ordering the extrajudicial killing of any person neither participating in direct active hostilities against the United States nor an imminent threat to the physical safety or life of another. A violation of the prohibition shall be felony punishable by imprisonment for up to five (5) years.

**SECTION 4. IMPEACHABLE OFFENSE.** A violation of the prohibition in section 3 shall be treated as an impeachable high crime and misdemeanor under Article II, section 4, and should oblige the House of Representatives to vote a corresponding article of impeachment to send to the Senate for prosecution, and for the Senate to vote for conviction of the President and removal from office.

**SECTION 5. EXPENDITURES FOR ASSASSINATIONS BY PRESIDENTS.** No monies of the United States may be expended to support assassinations by Presidents.

**SECTION 6. DEFINITIONS.** Within 60 days of enactment of the Prohibition of Assassinations by Presidents Act of 2021, the President shall submit to the House of Representatives and Senate proposed rules defining “participating in direct active hostilities against the United States” and “imminent threat to the physical safety or life of another.”

**SECTION 7. REPORTING.** The President shall report within 24 hours to the Chairmen and Ranking Members of the House and Senate Judiciary Committees the circumstances and justifications for every extrajudicial killing ordered by the President except for killings on an active battlefield pursuant to a congressional declaration of war or particularized statutory authorization for the offensive use of the United States Armed Forces.

**SECTION 8. EFFECTIVE DATE.** This Act shall take effect on January 20, 2021.

## **5. PRESIDENTIAL SIGNING STATEMENTS**

### **5.1 HOUSE-SENATE BILL**

To nullify and sanction presidential signing statements.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Nullification of Presidential Signing Statements Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

- (1) Presidential signing statements issued in conjunction with acts of Congress the President has signed into law frequently state his intent to disregard one or more provisions because in the President’s view they are unconstitutional.
- (2) Presidential signing statements violate the Constitution’s separation of powers, including a duty to take care that the laws be faithfully executed in Article II, section 3.
- (3) A meticulous 2006 Report of the American Bar Association’s Task Force on Presidential Signing Statements and the Separation of Powers Doctrine endorsed President George Washington’s constitutional principle that he must either “approve all the parts of a Bill, or reject it in toto.”
- (4) Signing statements are indistinguishable from presidential line-item veto power which the United States Supreme Court invalidated in *Clinton v. New York* (1998). They disarm Congress from forcing the President to choose between no bill at all or taking the sour with the sweet contrary to the Constitution’s intent.
- (5) Prohibiting signing statements would not make the President defenseless against congressional encroachments. The President may bring or support suits challenging their constitutionality in a proper case or controversy. President Franklin Roosevelt refused to

defend the constitutionality of an appropriations bill that barred compensation to three named allegedly “subversive” Executive Branch employees in *United States v. Lovett* (1946). There, the Supreme Court held the compensation bars were unconstitutional bills of attainder.

(6) The signing statements of Presidents George W. Bush, Barack Obama, and Donald Trump have nullified hundreds of provisions of duly enacted laws with no congressional opportunity to override the *de facto* presidential vetoes.

(7) The effects of presidential signing statements are to make laws from bills that Congress never enacted according to the requirements of Article I, section 7.

**SECTION 3. NULLIFICATION OF PRESIDENTIAL SIGNING STATEMENTS.** Presidential signing statements are hereby declared to be null and void and without force or effect. They do not relieve the President of his constitutional duty to take care that all provisions of bills the President signs into law must be faithfully executed.

**SECTION 4. IMPEACHABLE OFFENSE.** A presidential signing statement shall be deemed an impeachable high crime and misdemeanor under Article II, section 4 for violating the Constitution’s separation of powers and presidential duty to take care that the laws be faithfully executed, which should oblige the House of Representatives to vote an article of impeachment to send to the Senate for trial, and should oblige the Senate to vote for conviction and removal from office.

**SECTION 5. DEFINITION OF SIGNING STATEMENT.** For purposes of this Act a presidential signing statements means a statement that the President intends to disregard provisions of bills he has signed into law under Article I, section 7 because he believes they are unconstitutional or otherwise.

**SECTION 6. EFFECTIVE DATE.** This Act shall become effective January 20, 2021.

## **6. EXECUTIVE ORDERS AND EXECUTIVE AGREEMENTS**

### **6.1 HOUSE-SENATE BILL**

To prohibit executive orders or executive agreements except to implement duly enacted statutes or duly ratified treaties.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Prohibition of Executive Orders or Executive Agreements Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

- (1) Article I, section 1 of the Constitution provides that, “*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” (Italics added).
- (2) Edward Gibbon warned in *The Decline and Fall of the Roman Empire* that, “The principles of a free constitution are irrevocably lost, when the legislative power is nominated by the executive.”
- (3) Baron de Montesquieu, who was mentor to the Constitution’s Framers, taught that, “There can be no liberty where the legislative and executive powers are united in the same person.”
- (4) Compared with the Executive Branch, Congress is more accessible to ordinary citizens. Its proceedings are more transparent. It represents more of a cross-section of the American people which encourages compromise and moderation, in contrast to the monolithic sprawling Executive which catalyzes unilateral extremism often in complete secrecy.
- (5) Executive Orders divorced from the implementation of duly enacted legislation violate the Constitution’s separation of powers unless justified by an express or implied constitutional power of the President.
- (6) Since at least World War II, Executive Orders have been commonly issued by the President to circumvent the legislative responsibilities of Congress conferred by Article I, section 1.
- (7) Article II, section 2, clause 2 (Treaty Clause) provides that the President “shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senate present concur . . . .”
- (8) A “treaty” is a written international agreement among sovereign states.
- (9) Alexander Hamilton amplified in *Federalist 75*: “[Treaties] are not rules prescribed by the sovereign to the subject, but agreements between sovereign and sovereign. The power in question seems therefore to form a distinct department, and to belong, properly, neither to the legislative nor to the executive.”
- (10) International initiatives to protect migratory birds have been concluded as treaties, for example, the 1916 Migratory Bird Treaty.
- (11) Arms control agreements have been ratified by the Senate, for example, the

Washington Naval Treaty of 1922; the Strategic Arms Limitation Treaty of 1972, and the Intermediate-Range Nuclear Forces Treaty of 1987.

