



The Public Check on Congress: Collective Congressional Accountability Could Be a Democracy Game-Changer

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Introduction

The Public Check on Congress (PCC) directly addresses a tap root cause of our national political dysfunction: the lack of incentive for members of Congress to reach consensus and act in alignment with the national public interest. With a constitutional amendment it would create a new, nonpartisan mechanism allowing the national electorate, by means of a nation-wide referendum, to hold members of Congress collectively accountable for what they do, and choose not to do. Members of Congress of all parties and both houses would be held jointly responsible for Congress's overall performance.

Our political system has deteriorated over the past several decades, from the top tier among advanced democratic countries to the bottom. It is now routinely characterized as "flawed." It will take a robust intervention to change that trajectory. PCC could be a key element of that intervention.

As described below, PCC is designed to reduce polarization in Congress and society at large; dramatically improve legislative outcomes; encourage more serious, longer-range planning; strengthen the influence of the mainstream voting public vs. moneyed interests and fringe factions; stimulate civic engagement; incentivize political participation among younger voters; bolster our country's image and influence on the world stage; and provide the many other benefits of a meaningful measure of joint bipartisan / bicameral ownership of congressional outcomes where the general public - not moneyed interests or tribal factions - holds the carrot and the stick.

PCC is in the early stage of concept development. The purpose of this memorandum is to put forward a first draft formulation that can serve as a starting point for further refinement, provide the rationale for the sweeping potential benefits claimed for PCC, discuss considerations related to the amendment process, and invite thought leaders and other interested parties to help evaluate this new accountability concept.

The Public Check on Congress Constitutional Amendment (draft)

Here are the key elements of the first draft of a Public Check on Congress collective congressional accountability amendment:

✓ A nationwide referendum on Congress's overall performance is held once every eight years. Congress needs a 35% approval rating to "pass". If this occurs, there are no further PCC procedures until the next referendum eight years later.

✓ If the approval rating is less than 35%, a second, “recall,” nationwide vote is held two years later.

✓ If, again, the support for Congress is below 35%, then one-third of the members of each house of Congress – the most senior third in terms of total tenure in Congress – are to be replaced by elections held in their home districts and states by no later than the next general congressional election. They cannot run again for either house for ten years. Anyone having left Congress at any time during the prior five years is also ineligible for ten years.

✓ Eight years after the replacements are selected, the next PCC referendum is held.

Here are some explanatory comments.

The primary goal of PCC is to create a new, powerful incentive for members of Congress to reach consensus across party lines and between the House and the Senate to legislate in alignment with the general public interest. It would incentivize this spirit of teamwork with a national referendum on congressional performance. Failure to “pass” the approval threshold would cost a substantial fraction of members of Congress their jobs.

The draft amendment above lays out a starting point for key PCC parameters such as the approval threshold, the percentage of members of Congress at risk, frequency of the PCC referendum, etc. The thinking behind these is described below, but at this stage they are all up for debate.

To get the conversation started, I suggest 35% as the approval threshold. This is not because 35% is an acceptable approval rating for Congress. (Although it is considerably above the 20% ceiling we’ve become accustomed to.) If we are going to go to the trouble of amending the Constitution to fix Congress, we should expect approval ratings in the 50% to 70% range, or higher. But if we set a high approval bar, PCC may become a “sword of Damocles” hanging over Congress, triggering short-sighted pandering behavior to appease the public. It might make more sense to set a lower bar, like 35%, combined with consequences for failure so severe as to motivate members of Congress to fundamentally change their behavior so that strong performance guided by the will of “We the People” becomes an ongoing end in itself, not a last-minute necessity to avoid a penalty.

Here are some of the changes you would expect to see with PCC in place:

Most importantly, we should see a dramatic reduction in behaviors that interfere with consensus-building and passage of desirable legislation. This includes toxic demonization of opponents both in Congress and during campaigns; excessive filibusters; “holds” by party leaders and individual members on legislation and personnel appointments; attacks and disparagements of particular groups of citizens; theatrics for media consumption; frivolous investigations; undue influence from special interests out of sync with the national interest; etc. All of these polarizing ploys will become lose-lose tactics with PCC’s collective accountability in place. This is because, unlike every current election for national office, PCC is not a “lesser of evils” vote. It gives the public the “pox on both your houses” option. The good news is that we can expect Congress to demonstrate enough constructive collaboration to earn the other PCC

option — a nod of satisfaction from the national electorate to all members of Congress for their collective performance. .

