

**December 7, 2016****Ray Padgett** | raypadgett@shorefire.com**Mark Satlof** | msatlof@shorefire.com

T: 718.522.7171

**Intelligence Squared U.S.****Call a Convention to Amend the Constitution**

For the Motion: Lawrence Lessig, Mark Meckler

Against the Motion: David Super, Walter Olson

Moderator: John Donovan

**AUDIENCE RESULTS****Before the debate:****33% FOR****22% AGAINST****45% UNDECIDED****After the debate:****44% FOR****43% AGAINST****13% UNDECIDED**

Start Time (00:00:00)

John Donovan:

Hi. Jeffrey. So, Jeffrey, I'll let introduce you first. Well, I've introduced you both by name. But Jeffrey, you are president and CEO of the National Constitution Center, and you're also a professor at the George Washington University School of Law. And Nicholas Quinn Rosenkranz is the director of the Rosenkranz Foundation and a professor at Georgetown Law. But, Jeffrey, I'll let you tell the story about how it comes about that we're in partnership with the National Constitution Center today, including what the NCC is.

Jeffrey Rosen:

Wonderful. Well, ladies and gentlemen, the partnership between the National Constitution Center and Intelligence Squared is one of the crown jewels of our Constitutional programming. And the National Constitution Center is a very special. It's this beautiful museum in Philadelphia of the Constitution on Independence Mall right across from Independence Hall.

0:00:48

But it's also the only place in the United States where the charter from the U.S. Congress to host bipartisan or multi-partisan Constitutional debates and education. And this debate series is the core of our efforts. And usually we tell people, "don't vote your policy views. Vote your Constitutional views." In other words, it's possible that you could think gun control is a good idea, but the Constitution forbids it, or that it's a bad idea but the Constitution allows

it. Tonight, since we're debating whether or not to hold a convention to amend the Constitution, you're going to have to return to first principles. Two quick plugs: I want you, after the show, not now, to download the thrilling new interactive Constitution in the app store that the Constitution Center has created. It is cohosted by the leading liberal and conservative lawyers' organizations in America and it unites the top liberal and conservative scholars to write about every clause of the Constitution, describing what they agree about and what they disagree about.

0:01:44

So, you can click on Article V, which is the one that has to do with Constitutional amendments, and you'll see the top scholars agreeing and disagreeing. It's an actually thrilling tool which has gotten 8 million hits since it launched. We think it'll transform Constitutional debate. The final thing is, we've just hosted a really interesting national poll, and we're about to release the results, but here is a preview. Americans overwhelmingly love the Constitution, but 57 percent to amend it. Out of that percentage, 41 percent want an amendment for term limits, 35 percent want to amend the Electoral College, and 35 percent want a balanced budget amendment. More soon on that score. And over to Nick.

John Donovan:  
Nick Rosenkranz.

Nicholas Rosenkranz:  
So, this is --

John Donovan:  
Well, let me explain why -- what you do for us before these debates as a law professor. You talk about really what we should be looking for and what are -- what are the issues involved actually where -- related to the text of the Constitution.

Nicholas Rosenkranz:  
Yes. So, this is a bit different from our usual Constitutional debate. But this question is -- lurks in the background of every Constitutional debate we ever have.

0:02:47

So, our debates are about how to read or interpret particular clauses of the Constitution. But in the background is always the question of, well, what if I don't like that clause? What if I think that clause is actually a mistake? And we -- is there a mechanism for Constitutional change? And, indeed, there is. Out of the seven original articles of the Constitution, one of them provides for mechanisms for Constitutional change, and that's Article V. You know, I was thinking about this just recently so. 83 years and two days ago, was ratified one of my favorite Constitutional amendments, hopefully one of your favorites as well, the 21st amendment.

[applause]

21st amendment repealed prohibition. So, if you're going to have a cocktail after the debate, it's thanks to the 21st amendment.

0:03:44

And you know, it's worth thinking about as you watch this debate. On the one hand, isn't it startling in a way, that three quarters of the country thought that prohibition was a great idea in 1919. And just 14 years later, three quarters of the country thought it was a terrible idea --

[laughter]

-- and repealed it. And so, in a way, that is, you know, a cautionary tale about Constitutional change. You might not -- you know, as confident as you are that you're right, you might -- history might judge you to be wrong. On the other hand, though, if you do make an error, I suppose it's reversible. And this is a case in which an error was reversible. And it's actually the only such case where we amended the Constitution then amended it back. So, this is a debate really about Constitutional change. And are you optimistic about it or pessimistic or is your mind open to it as of now?

John Donovan:

All right. Gentlemen, thank you very much. Very good table setting. I want to thank you. And let's then welcome our debaters to the stage.

Oh, and one plug, the National Constitution Center is definitely worth a visit. It is spectacular, and it's an hour and a half train ride away. So, get yourselves to Philadelphia. Thanks, everybody.

[applause]

John Donovan:

As I said, I'm going to be explaining a little bit of the production process throughout the evening. And the first thing I want to explain is that a number of times during the evening, because of -- because of the nature of the broadcast, the radio show and the podcast we put together, I have to say certain things repetitively such as my name. So, I'll be telling you again and again what my name is. It's not because I forget, but it's in the script. And there will be times when I will be --

0:05:45

-- I'll want to sort of add a little bit of atmosphere to the moment. And so, let me just shut off my phone because I just heard it talking to me. Yeah, I was really glad it wasn't me. I'm the only one who gets to do that without getting kicked off the stage once. A couple of times during the program, I'm going to ask you to applaud spontaneously to -- you know, when we

come back from breaks and things like that. So, it'll be pretty obvious when I introduce the debaters one at a time that you are going to want to clap then. And the other times when it's not so obvious, I will actually ask you explicitly or do a little gesture like this. And one of those times, to sort of give us a very good launch, is right now. Thank you.

[applause]

It was never supposed to be this way. How often have you heard that complaint about the way our federal government works?

A complaint made by both the left and the right, that the system is broken and that it cannot be fixed because the very Congress, president and Supreme Court who have the powers to fix it are actually part of the problems themselves. But what if the states of the United States -- those 50 separate power centers, could get together and propose their own amendments to the Constitution, rewriting the rules that govern Congress, the Supreme Court, and the president? Well, that kind of escape hatch actually exists. It is written into Article V of the Constitution that states can insist on a convention to propose amendments to the institution if enough of them get together to do it. It takes two-thirds. It has never happened, but it could. And the question is: should it? Well, that sounds like the makings of a debate, so let's have it. Yes or no to this statement, "Call a convention to amend the Constitution," a debate from Intelligence Squared U.S. We are at the Kaufman Music Center in New York City in partnership with the National Constitution Center, with four superbly qualified debaters on stage who will argue for and against the motion.

0:07:51

As always, our debate goes in three rounds, and then our live audience here in New York votes to choose a winner, and only one side wins. What I would like to do now is register your view on this question before you actually hear the arguments. So, I want to ask you to go to those question pads at your seat and take a look at keys number one, two, and three. Those are the only ones that matter. If you agree with this motion at this point, "Call a convention to amend the Constitution," please push key number one. That's the team -- the side -- the argument that this team will be arguing for. If you disagree -- that's the position this team will be arguing for, push number two. One is for, two is against. And three is undecided, which is a perfectly reasonable and respectable starting position. And we'll lock that out when I have received full eye contact.

[laughter]

You know, actually, full eye contact from 450 people is a really scary thing. I didn't realize it. All right, looks like everybody's done that. Now, what I want to explain is that after you have heard all of the arguments -- and we go through our three rounds. At the end of the debate, I'll ask you to vote again. And what we do is we declare victory going to the side whose numbers have moved up the most in percentage points. So, it is the difference between the first and the

second vote. It's not the absolute number, it's the difference, because what we're looking for is the persuasiveness of each team's arguments. So, let's move on to our first round. Our motion is this, "Call a convention to amend the Constitution." Let's meet our debaters. We have two debaters arguing for the motion. First, let's say hello to Larry Lessig. Hi, Larry.

[applause]

0:09:44

And, Larry, you're a professor at Harvard Law. You're a constitutional lawyer. You're well-known as a pioneer in the field of Internet law, but you are also well-known for taking strong advocacy positions against corruption in government, and specifically the influence of money in politics. You ran in the last presidential election -- the one that we've just come through, as a long-shot candidate for the Democratic nomination in the Democratic primary. What were you hoping to accomplish, other than winning the White House for yourself?

[laughter]

Lawrence Lessig:

So, my objective was to drain the swamp --

[applause]

-- but I wanted to do it in a more loving, kind of rainbow coalition-like way.

John Donovan:

Larry Lessig, thank you. Tell us, please, who your partner is in this debate.

Lawrence Lessig:

My partner is my friend and someone I worked with a long time, Mark Meckler.

John Donovan:

Mark Meckler, ladies and gentlemen. Hi, Mark.

[applause]

Mark, you are president of Citizens for Self-Governance. And that's the umbrella organization for the Convention of States project, whose goal is to have the kind of convention that we're arguing about tonight. You are also co-founder of the Tea Party Patriots. So, would it be exaggerating to say that you and your debate partner -- the potential Democratic nominee -- are not sitting on the same side of the political spectrum?

Mark Meckler:

Though we are friends, we sit on radically different sides of the political spectrum, which, as you can imagine, was most interesting in this election year. However, we came to the same spot in the center, and that is the spot where we both believe that the government -- the federal government, specifically -- has run away from the people, and that only we the people can do something to fix that. And by the way, as the only non-law professor on the panel tonight, I will be providing translation.

[laughter]

John Donovan:

Thanks, Mark Meckler, and to the team arguing for the motion.

[applause]

0:11:44

And again, our motion is "Call a Convention to Amend the Constitution." We have two debaters who will be arguing against it. Please, first, let's welcome Walter Olson.

[applause]

Walter, welcome to Intelligence Squared. You're a senior fellow at the Cato Institute. You have a blog that does very well called, "Overlawyered.com." You've written a lot of books on law. You're known as the godfather of the tort reform movement. But interesting thing -- when you were a young scholar, starting out at the American Enterprise Institute, you were going to be focusing on economics. So, what got you looking at law as your focus?

Walter Olson:

Well, my boss then was not just any boss. It was Nino Scalia before he went on the Supreme Court. And he made law seem so much more interesting than economists -- economics, especially since lawyers knew how to get around absolutely any words on a page.

John Donovan:

[laughs] So you made the right choice.

Walter Olson:

I think so.

John Donovan:

Okay. Thank you.