(12) The Treaty Clause requires ratification by a two-thirds Senate majority because the President may readily abandon the national interest for personal ambitions in international affairs.

(13) Mr. Hamilton explained in *Federalist 75*: “However proper or safe it may be in governments where the executive magistrate is an hereditary monarch, to commit to him the entire power of making treaties, it would be utterly unsafe and improper to entrust that power to an elective magistrate of four years’ duration . . . The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.”

(14) Since the 1920 Senate defeat of the Treaty of Versailles, Presidents have commonly resorted to Executive Agreements in lieu of treaties to circumvent the Treaty Clause requirement of Senate ratification by a two-thirds majority; or, transformed treaties into legislative agreements to avoid a two-thirds Senate majority requirement, as with entry into the World Trade Organization pursuant to 19 U.S.C. 3511.

(15) Executive Agreements violate the Constitution’s separation of powers unless invoked to implement a duly enacted statute, a duly ratified treaty, or an express or implied constitutional power of the President.

**SECTION 3. PROHIBITION OF EXECUTIVE ORDERS OR EXECUTIVE AGREEMENTS.** Executive Orders or Executive Agreements are hereby prohibited except to implement a duly enacted statute or a duly ratified treaty.

**SECTION 4. IMPEACHABLE OFFENSE.** A violation of section 3 by the President shall constitute an impeachable high crime and misdemeanor for purposes of Article II, section 4 of the Constitution of the United States, which should oblige the House of Representatives to vote an article of impeachment to send to the Senate for trial, and for the Senate to vote for conviction of the offender and removal from office.

**SECTION 5. REPORTING.** The President shall transmit to the Chairman and Ranking Member of the House and Senate Judiciary Committees copies of every Executive Order or Executive Agreement within 24 hours of their issuance together including a written justification of their legality under this Act.

**SECTION 6. EFFECTIVE DATE.** This Act shall take effect on January 20, 2021.

## 7. ENFORCING THE FOURTH AMENDMENT RIGHT TO BE LET ALONE FROM DRAGNET GOVERNMENT SURVEILLANCE

### 7.1 HOUSE-SENATE BILL

To enforce the Fourth Amendment right to be let alone from government surveillance.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Right to be Let Alone Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

- (1) The right to be let alone from government surveillance is the most cherished right among civilized people.
- (2) The American Revolution was ignited by British Writs of Assistance which trampled on the right to be let alone.
- (3) William Pitt the Elder’s electrifying 1763 address to the British Parliament thundered like a hammer on an anvil throughout the American colonies: “The poorest man may in his cottage bid defiance to all the forces of the Crown. It may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter; but the King of England cannot enter—all his force dares not cross the threshold of the ruined tenement!”
- (4) United States Supreme Court Justice Louis Brandeis lectured in *Olmstead v. United States* (1928): “The makers of our Constitution undertook to secure conditions favorable to the pursuit of happiness. They recognized the significance of man’s spiritual nature, of his feelings, and of his intellect. They knew that only a part of the pain, pleasure and satisfactions of life are to be found in material things. They sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations. They conferred, as against the Government, the right to be let alone—the most comprehensive of rights, and the right most valued by civilized men.”
- (5) The Fourth Amendment generally prohibits government encroachments on the right to be left alone absent a warrant issued by a neutral magistrate based on probable cause to believe the target is complicit in crime.
- (6) Surveillance of Americans to collect foreign intelligence without a criminal nexus is without justification under the Fourth Amendment and is superfluous to national security. Long years of experience with the Foreign Intelligence Surveillance Act is corroborative.

The Act inspires fear of government retaliation for peaceful dissent and induces citizen docility inimical to liberty.

**SECTION 3. CRIMINAL PROHIBITION ON FOREIGN INTELLIGENCE SURVEILLANCE OF AMERICAN CITIZENS.** Notwithstanding any other provision of law, targeting an American citizen or permanent resident alien to collect foreign intelligence without a nexus to a federal crime under color of law is prohibited. A violation of the prohibition shall be a felony punishable by up to five (5) years imprisonment.

**SECTION 4. IMPEACHABLE OFFENSE.** A violation of section 3 shall be deemed an impeachable high crime and misdemeanor under Article II, section 4 of the United States Constitution, and should oblige the House of Representatives to vote a corresponding article of impeachment to send to the Senate for prosecution, and for the Senate to vote for conviction of the offender and removal from office.

**SECTION 5. EFFECTIVE DATE.** This Act shall become effective January 20, 2021.

## **8. STRENGTHENING CONGRESS**

### **8.1 HOUSE RESOLUTION**

To establish a standing House Committee on Impeachment.

Now, therefore, be it Resolved by the House of Representatives,

Rule X of the House of Representatives shall be amended to establish an eleven member standing Committee on Impeachment, no more than seven of which shall be from the same political party. The Committee shall possess the same investigatory powers of sister standing committees. The Committee's jurisdiction shall extend to the investigation and prosecution of impeachable offenses pursuant to Article II, section 4 of the Constitution, and to proposing resolutions establishing an inexhaustive list of particularized impeachable offenses.