Another important parameter of PCC is the fraction of members of Congress that would be dismissed if they fail the PCC vote. It must be large enough so that self-serving and party-serving divisive norms are subordinated to a new dominant country-serving teamwork norm. The actual number of members of Congress feeling the PCC effect will be much larger than one-third given the uncertainties of attrition during the cycle. Putting the senior members of Congress at the top of the dismissal list will assure that they use that seniority to make and enforce the necessary behavior-modifying changes in rules, codes of ethics, and norms. The point, once again, is to give Congress every opportunity to convert itself into the highly functional institution we deserve so that we rarely, if ever, wind up actually triggering a massive PCC recall.

The draft formulation above calls for a two-step process for the PCC recall, somewhat like the two-step impeachment and conviction of a President already in the Constitution. This would give Congress a two-year “grace period” to regain the trust and approval of the public and avoid termination of senior members. There are other ways to signal to Congress where they stand so that the two-step process can be simplified. These alternatives can be part of the amendment debate. Although the draft amendment here allows for an additional two years to replace recalled members of Congress, my guess is that these elections would be conducted quite promptly by the affected states and districts to minimize the “lame duck” interval.

Another benefit we should expect is a new emphasis on long-range planning. Recognizing that every eight years Congress will have to defend its record of accomplishment over the past PCC cycle, it will be strongly incentivized to develop multi-year plans for such policy areas as climate change response, fiscal sustainability, entitlement reform, national security, immigration policy, reproductive rights, gun safety, technology oversight, addressing social and economic inequities, increased focus on intergenerational fairness, etc. The public will expect party leaders to periodically stand together before the national electorate to present their joint plans and progress reports. Dissenting views can be acknowledged, but would be accompanied by commitments to reach timely consensus.

An eight-year cycle will also increase congressional focus on younger voters who now feel especially estranged. Middle and high school students, too young to vote at the beginning of the cycle, will be a cohort to be reckoned with in anticipation of the next PCC vote. For example, after a school shooting, they will be in a position to demand something more than thoughts and prayers.

This new dynamic for legislation and planning will require the members of Congress to find common ground consistent with the national interest. Fortunately, surveys show that supermajorities of Americans share common ground on most major national issues. And those majorities grow even larger when asked if they are willing to compromise. We can therefore expect Congress to dispense with partisan labels and inflammatory rhetoric as it consults the citizenry for their policy preferences. In this way, the depolarizing effect of PCC on Congress itself would incentivize Congress to heal rather than exacerbate divisions in society at large. Not every issue needs to be a wedge issue.

Every Vote Will Count

Just as PCC would be the only national vote that is not a “lesser of evils” choice as noted above, it would also be unique in several other ways. Unlike every vote for members of Congress and President, which are counted up by district and state, PCC would be the only election where the relevant count is the national total. PCC is likely to encourage greater turnout, especially among Independents who are left out of the typical binary primary process and often feel at loose ends as they stare at the general election ballot.

By the way, this might be a good time to refer to the chart on the last page of this memo. It notes at the top the current accountability framework for Congress where each member is elected by the small sliver of the electorate residing in his or her home district or state. (Congressional leadership and vote totals are as of 2022.) The chart also shows the additional national accountability that members of Congress would have under PCC. After casting the traditional vote for members of Congress, the voter is asked toward the bottom of the chart the PCC accountability question: “How’s Congress doing?” — it’s very straightforward, totally nonpartisan, just check one of two boxes, “Pass” or “Fail”. Virtually every voter can readily answer this question and, if congressional performance is poor, would be only too happy to answer it. As noted above, it is intended that Congress would reform its ways so that the PCC recall is rarely, if ever, put into effect. But if it were to happen, all replacement members would be chosen in local elections in their home districts and states. The local constituency would make that selection.

Softening the Effects of Gerrymandering and the Senate’s Small State Bias

As a national referendum, PCC would diminish the excessive partisanship of members of Congress in “safe” districts and states, including those from gerrymandered districts. They would not be exempt from accountability for Congress’s overall performance, since they would be exposed to the same risk of recall as any other member. This national accountability would also help soften the small state representation bias in the Senate where no matter how small the state, every Senator will also have to listen with at least one ear to their new national constituency.

Money in politics

Under PCC, Congress will be under enormous pressure to deal with excessive money in politics, since this is a top concern of Americans of every political stripe. There is already much progress on a campaign finance amendment by American Promise and other groups. PCC would be a useful complement by prompting Congress to develop and continuously update laws and ethics rules addressing all the ways money and other modes of undue influence distort our politics. Of course, special interests are entitled to their seat at the table. But their influence must be rebalanced when the post-PCC Congress reexamines its definition of the common good.

Strengthen Congress’s Ability to Check and Balance the Other Branches

Over the past several decades, Congress’s diminished capacity for consensus-based governance has also diminished its ability to constructively check and balance the other two branches of government. This creates a vacuum where the absence of a bipartisan majority in Congress allows the President to take “Executive Action” which should either be prevented or, at a minimum, legitimized by appropriate congressional support. With PCC, Congress would be incentivized to fulfill more coherently its responsibility to check and balance the Executive and Judicial branches.