Walter Olson:

But I'm not a lawyer and not a law professor, but I still write about them.

John Donovan:

All right. And can you tell us who your partner is, please?

Walter Olson:

And my partner is my friend, David Super.

John Donovan:

Ladies and gentlemen, welcome David Super.

[applause]

Hi, David. So, you're a professor at Georgetown Law. Your research there focuses on constitutional law, administrative law. You also worked in policy -- the Center on Budget and Policy Priorities. You worked on food assistance, income security. But before all this, you were a community organizer, which -- I think you might be the only one on the stage. But you -- in talking about this convention idea, you have said a convention would be a Brexit scale event, and not in a good way. So, what's the likelihood of that happening?

David Super:

I'm afraid it's all too great. We are -- after 200 years -- we're on the brink of gambling away our Constitution and the ground rules for changing it are going to be sorted out by the special interest groups.

John Donovan:

So, the stakes are that serious.

David Super:

They are.

John Donovan:

All right. Well, we're going to be hearing about that as we continue through the debate, through the evening. Now, our debate goes in three rounds. And Round 1 is comprised of openings statements by each debater in turn.

0:13:49

They will be six minutes each. And here, speaking to open the debate, speaking for the motion -  
- Mark Meckler. He is president and co-founder of Citizens for Self-Government -- Governance. Let me re-do that, so we can clean it up in the edit, because I want to get the name of your organization correct. Mark Meckler. He is president and co-founder of Citizens for Self-Governance. He will be arguing for the motion, "Call a Convention to Amend the Constitution."  
Ladies and gentlemen, Mark Meckler.

[applause]

Mark Meckler:

Good evening. Thank you. Thank you for being here tonight to discuss what I think is the most important subject facing America today. We have a lot of debates in this country today about what should we do. This policy versus that policy, this much tax versus that much tax, this much regulation versus that much regulation. But I believe that those debates primarily miss the point of what's going on in America today. There is indeed a single fundamental question facing us as Americans today, and it is not what should we do.

The question facing us and facing our fellow countrymen is a two-word question, very simply, who decides. The American founders had a simple answer for that question and it is found in three words that you see up behind the stage and those words are, "We the People," decide. In the intervening century since that original constitutional convention the powers that be have shifted in America. Where they used to reside in the people at the state level closest to their governments at home, today the vast majority of power resides in Washington, D.C. I think it's important that we take a little trip across history to 1787 to that convention to what I think is perhaps the most important day in American history. September 15th is a day that I will never forget, because September 15th is my wife's birthday, so it's important I not forget that. But it is also Article V Day. I take you back to the convention hall on that steamy September day in 1787 when Colonel George Mason from Virginia arose and addressed the assembly.

0:15:51

And he said something like this, "My fellow commissioners, I fear we have made a terrible mistake. It is two days before the end of the convention and we have drafted a document that contains a fatal flaw in that it gives Congress the power to propose amendments should they deem them necessary, but it does not give the same power to the people acting through the states." And he asked them this very important question -- which I ask you today, "Are we so naïve that we believe that a federal government that becomes a tyranny will propose the appropriate source of amendments to restrain its own tyranny?" I wish we had a camera in that room, because I imagine all the guys in there slapping their foreheads and laughing. No government has ever restrained its own tyranny in the entire history of human kind, and if you believe that the federal government has drawn too much power to Washington, D.C., if you believe -- as Larry said, that it is time to drain the swamp, then the Founders -- thanks to Colonel George Mason, gave us a remedy and that remedy is found by calling a convention of states under Article V and draining the swamp.

The great plug that we may pull is not an election. We've tried elections. Democrats have tried elections. Many of my friends on the left felt that the election of President Obama was a sea change in America, and that everything would change in Washington, D.C., and the culture would become less corrupt and the people would be in charge. And for many of my friends on the left, they would tell you that things remained largely the same, better than with Republicans in control, but no fundamental change from Washington, D.C. And we've seen over the last few series of elections a sweep by Republicans of historic proportions and many

people on the right thought we were going to see a sea change in governance in Washington, D.C. because of the results of these elections. And I can tell you the feeling on the right today, even with the presidential election that just took place is that we haven't seen very much change and, frankly, we don't expect to see very much change.

0:17:44

So the question is, if we have tried over and over, election cycle after election cycle, decade after decade, if we have tried the same thing -- which is to elect good people who we believe represent our interests -- and let me make clear, we have an obligation to do that and we have tried to elect good people and in some instances we really have elected some good people to Washington, D.C., and yet the swamp remains in Washington, D.C. Then I ask, do we continue to do the exact same thing, argue about policy, argue about the should's and the shouldn't's, elect good people, and expect different results? Somebody much smarter than me said that age old adage, "To do the same thing and expect a different result is," -- well, you know what I'm saying. And so here we find ourselves on the precipice of national disaster. If you didn't like the results of the election, you think that was a disaster. If you don't like what's going on in Washington, D.C., you think we have an ongoing disaster.

The majority of your fellow Americans believe that, by the way, for different reasons. Seventy-two percent of Americans today say that the federal government is too big and does too much, and I want to make clear, on the right, they have different reasons for saying that. They might think the welfare state is too big or Washington, D.C. controls too much of the country and on the left, they might be talking about the military industrial complex, all the crony capitalism -- actually crony capitalism on both sides today, right? We've seen it recently in the news. So, this is where we find ourselves in America. You and you and you and I, regardless of our political affiliations, regardless of our ideologies, find ourselves at home watching TV incredulously saying that's not what I voted for. Democrat or Republican, that's not what I voted for. Liberal, conservative, Libertarian, that's not what we voted for. So, I come before you today to propose this, to tell you that we are too smart as a people.

0:19:44

We have too strong a heritage as a self-governing nation to allow this situation to continue. And so today, what I ask you for, is I ask you for your vote. I ask you to stand in the shoes of our forefathers, to be brave, to act boldly, and to call an Article V convention to amend the Constitution. Thank you very much.

[applause]

John Donvan:

Thank you, Mark Meckler. And that is the motion, "Call a Convention to Amend the Constitution." And here to make his opening statement against the motion, Walter Olson. He's

a senior fellow at the Cato Institute Center for Constitutional Studies. Ladies and gentlemen, Walter Olson.

Walter Olson:

Thank you, John. Could the U.S. Constitution be improved? Of course, it could. And I agree with some of the ideas that we will be hearing tonight for ways of improving it. You will probably agree with some of them, too, not necessarily the same ideas that I agree with.

But flirting around with the balanced budget proposals, the proposals to return power to the states, yes, I agree with some of those ideas. And when I talk about an Article V convention as dangerous and uncharted, I therefore am not talking about the fact that I would necessarily dislike the actual amendments proposed, nor am I saying that I would necessarily find that bad people, worse than our current elected representatives, would get into the positions of being the delegates to such a convention. Now, when my partner, David, comes on the stage, he will talk a little about those issues; what if it goes toward issues that you might not agree with? What if the people who get into the convention as delegates are people who are not there for the right reasons or are there for some of the same wrong reasons as people get into other elected officials? But I'm going to leave that. I say "dangerous and uncharted" for a couple of reasons.

0:21:44

And let me start with, "uncharted." This process has not been used in 225 years, and I think there is a good reason why it is not, even though it's clearly spelled out in the Constitution. We have only used the other way of amending the Constitution, which is for Congress to propose. We have never used the method by which the states call a convention. And because it has never been used, courts have not generated any precedent. We don't know how this would work. We do know that the relevant language in Article V is very terse and very uninformative. It does not answer most of the questions we would like to ask. For example, one of the first questions about a convention would be, "Does each state have the same vote," so that New York has the same vote as North Dakota and California has the same vote as Alaska. Many of my conservative friends who are proposing a convention say, yes, obviously, it does. You turn to the literature written by a lot of our more liberal friends, and they certainly are not endorsing that.

They would think that would be terribly unfair to the people of New York and California. And yet, you look at the text of the Constitution, and it does not decide, nor does it decide such key questions as: when does Congress have to call a convention? We know that there are numbers in there. We know that if 34 states currently call for one, then Congress must call it. That's two-thirds of the states. But how do you get to the 34? There are more than 34 calls already on Congress' desk. I know Congress has no desk, but bear with me. These include a large stock of balanced budget amendments which, however, have different wording. Six or eight, I believe it is by now, proposals from Professor Lessig's side, on campaign finance, and a bunch of

old ones hanging around on issues like reapportionment and I think even prohibition, because according to some people at least, once a petition goes into Congress, unless a state rescinds it, it never goes away.

0:23:47

So, Congress has some discretion here. It can either decide to lump together petitions by states that are not actually worded the same way -- let's say on a balanced budget, or it could, if it wanted to be radical, lump together ones that are on totally different subjects. And there are people urging that too. So, if a convention is called to deal with a single issue, is it legally bound not to stray off and treat related issues or perhaps completely unrelated issues? The language does not say. So, what we are setting ourselves up for here is uncertainty, which will be resolved by two different institutions: the Congress and the Supreme Court. And ironically, these are exactly the same two institutions that this whole process is intended to work around. So, the groups that will decide whether you can effectively use this or whether they will sabotage it are the same groups you're trying to defeat, Congress and the Supreme Court.

And it's bad enough for Congress to get to make the decisions. The Supreme Court, I love the Supreme Court. It's so wonderful. And yet -- and yet it decides things at the very end, after we have enacted, let's say four Constitutional amendments and ratified them through 38 states. And then we find out that the T's were not crossed or the I's were not dotted, or we missed one of those calls that I said about how a convention had to be done, and the Supreme Court strikes the whole thing down. What this leads us toward is a crisis Constitutional legitimacy, you'll hear a little more about that from my colleague, David. But we have had too many of those already. We do not need a situation in which we are uncertain whether or not Constitutional amendments have been adopted in legitimate form. And that is why I say we are standing here with a temptation. It is a temptation that at first glance could solve lots of our problems. It is also a temptation that could lead us even deeper into the land of polarization.

0:25:45

Into the land of considering our own government illegitimate, into the land of special interest involvement. It is a dangerous, uncharted territory. And we are a divided nation in so many ways. I think it's one of the reasons why it would be a waste of effort because there would never be, in fact, 38 ratifications of these amendments. You can't actually come up with something that would withstand the scrutiny of that many state legislatures. So, we would have placed our hopes in this basket, all to lose them in the end. Thank you.