### **8.2 HOUSE-SENATE CONCURRENT RESOLUTION**

To establish defiance of a congressional subpoena for testimony or documents by the President, Vice President, or other officer of the United States as an impeachable high crime and misdemeanor within the meaning of Article II, section 4 of the United States Constitution.

**Whereas** the congressional power to investigate and oversee the Executive Branch is a cornerstone of separation of powers and necessary to expose and deter executive lawlessness, corruption, fraud, waste, and other serious abuses;

**Whereas** United States. Supreme Court Justice Louis Brandeis famously observed: “Sunlight is said to be the best of disinfectants; the electric light the most efficient policeman.”;

**Whereas** due process requires that the law warn before it strikes;

**Whereas** the House of Representatives has voted articles of impeachment against three Presidents, one Cabinet officer, one Senator, one Supreme Court Justice, and fourteen subordinate federal judges without clarifying the meaning of “high crimes and misdemeanors” to give fair warning to the President, Vice President, and other civil officers of the United States;

**Whereas** the congressional power of oversight is the power preservative of all other congressional authorities;

**Whereas** the congressional powers of investigation or oversight of the Executive Branch are disabled without documents and testimonies from Executive Branch officials;

**Whereas** United States misadventures in foreign policy or national security have been chronically fueled or precipitated by Executive Branch secrecy or deceit;

**Whereas** the House Judiciary Committee voted an article of impeachment against President Richard M. Nixon for failing to produce documents and things demanded by duly authorized Committee subpoenas pursuant to the sole power of impeachment vested by the Constitution in the House of Representatives;

**Whereas** in pursuit of any legitimate legislative objective, Congress is authorized to investigate and to oversee the Executive Branch and to impose sanctions for contempt of its processes as affirmed by the decision of the United States Supreme Court in *Anderson v. Dunn* (1821) and its progeny;

**Whereas** the United States Supreme Court elaborated in *McGrain v. Daugherty* (1927), “A legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change . . . Experience has taught that mere requests for such information often are unavailing, and also that information which is volunteered is not always accurate or complete; so some means of compulsion are essential to obtain that which is needed. All this was true before and when the Constitution was framed and adopted . . . [T]here is ample warrant for thinking, as we do, that the constitutional provisions which commit the legislative function to the two houses are intended to include this attribute to the end that the function may be effectively exercised.”;

**Whereas** legitimate congressional objectives include determinations of whether laws have been violated, whether they have been properly enforced, whether new laws are needed, or whether funds should be appropriated or withheld;



**Whereas** Congress is endowed with plenary constitutional authority to determine whether defiance of a congressional subpoena by the President, Vice President, or other officer of the United States constitutes an impeachable high crime and misdemeanor without a court adjudication of any claimed executive privilege, state secrets, or other defense;

**Whereas** Congress possesses all the contempt powers of Article III courts;

**Whereas** Presidents Thomas Jefferson and Abraham Lincoln recognized that each branch of government has independent authority to interpret the Constitution within their respective spheres of power;

**Whereas** the United States Supreme Court has never opined on whether executive privilege or state secrets may be invoked to arrest the congressional power of investigation;

**Whereas** in *United States v. Nixon*, 418 U.S. 683 (1974), the Court subordinated executive privilege to the needs of a single criminal prosecution;

**Whereas** the importance of congressional oversight to our constitutional dispensation and separation of powers is orders of magnitude greater than prosecution of a single criminal case;

**Whereas** the *Nixon* tapes precedent suggests that executive privilege is subservient to legislative oversight of the Executive Branch;

**Whereas** the House Judiciary Committee in 1974 voted an article of impeachment against President Richard Nixon for defiance of a single House subpoena that had not been approved by any federal court; and

**Whereas** the absence of a specific definition of an impeachable high crime and misdemeanor invites the appearance or actuality of partisan exercises of the impeachment power which subverts its legitimacy and deters its use: Now, therefore, be it

Resolved,

**SECTION I. DEFINING DEFIANCE OF A CONGRESSIONAL SUBPOENAS BY THE PRESIDENT, VICE PRESIDENT OR OTHER OFFICER OF THE UNITED STATES AS AN IMPEACHABLE HIGH CRIME AND MISDEMEANOR.**

The House of Representatives (the Senate concurring) declares that disobedience to a congressional subpoena for testimony or documents in pursuit of a stated, legitimate legislative function by the President, Vice President, or other civil officers of the United States shall constitute an impeachable high crime and misdemeanor for purposes of Article II, section 4 of the Constitution of the United States, which disobedience should oblige the House to vote an

article of impeachment to send to the Senate for trial, and for the Senate to vote for conviction of the offender and removal from office.

This Concurrent Resolution shall take effect January 20, 2021.

### 8.3 HOUSE-SENATE BILL

To authorize congressional access to grand jury proceedings.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Access to Federal Grand Jury Information Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

- (1) The congressional power of investigation and oversight is a cornerstone of separation of powers and the rule of law.
- (2) Federal grand jury information is frequently relevant to legitimate legislative purposes.
- (3) The lack of routine congressional access to grand jury information under Rule 6 (E) of the Federal Rules of Criminal Procedure substantially weakens the oversight and investigatory powers of Congress.

**SECTION 3. CONGRESSIONAL ACCESS TO GRAND JURY INFORMATION.** Rule 6 of the Federal Rules of Criminal Procedure is amended by adding the following subsection (H) “The court shall grant access to grand jury matters requested by a committee of Congress to advance a legitimate legislative purpose.