Compatibility with other reforms

PCC is compatible with most other political reforms under consideration and would be a highly useful complement to some. The synergy with campaign finance reform was noted above. Other examples include Ranked Choice Voting, open primaries, proportional representation, and other reforms intended to improve representation by expanding voter choices and encouraging new political parties. With these reforms in effect, potential coalition government could result in congressional consensus being at least as elusive as it is today. This would be especially true if each house of Congress were to have its own dominant coalition. Under those circumstances, a meaningful collective accountability incentive may be even more useful for consensus-building.

Consistency With the Founders' Vision

The United States was the first modern country to go all in on the most fundamental principle of democracy: "government by consent of the governed." And so, if now we find that We the People do not have a mechanism that allows us to credibly withhold our consent, it is time for a significant intervention. I can say, with no fear whatsoever of being proven wrong, that if George Washington, James Madison, Alexander Hamilton, Benjamin Franklin and the others who signed the Constitution were to return to us today to help us fix our political system, among their first suggestions would be to install a mechanism by which the public could hold members of Congress collectively accountable. Back then the Founders felt that, despite the wide variety of interests represented in Congress, ambition would counteract ambition (Federalist # 51) such that the only way a decision could be reached would be through good faith compromise. Unfortunately, today's congressional dynamic features much more fission than fusion, and the Founders would conclude that a firm nudge toward consensus building is needed. That nudge cannot come from one of the other branches of government. It must come from the sovereign authority that ordained and established the entire system. This buck stops with you and me.

Getting Members of Congress on Board

As we discuss the role of members of Congress, let's resist the temptation to vilify them indiscriminately. Many of them feel victimized by the same broken incentive system that we are trying to fix. Some of those who know they are part of an institution that is failing the American people have gone public with their pleas for protective "cover" to allow them to do the right thing. Many others have expressed that sentiment privately. A longtime European politician could just as easily have been speaking for many in the U.S. Congress when he said, "We all know what to do. We just don't know how to get reelected after we've done it."

PCC would provide cover for doing the right thing. A high PCC approval vote would generate a tailwind for incumbents at reelection time not available to non-incumbents. This would be in sharp contrast to the absurd situation we often see today of an incumbent running against his own unpopular Congress, a tactic his opponent can use more effectively than he can.

In addition, a positive PCC vote would constitute a strong mandate for Congress from the American people - one as strong, or even stronger, than the "lesser of evils" presidential mandate. This would help Congress reclaim the political power it has ceded over the decades to the other

branches of our national government and help restore Congress to the "first branch" status originally envisioned for it by the Founders.

Another consideration for current members of Congress is the lengthy period of time before they would first face the risk of recall. It would take several years for PCC to become a part of the Constitution. After that, there would be a full PCC cycle before the first referendum. Any member of Congress voting for a PCC amendment could do the right thing for both the country and Congress and not worry about possible personal consequences of a PCC vote for many years.

(Although not incorporated in this formulation of PCC, such an amendment might be an excellent occasion for making a related constitutional change: increasing the term of Representatives from two to four years. The two-year cycle is widely viewed as too short for the House and, by extension, the full Congress, to be as productive as it needs to be. This change would be a clear win - win for Congress and the public.)

Many members of Congress already realize that the current dysfunctional condition is not sustainable. If they don't support a relatively benign accountability adjustment like PCC in the near future, they run the risk that growing public outrage will lead to something far more intrusive and punitive. These possibilities range from unconditional term limits to a new constitutional convention. Plans are already afoot for such a convention where the agenda could include dramatically circumscribing Congress's authority.

Members of Congress will not take the lead in strengthening their accountability to the public. But if they sense highly energized public support for it, they will do the next best thing: running to the front of the parade already in progress. That will be good enough.

Amending the Constitution

Until perhaps ten years ago, many among the conventionally wise asserted that the United States Constitution would never again be amended. They had their arguments all lined up. It was institutionally too difficult with supermajorities required in both houses of Congress and among state legislatures - more difficult than amending the constitution of any other advanced democracy. Or we were becoming too divided to agree on any amendment. Or, if we couldn't muster the political will to pass the Equal Rights Amendment, anything else was hopeless. Etc.

But another tenet of conventional wisdom is now beginning to show itself: "Nothing is more powerful than an idea whose time has come." And there are signs the time for robust political reform, including amendments to the Constitution, is at hand.