[applause]

John Donvan:

Thank you, Walter Olson. And a reminder of what's going on. We are halfway through the opening round of this Intelligence Squared U.S. debate. I'm John Donvan. We have four debaters, two teams of two, fighting it out over this motion, "Call a Convention to Amend the Constitution." You have heard the first two opening statements and now onto the third. Here at the lectern to debate for the motion is Lawrence Lessig.

He is the Roy L. Furman Professor of Law and Leadership at Harvard Law School. Ladies and gentlemen, Larry Lessig.

[applause]

Lawrence Lessig:

So, I come to this issue for reasons very different from my friend, Mark Meckler. But we come to the same place in concluding we need this procedure to address the different problems that motivate us to be activists in this field. I am obsessed with the question whether we can have a representative government in America again. I am obsessed with the fact that at the core of our government is a failed institution called Congress, an institution which in no sense represents us. It doesn't represent us because the politicians gerrymander districts so the system is not representative.

0:27:44

It doesn't represent us because the politicians suppress the votes of the people on the other side, and it doesn't represent us because the politicians obsessively spend their time raising money from the tiniest fraction of the one percent to fund their campaigns to get back into Washington. It doesn't represent us. And because it doesn't represent us, the problems that Americans care about are problems our Congress cannot sensibly address. And the problems that I care about most, problems of equality, problems of climate change, are problems which our Congress will never address sensibly so long as it does not represent us. Now, the critical point to recognize about that failure of representation is that they won't fix it. They do not have the incentive to fix it because the problems make it easy for them to stay in power.

They don't know. They haven't the horizon. They haven't the motivation to address these problems in a way that allows us to believe they can be fixed. So, if you think there are problems our Congress cannot itself fix, the question is, what do we do? How do we fix them? Now, the framers faced that problem. And they looked at a Constitution, the Articles of Confederation, that required unanimous consent to be amended. And after recognizing unanimous consent was not possible, they threw up their hands and walked away from it, and they proposed a convention -- a Constitutional convention that drafted a new Constitution, and they ratified that new Constitution against the procedures of the old Constitution.

0:29:46

We on this stage -- Mark and I -- do not want a constitutional convention, because our constitution gives us a much simpler way to go around Congress. This is Mason's gift to America. It gives us a way to convene a body that's not controlled by Congress for the single purpose of proposing amendments. Of proposing amendments which are not part of our constitution unless 38 states ratify it. Now, 38 is a popular number these days. It's also the number of electors that need to change in the Electoral College, but the one I want to focus you on is --

[applause]

-- this is my playful jab to my friend here. The one I want to focus you on here is how easy it is to block an amendment because the number is 38 states.

Because 38 states -- that means that one house in 13 states would need to vote against the amendment to make sure it can't pass. And in 2017, there will be 13 Democratic-controlled legislatures, and five split legislatures, and 38 Republican legislatures with the five split legislatures. And so, when you think in the Democratic side, you can say, "That means there are 31 opportunities for a house to block the proposed constitutional amendment," and there are many more on the other side. And what that means is not that nothing gets passed, but that the only thing that can get passed through this procedure is something that actually speaks to all of us. And the only thing Mark and I are asking you to support tonight is the opportunity for people to sit down and try to work out reforms of our Constitution that actually speak to all of us.

0:31:55

And if we fail, we fail. But if we succeed, then we will have succeeded in solving what I think of as the crucial problem of American democracy, that it does not represent us anymore. And we have to find a way to make it represent us again. I ask you to support our proposal.

[applause]

John Donovan:

Thank you, Larry Lessig. And that proposal, again, "Call a Convention to Amend the Constitution." And here is our final debater to argue against the motion, David Super. He is a professor at Georgetown University Law Center. Ladies and gentlemen, David Super.

[applause]

David Super:

It's hard to imagine a worst time to amend the Constitution than now.

[laughter]

We are a nation –

[applause]

-- of anger. We've just elected a president -- and letters to the editor, polls, and so on say that people wanted to tear things down, wanted to shake things up -- but they had confidence there would be checks and balances to keep the new president from doing too much. A constitutional convention throws away those checks and balances. This is a time of division. Four of the last five presidential elections have left huge segments of the population questioning not just the desirability of the result, but even its legitimacy. We can't even agree on who has any business being president. Imagine if we push through constitutional amendments through this process, and the country now believes we don't even have a legitimate Constitution. This is a time of special interests. I'm captivated -- as I'm sure you all are -- by Professor Lessig's vision of the people coming together to work things out, but that's not who it's going to be.

0:33:49

It's going to be the same special interests that control Congress will control who are these delegates. Among the points my partner notes are open for the Congress to sort out is who picks the delegates. Will it be the state legislatures, which were elected in precisely the system that Professor Lessig criticizes? Will it -- or will it be a vote of the public? Probably the legislatures will keep it to themselves and the very Congress that he criticizes -- with much -- justification will be the ones that decide what the ground rules are. This is a time of division. On occasions in the past, when we've amended the Constitution, it was because we as a country agreed on something. We were all together on something. Right now, we're together on very little, sadly. This is the time -- this is very much the time when we should be organizing, persuading, talking with one another trying to reach across the divides that we have, not using the power tactics of a constitutional convention to try to paper over the consensus that we simply lack.

We don't need a situation in which large parts of the country believe that their Constitution's lost legitimacy. Under the proposed rules for constitutional convention put out via the American Legislative Exchange Council -- ALEC, which has been very influential in driving the effort to move to a constitutional convention, every state would have an equal vote. That would mean -- and that the convention could propose amendments by a majority of the states. That would mean that delegates from states with just 13 percent of the American population could put constitutional amendments out there. How could this go wrong? Quite a few different ways.

0:35:45

Certainly, there's the question of who will become the delegates. In all likelihood, state legislators will choose themselves and we will get the -- junior versions of the same problem that we have in Congress, people that are dominated by special interests. It seems to me bizarre that at a time when we're worried quite rightly about big money and special interests dominating politics, that we would up the ante. The very time when our system is most broken we would raise the stakes and put not just public policy and who's in government for the next number of years, but the very fabric of our country on the line. That does not seem to be a good thing to do in our current special interest dominated period. In addition, the ratification process is held up as some sort of a protection, but as Professor Lessig just noted, the original constitutional convention scrapped the ratification procedures that it inherited, which required a unanimous agreement and came up with two new rules.

A rule for it, two-thirds approval, and a rule for other amendments later, three-quarters approval. One can easily imagine a new convention doing something very much the same requiring majority ratification of its new Constitution and perhaps reverting to the three-quarters approach for later ones. If that happens, what are the states that don't ratify? That don't like the new regime. They can effectively secede or they can go along with the regime of the new Constitution that has been pushed out by this convention. And also, with regards to ratification, the assumption is that these will be simple amendments -- single amendments. Seven of the 27 amendments we've had up to this point have had multiple purposes to them. So, you can imagine log-rolling on the constitutional amendments just as you do with legislation. What would happen if we had a proposal for a balanced budget amendment and gun control?

0:37:44

What would happen if we had a proposal to repeal the takings clause that allows the government to take private property and get rid of the Electoral College? I don't know, and no serious person can say that they know. And then what about sleeper amendments? We're told that we should be counting calls for conventions that were passed back in the '70s. What if we put some amendments out there that don't immediately get ratified, but at some point when there's a wave election to the left or to the right, the additional legislatures come on board, states change, demographics change. We never have a point when the country as a whole is united behind something and yet we -- and yet over time we can accumulate enough legislatures to do it. The biggest problem with all of this is that there's absolutely no one to watch the hen house and it's going to be infested with foxes. Thank you.

John Donvan:

Thank you, David Super.

[applause]

And that concludes round one of this Intelligence Squared U.S. debate where the motion is, "Call a Convention to Amend the Constitution."

Now, we move on to round two, and in round two the debaters address each other directly and they also take questions from me and from you and our live audience here in New York City. This is our motion, "Call A Convention to Amend the Constitution." Two debaters arguing in support of the motion, Mark Meckler and Larry Lessig. We've heard them say that this debate is essentially a debate about a question of who decides, that the power of the people has been tilted too far in the direction of Washington and therefore taken away, that the system is rife with corruption where money is in control, that Congress is a failed institution not truly representative of the people, and that there are no other options but for this clause of Article V, which finally provides a way for power to return to the direction in which it was originally intended to stand by the founders themselves. The team arguing against the motion, David Super and Walter Olson.

0:39:44

They are saying that they're not against the argument that there are problems with the Constitution -- that amendments make some sense, but they say this process, this procedure, this Article V convention represents a huge risk due to its utter unpredictability, that the framers did not give us a rule book for us, that trying to implement it could cause its own form of Constitutional crisis, particularly at this time. That we are a nation of anger, and there could be no worse time than the present to try this option. I want to go to the team first arguing against the motion, and I want to point out that this is a debate where essentially, we really are talking about process and principles, and yet I do think that we're going to want to talk about some particulars and the politics of some of the particular examples that are coming along, while making it clear that we're not here to debate for or against a particular kind of amendment. Those amendments are going to come up in the evening tonight, but to recall that what we're really trying to do is debate the merits of this process.

But the team arguing against the motion, you know, we traditionally pay a great deal of deference and respect and speak of the Framers and the Constitution itself in reverential terms. But are you saying, on this one, this clause, that the framers blew it by putting it in there? Would you amend it away if you could?

[laughter]

Walter Olson:

Well, we know a fair bit about the Framers' discussion of this. And my own theory is they ran out of time. They would have done a better job had they not been under the crush of other

issues and that it's well worth discussing the defects because -- as I'll get to in a little more detail later, we can actually address the amendment process. It's often been suggested that we go after the amendment process and the barriers to it which also applies to the amendments that come out of Congress because there haven't been any of those that have been successful for decades now as I remember. And yet there were periods -- the Nixon period, for example, in which several came out.

0:41:46

And other periods in which, for whatever reason, the public mood, changing political alignments, the climate allowed for quite a bit of amendment. And I'd like to focus more on what the founders did right. I don't think they made it quite easy enough to change it.

John Donovan:

All right. Let me take it to the other side. The same question. Do you think the amenders -- I'll take this to Mark, first. Did the framers get it right, giving this option to the states?

Mark Meckler:

They knew exactly what they were doing. They understood the Article V process because the vast majority of the framers who were there in convention had actually been in convention multiple times. And there is an implication that this has never been done in American history so we have no idea what will happen. In fact, we've held interstate conventions 38 times in American history, 36 times before the 1787 convention -- sorry, 32 times. Six times since that convention. The rules have been remarkably the same in all of those conventions.