**SECTION 4. EFFECTIVE DATE.** This Act shall become effective January 20, 2021.

### 8.4. HOUSE-SENATE BILL

To fortify compliance with the Appointments Clause for principal officers of the United States, Article II, section 2, clause 2.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Compliance with the Appointments Clause Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

- (1) Article II, section 2, clause 2 of the Constitution requires the appointments of “[principal] officers of the United States “with the advice and consent of the Senate.
- (2) The sole constitutional exception to the advice and consent requirement is for “vacancies that may happen during the recess of the Senate as stipulated in Article II, section 2, clause 3.
- (3) A “principal officer” includes any officer exercising “significant authority under laws of the United States” as declared in *Buckley v. Valeo* (1976).
- (4) The purpose of Senate confirmation of principal officers was explained by Alexander Hamilton in *Federalist 76*: “It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration.”
- (5) Mr. Hamilton also amplified the evils to be expected from appointments by the President alone: “It will readily be comprehended, that a man who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire branch of the legislature. The possibility of rejection would be a strong motive to care in proposing . . . He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure.”
- (6) The Appointments Clause is circumvented if the President is permitted unilaterally to appoint an “acting” principal officer to exercise the same powers of a principal officer confirmed by the Senate.
- (7) The Appointments Clause is also circumvented by unilateral presidential appointments of White House advisers who exercise equal if not greater authority than Cabinet officials, for example, the National Security Advisor, White House Counsel, or White House “Czars” authorized to superintend various executive departments or agencies.
- (8) Violations of the Appointments Clause substantially degrade the competence and loyalty to the Constitution expected of principal officers of the United States.

(9) The Federal Vacancies Act of 1988 is unconstitutional insofar as it authorizes the President temporarily to appoint principal officers of the United States without the advice and consent of the Senate.

(10) Supreme Court Justice Clarence Thomas in *NLRB v. SW Gen., Inc.*, 137 S. Ct. 929, 946 (2017) (concurring) remarked: “The [Vacancies Act] authorizes the President to appoint both inferior and principal officers without first obtaining the advice and consent of the Senate. Appointing inferior officers in this manner raises no constitutional problems. . . . Appointing principal officers under the [Vacancies Act], however, raises grave constitutional concerns because the Appointments Clause forbids the President to appoint principal officers without the advice and consent of the Senate.”

**SECTION 3. PROHIBITION ON EXPENDITURES.** No monies of the United States shall be expended to compensate persons exercising the powers of a principal officer of the United States in an acting capacity or otherwise unless they have been confirmed by the Senate for that same principal office.

**SECTION 4. IMPEACHABLE OFFENSE.** Appointing a principal officer of the United States or serving as a principal officer of the United States without the advice and consent of the Senate shall be deemed an impeachable high crime and misdemeanor under Article II, section 4, which should oblige the House of Representatives to vote an article of impeachment to send to the Senate for trial, and should oblige the Senate to vote for conviction and removal from office.

**SECTION 5. DEFINITION.** For purposes of section 3, a “principal officer” includes any officer who, *de jure* or *de facto*, exercises significant authority under the Constitution or laws of the United States.

**SECTION 6. REPEAL OF FEDERAL VACANCIES ACT OF 1988.** The Federal Vacancies Act of 1988 is hereby repealed to the extent it authorizes the President temporarily to appoint principal officers of the United States without the advice and consent of the Senate.

**SECTION 7. EFFECTIVE DATE.** This Act shall become effective January 20, 2021.

## 8.5. HOUSE-SENATE BILL

To require the National Security Advisor and White House Counsel to be appointed with the advice and consent of the Senate.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “National Security Advisor and White House Counsel Confirmation Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

- (1) Article II, section 2, clause 2 of the Constitution requires the appointments of “[principal] officers of the United States “with the advice and consent of the Senate.
- (2) The sole constitutional exception to the advice and consent requirement is for “vacancies that may happen during the recess of the Senate as stipulated in Article II, section 2, clause 3.
- (3) A “principal officer” includes any officer exercising “significant authority under laws of the United States” as declared in *Buckley v. Valeo* (1976).
- (4) The purpose of Senate confirmation of principal officers was explained by Alexander Hamilton in *Federalist 76*: “It would be an excellent check upon a spirit of favoritism in the President, and would tend greatly to prevent the appointment of unfit characters from State prejudice, from family connection, from personal attachment, or from a view to popularity. In addition to this, it would be an efficacious source of stability in the administration.
- (5) Mr. Hamilton also amplified the evils to be expected from appointments by the President alone: “It will readily be comprehended, that a man who had himself the sole disposition of offices, would be governed much more by his private inclinations and interests, than when he was bound to submit the propriety of his choice to the discussion and determination of a different and independent body, and that body an entire branch of the legislature. The possibility of rejection would be a strong motive to care in proposing . . . He would be both ashamed and afraid to bring forward, for the most distinguished or lucrative stations, candidates who had no other merit than that of coming from the same State to which he particularly belonged, or of being in some way or other personally allied to him, or of possessing the necessary insignificance and pliancy to render them the obsequious instruments of his pleasure.”
- (6) The Appointments Clause is circumvented if the President is permitted unilaterally to appoint an “acting” principal officer to exercise the same powers of a principal officer confirmed by the Senate would exercise;
- (7) The Appointments Clause is also circumvented by unilateral presidential appointments of White House advisors who exercise equal if not greater authority than Cabinet officials, for example, the National Security Advisor, White House Counsel, or White House “Czars” authorized to superintend various executive departments or agencies.
- (8) Violations of the Appointments Clause substantially degrade the competence and loyalty to the Constitution expected of principal officers of the United States.

(9) Supreme Court Justice Clarence Thomas in *NLRB v. SW Gen., Inc.*, 137 S. Ct. 929, 946 (2017) (concurring) remarked: “The [Vacancies Act] authorizes the President to appoint both inferior and principal officers without first obtaining the advice and consent of the Senate. Appointing inferior officers in this manner raises no constitutional problems. . . . Appointing principal officers under the [Vacancies Act], however, raises grave constitutional concerns because the Appointments Clause forbids the President to appoint principal officers without the advice and consent of the Senate.”