There is now a broadly shared understanding that the crisis in our democracy is tipping from critical to existential. The corresponding tipping point for amending the Constitution is that what once was "inconceivable" will soon become "inevitable". A growing number of citizens now want to hear the case for new ideas. They want to know if an amendment concept is nonpartisan; if it has game-changing potential for delivering good governance responsive to the will of the people; whether it can energize and galvanize the exhausted supermajority that is tired of only lesser-of-evil choices; whether it can excite young Americans; and whether it strengthens the fundamental principle of our democracy: "government by consent of the governed."

Since PCC calls for some shifting of congressional accountability paradigms, we can't yet be conclusive about how well it measures up against these criteria. But given its potential, it is

worthy of a full evaluation in the emerging national conversation about possible fundamental, structural changes that a vast majority of Americans agree our political system needs.

PCC would be especially well-suited for consideration by existing civic engagement groups, deliberative democracy forums, book clubs, high school and college government classes, and other convenings of people who want to be part of the national conversation vetting fundamental reforms. If the general public finds that PCC can make a substantial improvement in how our government works, then popular momentum will help it become a campaign litmus test for candidates for Congress, where it must be proposed, and for state legislatures, where it must be ratified.

That is a long way off. But if public interest is high, we may not have to wait that long before much of the benefit of PCC kicks in. Once it appears to be likely, we might see the behaviors of members of Congress begin to adapt to the approaching new reality of collective accountability.

Conclusion

In our early days as a new nation, our Founders adopted the Latin motto, “E Pluribus, Unum.” In English that translates as, “Out of Many, One.” Our democratic system of government, with its all-in commitment to separation of powers combined with an elaborate overlay of checks and balances depends on a stable yet responsive equilibrium that allows for both respect for the rights and differences of individuals and groups (pluribus) and capacity for decisive governance consonant with the common good (unum.)

Over the past several decades we have drifted dangerously away from that equilibrium. And we must face the likelihood that we will not return to it without significant Intervention by the American people.

The Founders anticipated that, from time to time, such intervention would be necessary. Here, for example, is part of a letter from George Washington, who presided over the Constitutional Convention, to his nephew. It is dated November 10, 1787, two months after the convention concluded:

The warmest friends and the best supporters the Constitution has, do not contend that it is free from imperfections; but they found them unavoidable and are sensible; if evil is likely to arise therefrom, the remedy must come hereafter; for in the present moment, it is not to be obtained; and, as there is a Constitutional door open for it, I think the People (for it is with them to Judge) can as they will have the advantage of experience on their Side, decide with as much propriety on the alterations and amendments which are necessary [as] ourselves. I do not think we are more inspired, have more wisdom, or possess more virtue, than those who will come after us.

Many of the other signers had similar thoughts. They expected that, should we ever face the congressional dysfunction we are now experiencing, we would figure out how to remedy it. And if it were to take one or more amendments to do it properly, then “there is a Constitutional door open for it.” It was George Washington’s faith in your wisdom and virtue and mine that allowed him to sign the Constitution. Now we have a chance to prove ourselves worthy of that faith.

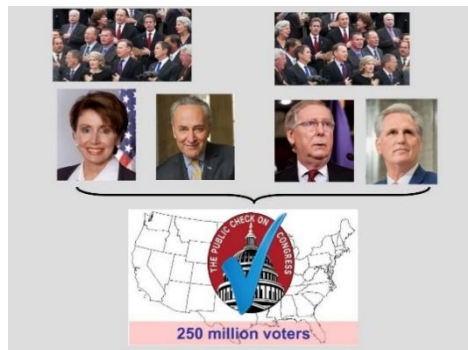
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The Public Check on Congress

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Currently, each member of Congress is only accountable to his or her individual district or state – a tiny sliver of the overall electorate.



What if:

In addition to their individual accountability the members of Congress, together, could be held collectively accountable by the national electorate as a whole for Congress's overall performance?

Public Check on Congress
How's Congress doing?
(Check one)

Pass

Fail

If we create a new, strong incentive for members of Congress to compromise and act in the national interest, they will do so, to avoid being replaced with others who will.

The Public Check on Congress Constitutional Amendment (Draft)

- ✓ **A nationwide referendum on Congress's overall performance** is held once every eight years. Congress needs a 35% approval rating to "pass". If this occurs, there are no further PCC procedures until the next referendum eight years later.
- ✓ **If the approval rating is less than 35%**, a second, "recall" nationwide vote is held two years later.
- ✓ **If, again, the support for Congress is below 35%**, then one-third of the members of each house of Congress – the most senior third in terms of total tenure in Congress – are to be replaced by elections held in their home districts and states by no later than the next general congressional election. They cannot run again for either house for ten years. Anyone having left Congress at any time during the prior five years is also ineligible for ten years.
- ✓ **Eight years after the replacements are selected**, the next PCC referendum is held.