I've read the rules myself. Every -- so all of the founders knew exactly how those things run. They've run that way before the convention. They've run that way since the convention. The procedures have always been the same. I would also like to address the one state, one vote rule. It's always --

John Donovan:

I'll come back to that, actually. I just want to stay on this point of -- take it to David Super. Your response to what your opponents were just saying about the fact that there is, you know, sort of two precedents. You're looking at other kinds of conventions run by states and intrastate -- interstate conventions as well. There really is a rule book, that we know how it would work.

David Super:

Well, we really don't. We've had one Constitutional convention in Philadelphia. We've had all sorts of other meetings and discussions and whatever. We've never put the very essence of our nation on the line. Other countries define who they are by ethnicity, by perhaps sometimes by geography, by religion in some cases. This country we define ourselves by the values enshrined in our Constitution. We've never put that on the line.

John Donovan:

I want to take it back to the other side. Larry Lessig, what about that?

Lawrence Lessig:

So, in the anatomy of this argument, the move you saw David make is the critical move opponents of the convention make.

0:44:02

And the critical move is to say we're talking about a Constitutional convention, the thing that I think we had in 1787. And what I said in my introduction was, we're not talking about a Constitutional convention. What we're talking about is a convention called pursuant to our Constitution, which is not what happened in 1787. And when you ask the question, do we have precedent for conventions called pursuant to a Constitution, the answer is, we have hundreds of those precedents at the states across the United States throughout the history to the present day. These conventions happen all the time. And they do not run away. They seem to work out all the questions that the other side thinks just cannot be worked out by human beings in the 21st century.

John Donovan:

Okay.

Lawrence Lessig:

These questions are possible because we've seen them happen and answered over and over and over again.

0:44:56

John Donovan:

Let me take that response back to Walter Olson.

Walter Olson:

Well, again, on these key questions of -- for example, does each state have an equal vote in the proceedings, can a convention be limited to a single subject -- we all know -- we've all read the literature -- that we can cite very high authority on both sides, that we can cite Chief Justice Burger, for example, saying that it could not be limited to a single subject. You can cite numerous law professors and people in Congress saying that states would get a representation proportional to their population. And you can also cite very good authority on the opposite side. These remain unresolved questions, if we are to look at the best that has been thought and written about them over the last 50 years.

John Donovan:

Mark Meckler, want to respond?

Mark Meckler:

Prepared by National Capitol Contracting  
(703)-243-9696

200 N. Glebe Rd., #1016  
Arlington, VA 22203

I couldn't disagree more vehemently with the statements. The great authorities on the subject do not disagree. The greatest authority on the subject is Madison, who was at the 1787 convention himself, and wrote in Federalist 40, "if we want to know what the authority of the Founders -- of the framers actually was, look to their commissions."

0:46:01

And this is important. I've read all of their commissions. The commissions are the documents that the people bring to the convention that says what their authority is. And you allege that 1787 ran away. I would ask you the question, and it's a critical question -- have you read those commissions?

John Donovan:  
David Super.

David Super:  
Yes. And but have you read the Articles of Confederation, which said unanimous amendment? And they just threw that in the trash. Yes --

John Donovan:  
Yes. Which is why --

Lawrence Lessig:  
It's exactly -- it's exactly -- that was a constitutional convention. Well, let's shift into jurisprudence geek mode for a --

David Super:  
I'm having trouble understanding.

Mark Meckler:  
-- second.

John Donovan:  
Wait, let David -- you interrupted David, which is fine with -- to make that point, but I want to let David continue his point and come back to you. So, David.

David Super:  
Yeah. I mean, I'm not understanding this distinction between a constitutional convention and a convention under the Constitution. A convention that has the power to amend the constitution, including stripping it all out and rewriting it strikes me as a constitutional convention.

0:46:59

That is what this thing would have the power to do, and the last one did not obey the commands that were set out in the prior document. It's true the states were fed up with the Articles of Confederation. It's true, as my colleagues across the way say -- they're fed up with things that are happening in the current system. But being fed up with the old rules is not a justification for disregarding them --

John Donovan:  
Okay.

David Super:  
-- and there is absolutely no authority that can hold a constitution in line if it decides to run away. We saw that in --

John Donovan:  
Okay.

David Super:  
-- 1787.

John Donovan:  
Larry Lessig's response?

Lawrence Lessig:  
Yeah. This is a great debate, because this is a really fundamental difference. And with respect, you're just wrong.

[laughter]

Wrong. It is absolutely clear that in constitutional theory and jurisprudence, there is such a thing as the constituent power of a nation, which is the ability to create the constitution. And all across history and across jurisdictions around the world, there are times when they basically throw out their old constitution and create a new one.

0:48:01

They do it illegally. That's what we did. We did it with the authority given to the people who went there. Of course, that was fine. But what we did was to amend our constitution against the background of -- illegally against the background of the existing rules. And that was because this whole proceeding was a constitutional convention. That's what that means. But when you look at the practice in the states, and when you look at what the Constitution talks about, it's not talking about creating a constitutional convention. Those words don't exist. What it says is, "A convention for proposing amendments." And then it goes on to say, "Those amendments have no effect unless ratified by three-fourths of the states."

John Donovan:  
Okay.

Lawrence Lessig:  
So, this is a special purpose convention, and there are literally hundreds of special purpose conventions that do not have the constituent power to radically re-write or throw out the Constitution, if anything.

John Donovan:  
Walter Olson to respond.

0:48:54

Walter Olson:  
Yeah. My point is narrower, which is we are interpreting it as the originalists on the court would say -- the original public meaning of the document, not its legislative history. And I love Madison, but the ideas that he had -- that he didn't have time to convince others of and pack in -- are not part of the language. They are not part of the original public meaning. And what it's actually left us -- and they changed the language, as you know, a couple of times -- what it's actually left us is extremely sparse. We are not entitled to use -- to fill in the blanks based on our legislative history notion of what they would have done if they had an extra week.

John Donovan:  
Mark Meckler.

Mark Meckler:  
Yeah. Actually, turning to jurisprudence, which is what we have to do -- we have a history of jurisprudence, over 50 times --

John Donovan:  
For those who don't know the term, can you just define it for --

Mark Meckler:  
So, the --

Lawrence Lessig:  
The law professor here --

Mark Meckler:  
Well, I'm a --

John Donovan:  
Yeah.

Mark Meckler:  
-- non-professor.

John Donovan:  
Yeah. Yeah.

Mark Meckler:  
When the courts rule on something historically, we call that jurisprudence. That's the existing body of law that we have, where the courts have publicly ruled on something.

0:49:54

Over 50 times, the courts have ruled on Article V process. And in every case, they have ruled that the history is what guides us in Article V processes, every single case. In fact, one court in Ohio went so far in 1971 as to say virtually everything that's justiciable around Article V has already been adjudicated by the courts.

John Donovan:  
David Super. One more on this point.

David Super:  
Well, not a constitutional convention and amendments can include striking everything and putting in something new. Amendments in Congress are routinely that way. I admire your optimism, but there's absolutely no one to watch over this to make it happen and I'm startled that you believe the special interests would be bowed by complicated theories about what someone -- what one member, an important member of the original convention said when they have the opportunity to get what they want, which this is not a time of high principle. This is a time of anger, a time of feeling other people are not entitled to what they've got.

0:50:57

And a time of quite -- of ruthlessness and if we open up the Constitution in this way, there's absolutely no one to protect us.

John Donovan:  
Right. Let me take your point and also in your opening statement to Larry Lessig, and, Larry, one of your passions is to eliminate the influence, undue influence of money in politics and David Super said in his opening statement that the convention itself would be influenced by and manipulated by the same sorts of moneyed interests as everyday politics now and that there would be no way to keep that out of it. So, it would be -- you would be defeated from the beginning. It's an interesting point. I can see its cohesiveness. So, can you argue back to that?

Lawrence Lessig:  
Prepared by National Capitol Contracting  
(703)-243-9696

200 N. Glebe Rd., #1016  
Arlington, VA 22203

So here we're in complete agreement about the nature of the risk. I am an enormous fan of David's work focusing and helping us to understand the corrupting influence of these special interests in all sorts of areas of law. And I do think that there's an incredibly important risk that the same corrupting influences take over in this process as well.

0:51:58

But I think the response to that risk is not to run and hide under a rock or to say, "Oh my gosh we can't do it so let's just accept a broken constitution that doesn't represent us and just live with the problems it creates." The response should be to find a way to block exactly that from happening. Now, the one thing we know about this process, because you've emphasized it so repeatedly is we haven't actually had a lot of these types of conventions. So, the mechanisms of special interest control are not well developed, but let me tell you, David, I will stand with you. We'll work together you and me to make sure that when these processes happen we will not allow them to be captured in the same way. Now, I'm not so naïve to say that's easy. None of this is easy. It's just important to fix these problems, and if we're going to fix these problems it's also important to make sure your concern is addressed, that it's not corrupted in the process.

[applause]

John Donovan:  
Walter Olson.

Walter Olson:

And yet imagine -- let's say the balanced budget is the topic of the convention. Imagine trying to keep everyone who has a direct interest in budgetary issues, which means practically everyone. Everyone who depends on a government program, everyone who pays taxes. These groups will of course involve themselves. They are all special interests and practically every special interest in the country is going to be interested in a balanced budget amendment. The ideas that somehow or other we can purify the process by eliminating everyone who has an interest in federal budget outcomes, we'll be left with an empty room.

[laughter]

[applause]

John Donovan:  
Mark, please. Mark Meckler. Mark Meckler.

Mark Meckler:

The idea that we believe that this process will be inherently pure is absurd. We understand politics. In fact, Larry and I both have worked at the foot soldier level in politics for a very long time. We understand how they work. The difference between what you're professing and, I

believe, what Larry and I are professing is a fundamental underlying difference in philosophy about the American body politic.

0:54:00

I believe in the American people. When I look around this room, I see my fellow citizens who whatever their political ideology is they're here on a weeknight because they think we have a problem and they're willing to come out and do something about it. There are millions of them all over the country and the process will be driven by them and you believe in an elitism that says only the special interests and the moneyed powers control things. We just saw that not be true in this election cycle frankly almost on both sides. People still, in this country, have more power than special interests.

John Donvan:

I'm not sure your opponent said that, but I want to --

[laughter]

John Donvan:

Who would like to respond? David, let's hear from you.

David Super:

Well, if it were the people doing it, if we were getting the people in this room opening up the constitution, frankly, the stakes are so high with respect, I'd be nervous about that as well.