(10) The National Security Advisor exercises equal or greater powers than does the Secretary of State or Secretary of Defense, who are principal officers requiring Senate confirmation under the Appointments Clause.

(11) National Security Advisor Zbigniew Brezezinski was elevated to Cabinet status under President Jimmy Carter.

(12) National Security Advisor Henry Kissinger served simultaneously as Secretary of State under President Richard Nixon.

(13) The White House Counsel exercises equal if not more authority under the Constitution and laws than does the Attorney General, who is a principal officer requiring appointment with the advice and consent of the Senate. Examples include White House Counsel John Dean under President Nixon and White House Counsel C. Boyden Gray under President George H.W. Bush.

**SECTION 3. SENATE CONFIRMATION OF NATIONAL SECURITY ADVISOR.** The President’s National Security Advisor shall be appointed with the advice and consent of the Senate.

**SECTION 4. SENATE CONFIRMATION OF WHITE HOUSE COUNSEL.** The President’s White House Counsel shall be appointed with the advice and consent of the Senate.

**SECTION 5. EFFECTIVE DATE.** This Act shall become effective January 20, 2021.

## 8.6 HOUSE RULES FOR THE 117<sup>TH</sup> CONGRESS

To establish a House Rule to prohibit wholesale delegations of legislative responsibilities over policymaking to the Executive Branch.

### **FINDINGS.**

(1) Article I, section 1 of the Constitution provides that, “*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.” (Italics added)

(2) Edward Gibbon warned in *The Decline and Fall of the Roman Empire* that, “The principles of a free constitution are irrevocably lost, when the legislative power is nominated by the executive.”

(3) Baron de Montesquieu, who was mentor to the Constitution’s Framers, taught that, “There can be no liberty where the legislative and executive powers are united in the same person.”

(4) Compared with the Executive Branch, Congress is more accessible by ordinary citizens. Its proceedings are more transparent. It represents more of a cross-section of the American people which encourages compromise and moderation, in contrast to the monolithic sprawling Executive which catalyzes unilateral extremism.

(5) To evade their constitutional responsibilities in hopes of bolstering their re-election prospects, Members of Congress for a century have regularly and unconstitutionally delegated their responsibility for legislation to the Executive Branch.

(6) By neglecting to establish sharp and articulable statutory standards, Congress has surrendered legislative policy decisions to the Executive Branch by endowing it with limitless discretion in promulgating legislative rules.

(7) At present, executive agencies promulgate annually more than 20 legislative rules for every statute enacted by Congress.

(8) At present, legislative rules promulgated by executive agencies affect the health, safety, and welfare of the American people often more than do the statutory enactments of Congress contrary to the Constitution’s design.

(9) Congress is constitutionally prohibited from voluntarily surrendering its responsibility for legislation to the Executive Branch.

*Now, therefore, be it Resolved by the House of Representatives that,*

Rule 1. Question of Privileges of the House. A motion objecting to a bill on the ground that it delegates wholesale legislative responsibilities for policymaking to the Executive Branch in violation of the Constitution’s separation of powers shall be treated as a question of House privilege and shall have precedence over all other questions except motions to adjourn.

## 8.7 HOUSE-SENATE BILL

To establish a two-chamber legislative veto over major rules of Executive Branch agencies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Legislative Veto Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

(1) A legislative veto power by Congress over major executive agency rules is necessary to check bureaucratic excess, injustice, or capitulation to special interests.

(2) Compared with the Executive Branch, Congress is more accessible to ordinary citizens. Its proceedings are more transparent. It represents more of a cross-section of the American people which encourages compromise and moderation, in contrast to the monolithic sprawling Executive which catalyzes unilateral extremism.

(3) The United States Supreme Court in *INS v. Chadha* (1983) mistakenly held that legislative vetoes violate the Presentment Clause of the Constitution, Article I, section 7 clause 2.

(4) Justice Byron White correctly remarked in dissent in *Chadha*: “The prominence of the legislative veto mechanism in our contemporary political system and its importance to Congress can hardly be overstated. It has become a central means by which Congress secures the accountability of executive and independent agencies. Without the legislative veto, Congress is faced with a Hobson’s choice: either to refrain from delegating the necessary authority, leaving itself with a hopeless task of writing laws with the requisite specificity to cover endless special circumstances across the entire policy landscape, or, in the alternative, to abdicate its lawmaking function to the Executive Branch and independent agencies. To choose the former leaves major national problems unresolved; to opt for the latter risks unaccountable policymaking by those not elected to fill that role.”

(5) The United States Supreme Court has overruled more than 200 precedents. Justice Louis Brandeis elaborated in *Burnet v. Coronado Oil & Gas Co.* (1932) (dissenting): Stare decisis is not, like the rule of res judicata, universal inexorable command . . . Whether it shall be followed or departed from is a question entirely within the discretion of the court, which is again called upon to consider a question once decided . . . [I]n cases involving the Federal Constitution, where correction through legislative action is practically impossible, this court has often overruled its earlier decisions. The court bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function. (Footnotes omitted)

(6) Executive agencies promulgate legislative rules at a rate 20 times the rate that Congress enacts statutes.

**SECTION 3. ESTABLISHING A TWO-CHAMBER LEGISLATIVE VETO OVER MAJOR EXECUTIVE AGENCY RULES.** A major executive agency rule promulgated under the Administrative Procedure Act or otherwise shall cease to have of any force or effect if three-



fifths of the House of Representatives and Senate votes to disapprove the rule by concurrent resolution

**SECTION 4. DEFINITION OF MAJOR EXECUTIVE AGENCY RULE.** For purposes of this Act, an executive agency rule means a rule whose projected impact exceeds \$100 million as regards health, safety, welfare, consumer protection, civil liberties, the economy or otherwise.