0:54:58

But that's not --

[applause]

But that's not what we're talking about here. What we're talking about is the United States Congress, the very Congress that you have been railing against and that deserves to be railed against, deciding what the ground rules are and telling the states what to do. And my guess is they will have the state legislatures pick the delegates. Why wouldn't they? My understanding is that there have been practice or mock conventions where they actually -- it was stocked with state legislators. It likely would be state legislators. These are politicians who are, as Professor Lessig said, raising money 'round the clock, and are going to be very tied to the interests that provided them money. Many of them would like to go to higher office and will be responding to those interests.

John Donvan:

Larry Lessig.

Lawrence Lessig:

Yeah. So, I'm with you. I'm going to fight with you against those interests having this influence.

But again, let's get back to what's the consequence if they do? If they do, and a proposed amendment comes out, that then we spend two, three, four years talking about and pointing out, this is just a special interest amendment. This is an amendment that's responding to the special interests of these people or those people. It's not an empty that should be part of our Constitution. Then 13 legislatures will vote against it. 13 houses in 13 states will vote against it, and it won't be part of the Constitution. So, I agree it's a risk, but the question is, how high a risk is it? And that's not the only part of the question. The other part is, "And how high is the risk of doing nothing?" Because the only reason I'm here talking about a convention is I think there is zero chance that the problems I think have to be addressed are going to be addressed by this Congress. We've seen them not propose –

0:56:55

-- there's no chance they would ever propose the kinds of amendments that I care about and the kinds of amendments that Mark is talking about. So, if you don't have a solution to the problem, then I want to know --

John Donovan:

Let me -- yeah, actually, let me put that to this side. To win this debate, you do not need to provide an alternate solution. That's not your responsibility. However, it might be persuasive to know whether you have one.

[laughter]

So, I want to be clear, you don't have to, but --

Walter Olson:

I'm saving my solutions for my last two minutes, but --

John Donovan:

Okay.

Walter Olson:

But --

John Donovan:

Go ahead and save it.

Walter Olson:

But in all seriousness, the -- I sense a -- a wavering on the question of whether or not current politics makes any difference because on the one hand we just had a political explosion which got everyone's attention throughout this political world, that was widely acknowledged that the voters wanted different things than had been assumed they wanted, that voters cared about different issues and in different ways.

0:57:55

And the political structure is responding, trying to figure out -- we also heard -- and I'm sure -- you know, this is just an unfortunate phrase, but we heard the phrase, we've tried elections, as if somehow or other now we give up on them and move to extra electoral --

[talking simultaneously]

Walter Olson:

I said we shouldn't give up on them. Yes. And yet the -- we should not give up on conventional political process because in an area that is near and dear to my heart, gerrymandering, there has been substantial progress in part because the public can take action in the 50 states which itself can help solve the congressional problem.

John Donovan:

Okay. Let me move to a slightly different topic and get a little bit into some of the specifics of the critique of the idea put to you -- to you by your opponents. Mark Meckler, this question of who decides how many votes a state will get, you know, we're in New York. There is no way that a population in New York wants Wyoming to have the same number of -- anybody here from Wyoming that was -- careful.

0:58:55

There -- yeah. Nobody? Really? Yes? No. Okay. So, I'm safe.

[laughter]

But how -- so the question would be, in this process, who decides how many votes New York gets vis-a-vis Wyoming? Who decides it?

Mark Meckler:

The convention itself will actually decide. But again --

John Donovan:

That's the answer is -- every --

Mark Meckler:

If you look at the actual history --

John Donovan:  
Yeah.

Mark Meckler:  
-- again, we've done this many times in American history. It's always been -- always been one state, one vote. There was one exception where they actually tried to change that, the convention of 1861 that was called to try to avert the Civil War. And the proposal was made to give relative votes according to population. And that vote was taken in that convention. And amazingly, one state, one vote. And it was defeated. And in fact, from a practical political perspective, all the small states would simply walk away from convention, and there would fail to even be a quorum if it was not one state, one vote.

John Donovan:  
And do you -- and do you think the big states will go -- in the --

0:59:54

-- what you envision, you think the big states will go along with one --

Mark Meckler:  
It's the way it's always been. And I think if they don't, then that's fine. There won't be a convention, and then there is no risk.

John Donovan:  
Hmm. So, it all works out in the end.

[laughter]

Larry -- Larry Lessig.

Lawrence Lessig:  
Yeah, but then I want to emphasize one part -- one point, right? What we're talking about is the procedure for proposing the amendment. And in my view, though I very much support the idea of one person, one vote, and I'm troubled by what we inherit from the structure, and I'm very troubled, as I think the other side as well, as Walter is with the amending process that we have in our Constitution right now. Working with what we have, the fact that every state gets a vote to propose an amendment which they know cannot be ratified unless it is so overwhelmingly popular that three-fourths of the states will adopt it, doesn't seem to me to be a tragedy. If they get that wrong, we'll have a failed amendment. If they get it right, we'll have a successful amendment. And the fact that you got one vote isn't going to determine whether it's right or wrong.

1:00:56

John Donovan:

Okay. Let me take that to Walter Olson. So, your partner is saying the safety valve in all this problem, the protection against the risk you're talking about is that the Constitution says that even after a convention is called and proposals for amendments emerge from that, three quarters of the states still have to approve it, and it's just -- it's not going to be -- the country is not going to do something crazy -- 75 percent of the country is not going to do something crazy.

Walter Olson:

Well, that is a good question, isn't it, whether the country will do something crazy. You know, I --

[laughter]

I -- I have a serious point, but I can't resist telling a joke from Twitter, which is, U.K. on Brexit, "I just did the most rash and self-defeating thing ever." U.S., "Hold my beer."

[laughter]

I have a serious point, which is, to a large extent I go along with our opponents that it will probably not lead to disaster because it is so hard to get 38 states.

1:01:54

John Donovan:

But that's -- but that's conceding a very big point for their side.

Walter Olson:

Well, no, wait. I never actually conceded to anything. I just appear to be --

[laughter]

Those dissidents say it could, of course, be among the largest states. And the way that American politics works, California, Illinois, New York seem to vote on one side and the small states on another side. So, it's rather dangerous even if the states are not very numerous. My own view is that California, Illinois, and New York, especially is capable of throwing absolute fits to stop a process that it finds unfair, and that it would find a process in which each of the three stages were controlled by small states to be so grossly unfair. I don't even want to think about what California would do against that. But I want to be there when it happens.

Mark Meckler:

I'm happy to put California against Texas anytime, being from California. It is different.

Lawrence Lessig:

Can I make a serious --?

John Donovan:

Let me let David Super jump in, and then I'll come back.

David Super:

You can get -- you can get 26 states with 18 percent of the population, and you can get 38 states which is enough to ratify it with only 53 percent of the population. And those states could be well divided, so it could be far less than a majority. So, we could end up with a Constitution that is ratified -- that is proposed by a tiny minority, states with a tiny minority of the population, and ratified with states with a bear majority of the population. At that point, we lose the most precious thing we have as a country, which is a Constitution that everybody believes is theirs. And people may dislike it, may be frustrated with it, but everyone believes that it's theirs. We are about to go into a four-year period with a president that a great deal of the country does not believe is theirs. Far, far worse if that was a Constitution. And that is, of course, assuming that this -- this convention doesn't do what the 1787 one did, which is change the ratification rules to make its job easier.

John Donovan:

Larry Lessig.

Lawrence Lessig:

So, the way to ratify an amendment is the same whether the amendment comes out of Congress or comes out of a convention.

1:03:58

So, the problem you have with the ratification process of an amendment is a problem you have with the ratification process of every amendment. So, when you say you support the idea of amendments, why do you support the amendments that are going to come through Congress but not amendments that are going to come through a convention?

David Super:

If the House of Representatives is elected with one person, one vote -- and I have to say, it's striking here, I'm talking about what is endangered in the Constitution. We have already thrown one person, one vote over the side in this conversation. No one person, one vote on how it's proposed, no one person, one vote in how it's ratified. This is very alarming for a democracy.

Lawrence Lessig:

And again, David, you and I are on the same page in being --

[applause]

-- you and I are on the same page in being troubled with the lack of one person, one vote as a principle that runs all the way through our Constitution. And I want to see amendments to get

to that, and I expect you to be marching with me to get that too. But, we have to recognize that the problem here about how we ratify constitutions is baked into every constitutional amendment.

1:05:00

And the issue here is just why we can't have proposals outside of Congress's control. That's the only issue. Now, you say -- Walter, you said, though -- "We'll get this done anyway, through the ordinary political process." Let's take the issue I care about -- ending the influence -- the corrupting influence of money in politics. We've seen state legislature after state legislature passing resolutions asking Congress to propose an amendment to deal with the corrupting influence of money in politics. We've seen states like Montana have referenda where red state Montana, more than 70 percent of the public, supports the idea of an amendment to the Constitution to end the corrupting influence of money in politics.

John Donovan:  
Larry, what would that --

Lawrence Lessig:  
What is --

John Donovan:  
What would that amendment look like, just to illustrate for us?

Lawrence Lessig:  
No. I'm not getting into that now --

John Donovan:  
As economically as possible.

Lawrence Lessig:  
No. I'm not going to answer --

John Donovan:  
Why?

Lawrence Lessig:-- the question, because it's off the -- it's too hard for me.

Lawrence Lessig:  
No. I mean --

[laughter]

-- no, I mean, to answer the question in a serious way --

1:05:57

-- it is a very hard problem. And -- but this is --

John Donovan:

But would -- just a minute. Would it require many changes in different places?

Lawrence Lessig:

No, no, no. It -- I don't think it requires many changes. But one of the really important points I think Mark and I agree on is that what we're asking for is the process through a convention, of coming up with something that we know we can get passed in 38 states. That is the test.

John Donovan:

Okay.

Lawrence Lessig:

That is what the deliberation process --

John Donovan:

The reason I'm asking that -- and also, to put you on the spot. I was surprised by your answer, in fact -- is that I think the audience would like to get a little bit of a sense of some of the particulars. So, I'll go to Mark for that, because you're already well down the road with the Convention of States Project. Give me an example of an amendment that your organization would like to put forward that you don't think you could do working through Congress.

Mark Meckler:

So, John, you're not going to like this answer -- which is, I can't do that either. And the reason I can't is even as an organization, what we do is our goal is to call a convention and bring people together to have a discussion about subjects --

John Donovan:

Well, let me say --

Mark Meckler:

-- not to propose amendments.

1:06:54

And the reason is, I'm not arrogant enough to believe, or our Board, or our people who work with us, that we have the answers to the problems that ail the country. I do believe that a convention will come up with those answers.

John Donovan:  
Let me throw something out --

Lawrence Lessig:  
You know, I'm a law professor --

John Donovan:  
-- and see if --

Lawrence Lessig:  
-- and do I believe I am arrogant enough to believe --  
[laughter]

-- that I do actually -- and I have written these amendments. And I publish them in my books, and they're on the website. I know what I think the answer should be. But I am committed, as Mark is, to the idea that what we're talking about in a convention is a process for facilitating the deliberation about what the solutions to these problems are.

John Donovan:  
Let me put this in one more way -- and this is no attempt to trick you into giving something away that you don't want to. But if we were to throw something out there like term limits on members of Congress, if a convention came in with the sense that they wanted to do that, are you talking about a couple of words to make the difference? Is it -- the amendments would be that strong -- I mean, that brief and economical?

John Donovan:  
And is that one that you don't think you could get through Congress?

Mark Meckler:  
Well, we've proven we can't get it through Congress --

John Donovan:  
Okay.

Mark Meckler:  
-- because it's been done, it's been tried for a very long time.

1:07:55

The latest statement we have about that is when asked about it, our -- everybody's good friend Mitch McConnell -- not my good friend, but maybe you guys -- said, "That ain't going to happen," basically is what he said.

John Donovan:  
Prepared by National Capitol Contracting  
(703)-243-9696

200 N. Glebe Rd., #1016  
Arlington, VA 22203

[affirmative]

Mark Meckler:

And this is what is important to me. 80 percent of Americans, roughly, polled for 30 years straight, say that we should have a term limits amendment. They want term limits in the Constitution. And Congress will never propose it. Roughly the same numbers for some sort of balanced budget amendment. The American people know you can't forever spend more than you take in, and they want it. Congress has not and will never propose those things. There's no incentive to do so.

John Donovan:

Okay. Let me -- and we'll move on this particular point -- only one more round from your side, because you actually talked more about the actual -- you've talked about balanced budget. I brought up term limits.

Walter Olson:

Yeah.

John Donovan:

The -- so, the -- what I want to sort of get at is if a group were to get together just on something like term limits, and the rules could specify, "That's all we're going to talk about, and we're in and we're out," what's wrong with that?

Walter Olson:

Well, first, although, I think term limits is the best case for it, I dispute whether or not any of these ideas actually have a supermajority of public sentiment behind them.

1:09:00

I would love to think that the Balanced Budget Amendment -- some versions of which I like -- commanded the loyalty of a large majority of the American people. But when presented with elections in which there is a more responsible budget candidate and a less responsible one, gee, they don't always vote for the more responsible budgeter. I would like to think that term limits are also popular. They certainly are at the state levels. And yet, when you find someone running for their nth term -- their 19th term, are they actually being voted against by their constituents? No. The voters are capable of keeping these contradictory ideas in their minds. Now, I would not give up on Congress, even for the things like term limits that most directly challenge its power, because after all, direct election of senators was about direct a challenge as term limits, and yet was adopted by Congress in a constitutional amendment.

John Donovan:

Okay.

Lawrence Lessig:  
Can I --

John Donovan:  
I want to go to --

Lawrence Lessig:  
-- follow-up?

John Donovan:  
Yeah. Sure, Larry. And then I want to go to -- let me get people set for that before you answer.

1:09:54

I'm going to go to questions from you in the audience right after Larry's response, and the way it will work is just please raise your hand. Let me call on you. When I call on you, stand up. A microphone will be brought to you. Please wait for the microphone and if you forget, I'm just going to remind you to wait and we'd like you to ask a question that's on -- so what we can't do is go down through a litany of well, what do you think of changing this or changing that, because that's not really what we're debating. Something that goes more to the process, this or even to the politics of it, and I ask you to try to put it in the form of a question, not to debate with the debaters, but get them to debate better with each other. Okay, Larry.

Lawrence Lessig:  
So, the really important difference between us is whether there are amendments that can't come out of the congressional process, which requires something extraordinary like the convention and you just offered the Senate as an example of an amendment that came out of the congressional process thereby, I assume, trying to say that see, we can all do it inside the congressional process. But what you know, Walter, is that the reason the Senate amendment was proposed by Congress is that the states were within one or two states of a convention.

1:10:57

It was one of the closest times that we got to a convention and so this process of states saying we want a convention to propose amendments to deal with this problem of senators not being directly elected finally shook them to force them to act. Now, I'd be happy to do the same thing with this convention. I mean, I want to have a convention, but if the very act of forming a convention and getting those states finally gets Congress to do something fine, then we don't have to have the convention.

John Donovan:  
Okay. We're in the question and answer section of this Intelligence Squared U.S. debate. I'm John Donovan, your moderator. We have four debaters, two teams of two arguing it out over

this motion, "Call a Convention to Amend the Constitution." Questions, right down here sir, and the mic's coming down the aisle from behind you on the right-hand side. If you could stand up when the time comes.

Male Speaker:

Hi. William Grasse [spelled phonetically]. I'm still undecided, but I have a question for the pro side. Why don't the states rewrite their own constitutions which are frankly just replicas of the U.S. Constitution except for Nebraska, which has a unicameral system.

1:11:57

I don't see how we get any more democracy at the state level than we do at the federal level at this point.

John Donovan:

Larry Lessig.

Lawrence Lessig:

You know, I should have the numbers. I apologize I don't, but, actually, states are quite active in rewriting their constitutions. They've gone through many stages historically keeping some parts from very old, but going through many significant amendments, some not so fantastic, some pretty good, but this is a very vibrant constitutional drafting process, crafting process, which is by contrast very different from at the federal level.

John Donovan:

And what does it teach us about this motion?

Lawrence Lessig:

Well, I think that it teaches us that the process of conventions to amend the constitution, which is what many of these states go through, they convene conventions, states like Maryland every period -- I think it's every 10 years has to make a decision whether to have a convention or not. They have conventions that succeed in proposing amendments without running away and taking over the United States government or taking over the state next to them.

1:12:58

They do this. They've had a practice of doing this. So, the idea that this practice is not possible or not feasible is just belied by the actual experience of states in --

John Donovan:

Mark Meckler.

Mark Meckler:

In fact, 1972 Wyoming rewrote its entire constitution. California frankly passes its constitutional amendments every electoral cycle, so it is a robust and working process in almost all the states.

John Donovan:

David Super, I'd like to hear your response to that.

David Super:

Well, all of the state constitutional prophecies, conventions, and ballad initiatives are in the context of the federal constitution. We have the guarantee clause where the federal government will step in if any state constitution ceases to be in the Republican form. It hasn't --

Lawrence Lessig:

When has that ever happened?

David Super:

-- been used because it hasn't been needed to be used, but that is a backstop. We have the Bill of Rights. We have the 14th Amendment. All of those go on the table if we have -- open this up to a national convention and that convention throws it away.

1:13:56

[applause]

John Donovan:

Okay. Right in the center there. Ma'am, and the mic's coming down the left-hand side for you.

Female Speaker:

The pro side, and particularly Mr. Lessig, has made a somewhat compelling argument to hold a convention by mentioning proposed amendments that are probably attractive to many of us dealing with climate change, a balanced budget, and some other things, but are you prepared to take the risk in an environment where we have a soon-to-be president who is unaware that the 1st Amendment protects certain speech and that citizens can be stripped of their rights, who believes that --

John Donovan:

Wait. I just need you to cut to your question.

Female Speaker:

Well, my question is, make the argument to me that you are more confident and interested in this process than you are worried about the risk of amendments that you don't like rather than amendments you do like.

1:15:01

John Donovan:  
Thank you.

Lawrence Lessig:  
Well, I'll observe -- and I hope this won't --

John Donovan:  
Larry Lessig.

Lawrence Lessig:  
-- upset my friend here --

David Super:  
I'll let you know if it does.

Lawrence Lessig:  
-- that Mr. Trump was not elected with 75 percent of the population behind him, indeed not even a majority of the population behind him, and not even as many votes as the woman he purports to have beaten. So, I am not concerned that we have evidence that the public is as crazy as would lead me to worry that we're going to have the kind of overwhelming change of the Constitution that I think you and I are both -- would be both concerned of. Absolutely. I mean, there are things in the Constitution I do not want to see taken out. And so, I do have to say, if there is a substantial risk of that, then I want to find another way to fix the problems. But I don't think 38 states is a hurdle that produces substantial risk.

1:15:58

Again, if just 13 Houses in 13 states say no, it's dead. And that is the protection that I think is reported.

John Donovan:  
Walter Olson, do you want to respond to that?

Walter Olson:  
Yeah. I think it's an excellent question. And one of the depressing things about being in all of our business is that you realize the public often is not quite as attached to some of the rights that we prize. They're called 80/20 issues, in which 80 percent of the public picks a side. Sometimes, we're in the 20 percent, I think all four of us. That will happen sometimes on free speech issues, it will happen sometimes on issues where the rationale is national security for abridging some sort of individual freedom, some sort of privacy exercise in surveillance. And the question has come up again and again, don't we trust the ratifying legislatures, given that so many of them have to sign on.

1:16:54

And in general, if you take American public opinion averaged out over five or 10 years, yes, I do trust it not to make weird sorts of errors. And yet it can get into particular moods. It can be stampeded by a security event, say some disastrous attack. It can be stampeded by a silver-tongued demagogue. In both -- no names -- no names whatsoever.

[laughter]

And I am confident that if you give the American people a few years, it gets over those momentary flus or whatever you want to call them. But it might stay intoxicated for long enough --

John Donovan:

All right, let's have Larry respond to that.

Lawrence Lessig:

Yeah, it's important to make sure -- and my answer might have made this unclear. It's not the people voting to ratify an amendment to the Constitution. It's state legislatures or state conventions as Congress selects. So, the check here is 38 state legislatures or state conventions.

1:17:55

Not whether, in a particular moment of crisis we have the public that goes out to the polls and votes some crazy, insane outcome.

John Donovan:

David Super, what about that response?