**SECTION 5. EFFECTIVE DATE.** This Act shall become effective January 20, 2021.

## 8.8 HOUSE-SENATE CONCURRENT RESOLUTION

To require two-thirds of the Senate to consent to the revocation of treaties by the President.

**SECTION I. FINDINGS.** Congress finds as follows:

(1) Article II, section 2, clause 2 (Treaty Clause) provides that the President “shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senate present concur . . . .”

(2) A “treaty” is a written international agreement among sovereign states.

(3) Alexander Hamilton amplified in *Federalist 75*: “[Treaties] are not rules prescribed by the sovereign to the subject, but agreements between sovereign and sovereign. The power in question seems therefore to form a distinct department, and to belong, properly, neither to the legislative nor to the executive.”

(4) The Treaty Clause requires ratification by a two-thirds Senate majority because the President may readily abandon the national interest for personal ambitions in international affairs.

(5) Mr. Hamilton explained in *Federalist 75*: “However proper or safe it may be in governments where the executive magistrate is an hereditary monarch, to commit to him the entire power of making treaties, it would be utterly unsafe and improper to entrust that power to an elective magistrate of four years’ duration . . . The history of human conduct does not warrant that exalted opinion of human virtue which would make it wise in a nation to commit interests of so delicate and momentous a kind, as those which concern its intercourse with the rest of the world, to the sole disposal of a magistrate created and circumstanced as would be a President of the United States.”

(6) The reasons Mr. Hamilton elaborated to require Senate ratification of treaties apply equally to decisions of the President that would revoke treaties, i.e., that the President would be tempted to abandon the national interest to his personal financial or partisan political interests.

(7) The United States Supreme Court concluded in *Goldwater v. Carter* (1979) in the context of President Jimmy Carter’s revocation of the Taiwan Defense Treaty that whether Senate or congressional consent was required presented a non-justiciable political question.

**SECTION 2. IMPEACHABLE OFFENSE.** The revocation of a treaty by the President without the consent of two-thirds of the Senators present shall be treated as an impeachable high crime and misdemeanor under Article II, section 4, which should obligate the House of Representatives to vote a corresponding article of impeachment to send to the Senate for prosecution, and should obligate for the Senate to vote for conviction of the President and removal from office.

**SECTION 3. EFFECTIVE DATE.** This resolution shall take effect on January 20, 2021.

### 8.9 HOUSE-SENATE BILL

To make the National Security Agency accountable to Congress by legislation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “National Security Agency Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

- (1) The National Security Agency was created within the Department of Defense on November 4, 1952, through a classified letter from President Harry Truman to the Secretary of State and the Secretary of Defense.
- (2) The powers of the Agency are established exclusively by executive decree.
- (3) At present, almost 70 years later, there remains no express or implied statutory authorization for the National Security Agency or statutory enumeration or limitation of its powers.
- (4) The absence of statutory constraints on the activities of the National Security Agency or aggressive congressional oversight have given birth to chronic serious intelligence abuses that invade the rights of Americans to be let alone absent reasonably suspected complicity in crime as determined by a neutral magistrate.
- (5) The Senate Select Committee to Study Government Operations with Respect to Intelligence Activities (“Church Committee”), among other things, disclosed National Security Agency wrongdoing in operation SHAMROCK (interceptions of international

telegrams sent by Americans) and operation MINARET (interception of international communications of Americans for domestic law enforcement purposes).

(6) Post-9/11 Agency abuses or illegalities have been disclosed by Thomas Tamm and Edward Snowden, among others, revealing dragnet Agency surveillance of American citizens without statutory or constitutional authority.

(7) The limitless powers of the Agency to collect intelligence conferred by Executive Order 12333 pursuant to executive authority alone undermines national security by compounding manifold the difficulty of identifying credible international terrorism threats from a staggering volume of innocent or innocuous chatter.

(8) The classified budget of the Agency approximates \$25 billion annually according to best estimates.

(9) The classified number of Agency employees approximates 30,000 to 40,000 according to best estimates.

**SECTION 3. PROHIBITION ON FUNDING THE NATIONAL SECURITY AGENCY.** No funds of the United States may be expended by the National Security Agency until and unless Congress enacts a legislature charter that enumerates and limits its surveillance powers.

**SECTION 4. EFFECTIVE DATE.** This Act shall become effective January 20, 2021.

#### 8.10 HOUSE-SENATE BILL

To prohibit the Executive Branch from diverting funds away from the United States Treasury.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Prohibition on Expending Unappropriated Funds Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

(1) The Executive Branch collects annually billions of dollars from tariffs, fines, settlements, forfeitures, consent decrees, or otherwise.

(2) The Miscellaneous Receipts Act of 1849, 31 U.S.C. 3302 (b) generally requires that “an official or agent of the Government receiving money for the Government from any source shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.”

(3) Congress has enacted statutory exceptions to the Act, which undermines its cornerstone power of the purse.

(4) James Madison explained in Federalist 58: “This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.”

(5) The Executive Branch frequently circumvents the Miscellaneous Receipts Act by declining to receive money in civil settlements or otherwise in lieu of directing a private party to expend funds as directed by the federal government.

**SECTION 3. REPEAL OF STATUTORY EXCEPTIONS.** All statutory exceptions to the Miscellaneous Receipts Act are hereby repealed.