David Super:

Yes, but that's assuming that our state legislators are in a statesman-like or states woman-like frame of mind. And because of the power of money in politics, which you've very eloquently spoken about, we can't count on that. If the public is polling, that we need to crack down on free speech or crack down on the Fourth Amendment or crack down on something else because of an attack, because of some other perceived crisis, because the economy is in bad shape, I am not optimistic that the legislatures will stand up. Moreover, you keep saying that if 13 state legislators say no, it's dead. Sadly, that's not true. The most recently added amendment to our Constitution was proposed two centuries before it was added to the Constitution. So, if we get some bad amendments put out there by this convention, they will keep shambling on, threatening the republic until we have a wave election that puts them over the top and gets them ratified.

1:19:04

That's scary.

John Donovan:

One more on this question from Mark Meckler.

Mark Meckler:

And just to briefly address Professor Super. Any state can withdraw an amendment at any time, and in fact many, many states have done that throughout American history. And the movement exists to do that, should there be some scary amendment out there. There's a -- this is really important to me, and this is not to be offensive to the professors or the public intellectuals, people who work at institutes and think tanks. But I'm not one of them. I'm just a citizen, right? I live in a small, rural town in Northern California. That's where I come to politics from. I come to politics as somebody who is frustrated by what's happening in Washington, D.C., who votes over and over and watches them on my side, or the other side, not do what I want them to do.

And I'm looking for a mechanism that returns power to the people. And here's a fundamental difference I've had in experience. In the last two years alone, I've personally been in over 40 state legislatures. I've met these men and women face to face. And the idea that they're the same as the critters in Washington, D.C., where I've also spent a lot of time, is outrageous and offensive. Most of the legislatures in America are part-time legislator -- legislatures populated by people just like you who, frankly, are mostly annoyed that they're there in the legislature because they're trying to run a business and raise a family, and they mostly, basically volunteer to go to the state legislature for 30 or 45 days out of their life to do the business of the state once a year or once every other year. These are the kind of people that we want making decisions.

John Donovan:

Okay.

Mark Meckler:

And all polling shows us that they actually are closer to the people, and the people respect them a lot more than they respect D.C.

John Donovan:

All right. I want to take another question.

[applause]

Last seat in that row over there, and the mic's coming down the right-hand side.

1:20:55

Male Speaker:

I think for all the problems that exist --

John Donovan:

Could you tell us your name?

Male Speaker:

My name is Braden Sindoss [spelled phonetically].

John Donovan:

Thanks.

Male Speaker:

For all the problems that exist at the federal level, I think we can all agree that the corruption and cronies and that exist at the state level is 10 times worse.

[applause]

John Donovan:

Okay, I know -- I don't want you to debate the debaters, and that --

Male Speaker:

I'm not debating the debaters. It's leading to a question.

John Donovan:

Ask a question. Thank you.

Male Speaker:

Is, how do you propose to avoid state legislators being used as Trojan horses by special interests, for lack of a better term?

Lawrence Lessig:

Yeah, so --

John Donovan:

Larry Lessig.

Lawrence Lessig:

So here we are in New York.

[laughter]

And I'm with you, completely, absolutely. It's one of the most ridiculously corrupt legislatures in the United States, absolutely.

[applause]

1:21:54

But like Mark, I've been in lots of legislatures, and I have to tell you, like, you know, being a kind of con law geek, I have been moved, really -- one time, kind of embarrassing, kind of started tearing up when I was talking to these people, because these ordinary legislatures, state legislatures are not New York. So, you can't generalize from New York here, right? You can't generalize and say that when you think about state legislatures, you think about 15 New York City. They're not. They're Vermont's and New Hampshire's. New Hampshire has 400 representatives for 3 million people.

Mark Meckler:

I think they get paid a hundred bucks a year.

Lawrence Lessig:

That's it, a hundred bucks a year.

John Donvan:

All right. I'm going to jump in because I think your point is made, and you guys have been talking for about three minutes. I just want to let your opponents have a shot at this issue and the question. And the question I think basically, Mark made a very impassioned statement, and Larry backed him up, that taking New York out of the equation, that you can count -- we're not talking about ordinary citizen, one person, one vote, on these amendments.

1:22:57

We're talking about legislatures from the states, and that most of them are pretty standup groups of people that can be counted on to do the right thing. So, what's your response to that?

Walter Olson:

I like state legislatures, too, and I'm involved with what we do in my own state of Maryland. Where I'm not sure state legislatures shine necessarily, is in avoiding making some mistakes that relate to trying to stay in touch with public opinion. For example, states have repeatedly passed bills restricting religious liberty, which the courts have then had to strike down. States have repeatedly passed laws infringing on most of the rest of the Bill of Rights. And we have a self-correcting system on this in that the courts are fairly vigilant and do not allow Oklahoma's attempt, for example, to prevent the use of Muslim religious law in any legal proceedings.

1:23:56

It was unconstitutional, and the courts said so. That still leaves the states a pretty good judge of many of the issues that are proposed for Constitutional amendments I think. They have better judgment on balanced budget because most of them have such a provision in their constitution. They have better judgment on term limits because a lot of them have term limits. I wouldn't want everything to be up for grabs, though.

John Donovan:

Okay. Let's go another question. In the center, there. Yes. Yeah, you're going -- and it's going to be on the right-hand side. No, no, ma'am. Yeah. No, no. I'm sorry, go back two rows. It feels like Battleship.

[laughter]

Okay.

Female Speaker:

Hi. Katie Leonard [spelled phonetically]. My question is for the against side. So, given that the problems of anger and special interests might just become worse, if not now, then when is it ever appropriate to call a convention?

John Donovan:

Oh, great question.

1:24:54

Is there a time? David Super.

David Super:

Given the stakes involved, I am anxious. One could think about calling a convention at a time when we had resolved a great national crisis at the end of the Civil War. They chose not to do so and proposed three amendments, one of which was very compound. We could have thought of doing that in the Great Depression, when our system clearly had failed us. We handled that through other means. Those would be times when there was a great deal of unity in the country about what needed to be done, the path forward was more agreed to. At this time, it's hard to imagine that. And with all respect to all people in the country right now, I don't know that we're quite operating on the same level as George Washington and James Madison right now --

[applause]

-- in our political debates.

John Donovan:

Right down in front here. And the mic is going to come down the aisle from -- on the left-hand side, sir.

1:25:54

Male Speaker:  
Hello.

John Donovan:  
Hi.

Male Speaker:  
It seems to me --

John Donovan:  
Can -- would you mind telling us your name?

Male Speaker:  
Sorry. My name is Dabi Ferreras [spelled phonetically] from New York. It seems to me that what you said was very profound, about not having enough actual legislators in there -- because if you have such a huge population -- for instance, "we the people" -- how come they're not properly represented by having more members of Congress to actually come out to a more proper vote, more population vote? More representative a vote?

John Donovan:  
Can you -- can you phrase that into another question --

Male Speaker:  
It seems that there's --

John Donovan:  
-- another statement. Something that has, like, a question mark --

Male Speaker:  
Sure. Our population has grown a whole lot since it was put down to 435 -- 535, actually, all together. Why don't we have something more representative of the population we have currently, right now, as in, "We the people?"

John Donovan:  
Okay. I'm going to pass on that question, because I don't think it goes directly to the question of whether we should be having a convention or not.

1:26:56

Sir, in the center seat there -- just across the aisle from you. Thanks, sir, anyway, though.

Male Speaker:

Hi. Andrew Cianzo [spelled phonetically]. My question is, we have approximately, like, 250 years of legal precedent that's been established by the Supreme Court and by courts all around the country, mostly dealing with the Constitutional and the constitutional amendments. Now, if we make a vast change to the constitution, as would be likely happening under a constitutional convention here, how -- what happens to that previous -- to those previous decisions, and how does that affect our overall system of law within this country?

John Donovan:

Mark Meckler.

Lawrence Lessig:

I'd like --

John Donovan:

Oh, Larry.

Male Speaker:

-- [inaudible] Larry.

Lawrence Lessig:

Actually, I'll answer your question if you promise to repeat it without using the word "constitutional convention" in it.

[laughter]

No. I'm just joking. Okay. So, you're right that this is an amendment process against the background of a very rich tradition that has lots of issues that have been resolved and don't need to be corrected.

1:28:01

And that's why I'm not in favor of a constitutional convention to draft a new constitution. I think there are particular principles that we just need to reinforce. This is not an amendment -- I'm not violating that point. But I think the one principle that our Congress will never propose amendments to achieve is it proves -- well, it reinforces the idea that we are all equal citizens and we should have equal political power in this Republic. And that means ending the gerrymandering game, which I think Walter will be with me on. That means ending the way money corrupts Congress. That means assuring the right to vote and the right to vote equally and fairly across this country. I think it means ending the crazy "winner take all" in the Electoral College that means that we can have these loophole presidents. I think all of these are ways to say, "We achieve equality" by insisting on it in an amendment.

And I think there's a pretty elegant way to make that amendment. And if I knew a law professor, I'd ask him to write it or her to write it. But the point is, that is a tweak reflecting a really important value that I think the last 50 years -- at least -- in America have made salient, that we find -- have to find a way to put in the constitution. And if I thought Congress would do it, I would be happy to let them to do it --

John Donovan:  
Walter Olson.

Lawrence Lessig:  
-- but they're not.

John Donovan:  
Walter Olson, last word on this.

Walter Olson:  
Well, I agree with most of what Professor Lessig said. All constitutional amendments wipe out some previous precedent. Depending on their subject matter, they may wipe out a lot of it. This is the same question, though, whether an amendment comes of out Congress or out of the convention.

John Donovan:  
And that concludes Round 2 of this Intelligence Squared U.S. debate, where our motion is, "Call a Convention to Amend the Constitution."

[applause]

And now we move on to Round 3. Round 3 -- brief closing statements by each debater in turn, on our motion, "Call a Convention to Amend the Constitution."

1:29:56

These closing statements will be two minutes each. Right after that you will vote for the final time and we will announce our winner. The motion, "Call a Convention to Amend the Constitution." Here making his closing statement to support the motion from his seat, Mark Meckler, president of Citizens for Self-Governance.

Mark Meckler:  
Thank you. Thanks for being here tonight to listen to us address this important question and to also engage us in questions from the audience. To me frankly that's the most important part, because there are three really important words written behind us on this stage and those words are "We the People." If you would indulge me in a bit of history, in 1843 a young historian by the name of Mellen Chamberlain traveled the country. He was collecting stories from the last remaining Minutemen, who actually fought at the battles of Lexington and

Concord, and in 1843 as you would imagine, they were in their late 80s and early 90s and back then that was really old, right? Not a lot of those guys left and he knew if he didn't collect those histories -- there was no YouTube, they would be lost.

And so, he was going around collecting these oral histories and he happened across one Captain Levi Preston in North Carolina and he asked Preston a series of questions about why he fought in those first battles at Lexington and Concord, and he asked him if it was the stamp back. Had he been offended by the act of having to buy the stamps and place them on all his documents and Preston said, "Never bought a one of them. The governor locked them up in the armory and that's the last I ever heard of them." He asked him about the tea tax and he said, "I was a farmer's son. We never drank any tea. The boys threw it in the armory. That was pretty good, but that was the end of that." He asked him about the great revolutionary writers and Preston answered, "Never read one of them. We read the Bible, catechism, the Psalms, almanac. That was about it." He asked him about the heavy hand of British tyranny and Preston answered, "Never felt a wit of it." He asked him what was it that brought you to the field of battle that day and Preston answered what I think is the greatest philosophy of the American revolution, an American political philosophy throughout our history and Preston answered this, he said, "Son, when we went to fight them red coats that day we meant only one thing.

1:31:57

We had always governed ourselves and we always intended to. And them red coats, they intended that we shouldn't." Today, Washington, D.C., intends that you are not allowed to govern yourself. They prove it day in and day out and so I am here to ask for your support for the resolution to call the convention to propose amendments to the United States constitution. Thank you.

[applause]

John Donvan:

Thank you, Mark Meckler. And that is the motion: Call a Convention to Amend the Constitution. Here making his closing statement against the motion, Walter Olson, senior fellow at the Cato Institute Center for Constitutional Studies.

Walter Olson:

Thank you, John. I promised something constructive as an alternative. I don't want to come here and just be the negative guy throwing cold water on your hopes and in fact --

[laughter]

-- well, this is a vessel for hope and it's one of the reasons why it attracts so much attention, because people want hope and we do not have to simply say nothing can be done.

1:32:54

I'd like to spend a minute on a proposal written up by a wonderful paper for my own Cato Institute by Mike Rappaport, a law professor at San Diego, which is for a prefatory constitutional amendment just on the procedure of how a state convention should work. One which would fill in the blanks that I complained were left blank, one that would provide the specificity and the certainty to let us feel that we could walk forward without the ground giving out under our feet. It makes a great deal of sense because it sets to rest a lot of the procedural uncertainties of where it would lead, who would pick the delegates, whether it would have to stay on a single subject, what would happen to the large states and the small, and I can guarantee you the sense of America in general is that we want one person one vote. We do not want the small states to control everything. It would set those procedures. It would modernize them more appropriate, and we would then have the confidence to move forward on exactly these things.

The one idea, though, that I would leave you with is if you like this idea of first laying out a solid foundation for using the process and then using it, you must vote no on the resolution, because it's too soon to jump in there without that firm foundation. Thank you.

John Donovan:

Thank you, Walter Olson.

[applause]

The motion, "Call a Convention to Amend the Constitution." And here making his closing statement to support the motion, Lawrence Lessig, professor at Harvard Law School.

Lawrence Lessig:

So, in 2008, Iceland's economy totally collapsed. And when the Icelandic people looked around to try to see what had failed them, they recognized it was their government, a corrupted government that had failed them. And so, they started a process to fix it. By crowdsourcing a new constitution. They first collected a thousand people at random who met together to discuss what the values of that constitution should be.

1:34:56

And then they had an election where 500 people ran to serve on the commission that would draft the constitution. 25 were elected. And for four months, they drafted a constitution. Now, four months is about as long as our framers took to draft our Constitution, but our framers didn't post their drafts to Facebook every week. But the Icelanders did. And after that process, they produced a beautiful constitution which was then ratified by two-thirds of the Icelandic people in a national referendum. Now, that story is in many ways inspiring, but it's also humbling because, of course, Iceland is different in a thousand ways from the United

States. But when you think of the courage that they had to do what they did, it makes this debate seem so small. Because is it really so difficult for us to agree not to write a new Constitution, but simply to meet and deliberate about how to fix the problems that we all believe our Constitution has.

There is uncertainty, no doubt, but there's also certainty like this, Congress will not fix these problems. Of that, we can be certain. And we can also be certain of this: the Framers gave us a way around Congress. So, to remix Hamilton a bit, let me say, "Hey, yo, I'm just like my country. I'm young, scrappy, and hungry." Oh, not more -- not that anymore. But we -- "we cannot throw this shot away." You should vote for this motion to support the idea of us stepping up and doing something about these problems we know we have.

John Donvan:

Thank you, Lawrence Lessig.

[applause]

And that motion is, "Call a Convention to Amend the Constitution," and here making his closing statement against the motion, David Super, professor at Georgetown University Law Center.

1:36:56

David Super:

I'm not a gambler. If I was, though, and I found that the casino was tilting the table -- the roulette wheel against me, I would certainly not move to increase the odds. We did just have a presidential election where the candidate who spent the most money did not -- will not be taking office. Nonetheless, on the state level, the kind of money that interest groups that are affected by potential institutional amendments can throw in is absolutely decisive in legislative races, and putting the entire Constitution at stake when we are trying to -- in a system that we, I think, all admit is deeply flawed is a very dangerous thing. That's on the downside. But what's the upside? The upside is that many of these ideas, if proposed, even if put into the Constitution, that are being advocated, I don't think would work.

A balanced budget amendment. Is the Supreme Court going to review every budget that comes out to make sure it's balanced? Which justice will chair the appropriations committee? What if they spin off the Federal Reserve and dodge it that way? It's not going to work unless we hold our Congress accountable for it. And for that, we don't need to put the whole Constitution at risk. Do you really think that passing a Constitutional amendment to rewrite the Second Amendment or to delete it is going to take guns out of people's hands, that that's something that's going to happen? You're not serious about that. It's not going to work. Do you really think that the Congress, even if Citizens United was overturned, that the Congress would in fact pass strong campaign finance legislation? The amazing thing about Citizens United is that such

a weak provision was nonetheless struck down. Money was big in politics before Citizens United, and it will remain.

1:38:55

These are not things that can be successfully accomplished with a Constitutional convention, but an awful lot of mischief can. Please vote no on the resolution.

John Donovan:

Thank you, David Super.

[applause]

And that concludes our closing statements and round three of this Intelligence Squared U.S. debate. And now it's time to learn which side you feel has argued the best. I want to ask you to go again to the key pads at your seat. The voting works the same way. Push number one if you support the motion. It means you're with this team. Push number two if you oppose it. You're with this team. Push number three if you remain or became undecided in the course of the evening. All right, it looks like everybody's made up their minds. And thank you for that. I just want to say a couple of things while we're waiting for the results which will take less than two minutes. The first thing is, as I said at the beginning, at Intelligence Squared, we aspire to a level of discourse that involves intelligence and logic and wit and respect facts.

Interchange robust debate and in a fair way. I think the one thing that this side can -- you know, to calm your fears is that if there were a Constitutional convention and the style was the kind that you brought and that you brought, that that would bring some hope to the process. You were -- you were terrific debaters.

[applause]

I want to -- I want to say thank you again to Jeffrey Rosen of the National Constitutional Center for this partnership. I want to urge you again to go down to Philadelphia and see the NCC.

[applause]

I want to thank everybody who asked a question. And then there was one question I didn't get to, and this young lady in the seat there, you didn't get your chance, but you want to shout it out now or come up to the debaters afterwards? I know you don't have a mic.

Male Speaker:

Afterwards.

1:40:54

John Donovan:

Afterwards? Okay. I think you might be the youngest member of our audience, or -- are you in high school?

Female Speaker:

I'm in fifth grade.

John Donovan:

Fifth grade.

[applause]

Thanks for coming, and I know that we have some, I think, elementary school students upstairs as well. We are so delighted to have you here and getting an early start. You can -- this can be part of your college essay later on. You can --

[laughter]

And the guy talked about me from the stage. This concludes our fall season. We've had a really -- very gratifying season of debates in terms of the quality of the discourse that we had. We've been here. We were twice in Washington, D.C. We set out early in the year to have this season intersect with the issues that we thought would be unfolding over the course of the presidential election campaign, and we intersected really well. Tonight's an example of that. We do all of this as a nonprofit organization.

1:41:54

I know those of you who have been here before have heard me say this. We are a philanthropy. We put on this -- we put on this program, and then we release it into the wild. There are many, many people who are listening to the podcast and hearing the radio broadcasts on public radio stations. We're also available through Roku, Apple TV. We have a very, very far reach. We're getting into many, many schools as part of their curricula as well. And so, all I'm really going to say is the ticket price that you paid, we appreciate it. We need a lot more support. And if you go to our website and contribute, that will help us do more of these things and to do more of what we think is good in terms of the public discourse. And again, tonight was such a great example. The winter season starts on January 11th. Our first debate will be here. We're working still on the how we're going to shape the motion language, but we know what our topics are. Our topic starting in January -- that first topic at this point is going to be "Race and policing."

We're following up in February, tentatively, with the motion "Give Trump a chance."

[laughter]

Well, that's the -- at this moment, that's the theme. And that might actually be the language. We have a debate on the U.S., Saudi relationship. We're going to be look at charter schools, the universal basic income. "Walmart as a force for good."

[laughter]

You know, you laugh now. Come to that debate and see how you vote, okay? "Whether video games make us smarter." And in June in San Francisco, we're going to be teaming up again with the National Constitution Center in a debate that looks at government making demands on companies, tech companies, for digital information, and whether that is Constitutional or not. Our tickets are going on sale later this month through our website. And I just want to remind you that in addition to the podcasts, we live stream these debates, and you can always find out what we're doing by checking us out on Facebook and Twitter.

1:43:56

Okay. So, I have the results now. Remember, the way that we do this is the team whose numbers have moved the most from the first to the second vote is the team who is our winner. That moves up. So, the motion is this, "Call a Convention to Amend the Constitution." In the preliminary vote, 34 percent of you agreed with this. You were for the motion. 22 percent were against, and a very large 44 percent were undecided. Those are the first results. Let's look at the second result. In the second result, the team arguing for the motion, their first vote 34 percent, their second vote 44 percent. They pulled up 10 percentage points. That is the number to beat now. Let's look at the team against the motion. Their first vote was 22 percent. Their second vote was 43 percent. They pulled up 21 percentage points. That means the team arguing against the motion, "Call a Convention to Amend the Constitution," our winner. Congratulations to them. Thank you from me, John Donvan and Intelligence Squared U.S.

We'll see you next time. Thank you, everyone. And thank you for your forbearance during the sound problem.

[applause]

[end of transcript]