**SECTION 4. NON-CIRCUMVENTION.** Executive Branch decisions or actions intended to circumvent the Miscellaneous Receipts Act by directing private parties to expend funds to advance a government objective in lieu of the Executive Branch’s receipt of the funds shall be deemed a violation of the Act and of no legal force or effect.

**SECTION 5. EFFECTIVE DATE.** This Act shall become effective on January 20, 2021.

#### 8.11 HOUSE RULES FOR THE 117<sup>TH</sup> CONGRESS

To establish a House Rule to prohibit voting on appropriations bills without prior duly enacted legislative authorizations to expend the sums to be appropriated.

#### **FINDINGS.**

(1) A venerated congressional tradition prohibits the appropriation of monies that have not been previously authorized by statute.

(2) This tradition restrained profligate spending by requiring dual committee scrutiny of expenditures.

(3) The national debt has soared past \$26 trillion and annual federal spending has spiked to \$5 trillion in part because Congress has increasingly abandoned the venerated tradition of no appropriations without a prior authorization.

(4) The probability of unjustified appropriations jumps manifold without a prior authorizing statute: Now, therefore, be it

*Resolved by the House of Representatives that—*

Rule 1. No vote on an appropriations bill is in order unless the sums involved have been authorized by a previous statute.

Rule 2. Question of Privileges of the House. A motion objecting to an appropriations bill on the ground that the sums involved have not previously been authorized by statute shall be treated as a question of House privilege and shall have precedence over all other questions except motions to adjourn.

## 8.12 HOUSE-SENATE CONCURRENT RESOLUTION

To make violations of the Appropriations Clause, Article I, section 9, clause 7, or the Anti-Deficiency Act impeachable high crimes and misdemeanors.

**Whereas** James Madison, father of the Constitution, touted the congressional power of the purse enshrined in Article I, section 9, clause 7, as a cornerstone against executive tyranny or abuses in *Federalist 58*: “This power over the purse may, in fact, be regarded as the most complete and effectual weapon with which any constitution can arm the immediate representatives of the people, for obtaining a redress of every grievance, and for carrying into effect every just and salutary measure.”;

**Whereas** the power of the purse was invoked to terminate the unconstitutional misbegotten Vietnam War in Section 307 of Public Law 93-50; and

**Whereas** the Anti-Deficiency Act, 31 U.S.C. 1341 (a) protects the congressional power of the purse.

*Now, therefore, be it Resolved by the House of Representatives (the Senate concurring)*

**SECTION 1. DEFINING EXPENDITURES OF FUNDS NOT DULY AUTHORIZED AND APPROPRIATED BY CONGRESS OR CRIMINAL VIOLATIONS OF THE ANTI-DEFICENCY ACT AS IMPEACHABLE HIGH CRIMES AND MISDEMEANORS.** The House of Representatives (the Senate concurring), declares that any Executive Branch officer who authorizes the expenditure funds or expends funds of the United States not duly authorized and appropriated for the purpose of the expenditure, or who has committed a criminal violation of the Anti-Deficiency Act, 31 U.S.C. 1350, shall be deemed to have committed an impeachable high crimes and misdemeanor under Article II, section 4, which should obligate the House of Representatives to vote a corresponding article of impeachment to send to the Senate for prosecution, and should obligate for the Senate to vote for conviction of the offender and removal from office.

**SECTION 2. EFFECTIVE DATE.** This concurrent resolution shall become effective on January 20, 2021.

## 8.13 HOUSE-SENATE RESOLUTION

To strengthen the Emoluments Clauses of the Constitution.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Strengthening of the Foreign and Domestic Emoluments Clauses Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

(1) The purpose of the Foreign and Domestic Emoluments Clauses of the Constitution, Article I, section 9, clause 8, and Article 2, section 1 clause 7, is to prevent foreign or state governments or officials from exercising undue influence over the President by providing financial favors.

(2) To effectuate the letter and spirit of the Emoluments Clauses, the President should place all non-personal assets in a blind trust to avoid the temptation to make official decisions in whole or in part for self-enrichment.

(3) The salary, fringe, and pension benefits of a President are more than ample to enable a life of dignity and comfort.

**SECTION 3. STRENGTHENING OF FOREIGN AND DOMESTIC EMOLUMENTS CLAUSES.**

The President of the United States shall place all non-personal assets in a blind trust commencing on the date of inauguration and terminating on the date the President leaves office.

**SECTION 4. CIVIL PENALTY.** A civil penalty of \$10,000 shall be imposed on the President for each day of violation of section 3.

**SECTION 5. SUPPLEMENTATION OF THE FOREIGN AND DOMESTIC EMOLUMENTS CLAUSES.** This Act does not affect the constitutional prohibitions of the Foreign and Domestic Emoluments Clauses, Article I, section 9, clause 8 and Article II, section 1, clause 7, or constitutional remedies for their violations.

**SECTION 6. EFFECTIVE DATE.** This Act shall take effect January 20, 2021.

## 8.14. HOUSE RESOLUTION

To prohibit assigning Members of Congress to Committees or Chairmanships based in whole

in part by fund raising for the Democratic Congressional Campaign Committee or Republican Congressional Campaign Committee.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Prohibition of Congressional Extortion Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

(1) House Committees are now divided into tiers based on the opportunities they provide Members to raise funds from the industries and individuals with business before those same Committees.

(2) Committee chairs and assignments by House leadership are now based in whole or in part by a Member’s fundraising for the Democratic Congressional Campaign Committee (DCCC) or the Republican Congressional Campaign Committee (RCCC).

(3) Chairs or Members of premier Committees such as Appropriations, Financial Services, and Ways and Means are each expected to raise hundreds of thousands of dollars or more for the DCCC and RCCC, respectively.

(4) Making Committee chairmanships or assignments based on fund raising for the DCCC or RCCC is indistinguishable from extortion, endows House leadership with undue influence over the rank and file, and artificially inflates the power of special interests that fuel crony capitalism.

**SECTION 3. FUND RAISING PROHIBITION.** Assigning Committee chairmanships or memberships based in whole or in part on a Member’s fund raising for the Democratic Congressional Campaign Committee or Republican Congressional Campaign Committee is prohibited. A violation of the prohibition shall be punished as a felony with imprisonment for up to five (5) years.

**SECTION 4. NON-CIRCUMVENTION.** Any fund-raising requirement intended to circumvent the prohibition of section 3 shall be punished as a violation.

**SECTION 5. EFFECTIVE DATE.** This Act shall become effective on January 3, 2021.

**8.15 SENATE JUDICIARY COMMITTEE RULE  
AMENDMENT CONCERNING JUDICIAL NOMINEES**

Rule 1. Hearings on judicial nominees shall be held during regular sessions not during a

recess. Before a Committee vote on a nominee, all written questions submitted by Committee Members shall be answered and returned by the nominee to the Committee. All hearings shall be transcribed and will be made readily available both in print and online.

## 9. JUDICIAL ENFORCEMENT OF THE CONSTITUTION AND LAWS

### 9.1 HOUSE-SENATE BILL

To create congressional standing and private causes of action for constitutional violations

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “Judicial Enforcement of the Constitution Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

- (1) Federal courts are cornerstones in the enforcement of the Constitution.
- (2) James Madison, in championing a Bill of Rights, asserted: “If they are incorporated into the Constitution, independent tribunals of justice will consider themselves in a peculiar manner the guardians of those rights; they will be an impenetrable bulwark against every assumption of power in the legislative or executive; they will be naturally led to resist every encroachment upon rights expressly stipulated for in the Constitution by the Declaration of Rights.”
- (3) Speaking at American University in 1996, Chief Justice of the United States William Rehnquist lectured that judicial independence is “one of the crown jewels of our system of government.”
- (4) Chief Justice John Marshall in *Marbury v. Madison* (1803) observed that the “very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury” and warned that a government cannot be called a “government of laws, and not of men . . . if the laws furnish no remedy for the violation of a vested legal right.”
- (5) Since its landmark decision in *Bivens v. Six Unknown Named Agents* (1971), the United States Supreme Court has virtually eliminated implied private rights of action to redress constitutional violations committed under color of federal law, custom or usage, and seems poised to overrule the *Bivens* precedent.



(6) The United States Supreme Court has affirmed the power of Congress to create by statute private rights of action to redress infractions of the Constitution under color of federal law.

(7) In the absence of private rights of action, the enforcement of the Constitution against federal officials is severely hobbled.

(8) Suboptimal enforcement of the Constitution has also arisen from federal court decisions refusing to entertain challenges to the constitutionality of executive actions brought by Members or Committees of Congress based on non-constitutional prudential considerations regarding standing.

**SECTION 3. PRIVATE RIGHTS OF ACTION.** Every person who, under color of any statute, ordinance, regulation, custom, or usage of federal law subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the United States Constitution shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

**SECTION 4. CONGRESSIONAL STANDING.** A Member of Congress, congressional committee, or either House of Congress shall have standing to challenge the constitutionality of any executive action to the maximum extent consistent with the case or controversy limit of federal judicial power established by Article III, section 2 of the United States Constitution.

**SECTION 5. EFFECTIVE DATE.** This Act shall take effect on January 20, 2021.

## 9.2 HOUSE-SENATE BILL

To subject the White House to the Freedom of Information Act

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “The White House Accountability Act of 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

(1) The Freedom of Information Act (FOIA) is a proven cornerstone of Executive Branch transparency.

(2) The United States Supreme Court held that the President was not an “agency” governed by the APA or FOIA in *Franklin v. Massachusetts*, 505 U.S. 788 (1992).

(3) The lamp of experience shows that the White House is as inclined to lawlessness or unwarranted secrecy as other Executive Branch agencies.

(4) Justice Louis D. Brandeis taught that, “Sunlight is said to be the best of disinfectants; electric light the most efficient policeman.”

**SECTION 3.** The President or the Office of the White House shall be treated as an “agency” to be governed by the disclosure requirements of the Freedom of Information Act, 5 U.S.C. 551 et seq.

**SECTION 4.** This Act shall take effect January 20, 2021.

## **10. PRESIDENTIAL TAX RETURNS**

### 10.1 HOUSE-SENATE BILL

To require disclosure of the President’s tax returns

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

**SECTION 1. TITLE.** This Act shall be known as the “The Presidential Transparency Act 2021.”

**SECTION 2. FINDINGS.** Congress finds as follows:

(1) John Adams, second President of the United States, instructed, “The people have a right, an indisputable, unalienable, indefeasible, divine right to that most dreaded and envied kind of knowledge—I mean of the character and conduct of their rulers.”

(2) The President is a role model who should be above suspicion.

**SECTION 3.** The President of the United States shall on the date of inauguration and on each anniversary thereafter shall publicly provide copies of the President’s federal tax returns for the five preceding tax years in a format to be prescribed by the Office of Government Ethics.

**SECTION 4.** This Act shall take effect January 20, 2021.

BRUCE FEIN has served as special assistant to the assistant attorney general in the office of legal counsel at the Department of Justice, associate deputy attorney general, general counsel to the Federal Communications Commission, research director for the Joint Congressional Committee on Covert Arms Sales to Iran, and senior policy advisor to the Ron Paul 2012 presidential campaign. Mr. Fein is author of *American Empire Before The Fall*, and *Constitutional Peril: The Life and Death Struggle for Our Constitution and Democracy*. He has testified before Congress on constitutional issues on countless occasions.

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