



# Background Guide

We the People, Part Two:  
Constitutional Convention  
2022

Under Secretary-General: Everett Kalman  
Chair: Poorabi Nanda, Vice-Chair: Wade Bartlett

# IndianaMUNC VII

February 19-21 | Bloomington, IN  
Paul H. O'Neill School of Public and Environmental Affairs



## Copyright Notice

This document is the copyrighted intellectual property of Indiana Model United Nations Inc and is solely intended for use by students attending IndianaMUNC VII. Any distribution, modification, or duplication of this document without express written authorization from the Corporation is strictly unlawful.



## A Letter from the Chair

Hello Delegates!

My name is Poorabi Nanda and I am thrilled to be your chair for We the People, Part 2!

A little bit about me- I am a freshman at IU majoring in Political Science and minoring in International Studies and went to high school right here in Bloomington! Outside of Indiana Model UN, I am also involved in the IU Journal of Undergraduate Research and if I ever get a little free time, I'm probably binge-watching my favorite tv. shows or rereading the same book for the twelfth time.

I have been participating in MUN conferences since my freshman year of high school and attended IndianaMUNC all four years! I'm super excited to be chairing a committee and hope to make your experience at IndianaMUNC as amazing as mine! I understand that things will be a bit different this year. Nevertheless, we want to make your experience as enjoyable as possible. Please don't hesitate to reach out to me or Wade if you have any questions about committee, college, or just wanna say hi!

I'm really excited to see you all soon!

Poorabi Nanda

ponanda@iu.edu



## A Letter from the Vice Chair (Optional)

Hello Delegates!

I'm your vice chair, Wade Bartlett, and I'm a freshman studying cybersecurity and global policy. Fun fact: I went to Bloomington High School North and I was a delegate at this same conference just last year. Poorabi actually dragged me to my first Model UN meeting, and I ended up having a lot of fun in the club. I'm really excited to help run a committee this year!

Obviously this isn't exactly as we thought it would be. Instead of sitting in the front of the room silently judging everyone, I'll be behind my own computer screen (still silently judging everyone, it's literally in my job description) along with all of you. Even if this is a lot different than we imagined, I still want everyone to have the best experience possible. Don't hesitate to talk to me if you're having any problems; we'll do our best to fix them.

This is going to be so much fun. Good luck researching and good luck with position papers. I can't wait to see you all in February!

Wade Bartlett



## Introduction to the Committee

Over the past decade, it has been made abundantly clear to the American public and the nation's lawmakers that certain structures of the United States government are simply flawed. Whether it is the lopsided concentrations of power within specific branches or levels of the government, the lack of equal representation, or the need for additional protections of citizens' rights, the current Constitution does not adequately set up the structure of the government necessary for the 21<sup>st</sup> century United States, nor does it sufficiently protect the rights of the people. The goal of this committee will be to address these issues and to improve, or rewrite, the existing Constitution of the United States.

## Topic 1 | Balance of Powers History

Since the first Constitutional Convention in 1787, the question of power and the exercise of power in the United States has been debated at length. A point of contention between Federalists and Anti-federalists in constructing the Constitution was the power of the federal government. The Executive branch's power was constrained by several measures to ensure that the United States wouldn't devolve into a government of limitless and unaccountable power. The balance of power in the U.S. government was established through two structures: the separation of powers and federalism. Separation of powers in the United States refers to the unique responsibilities entrusted to each branch of the

<sup>1</sup> "Federalism," Legal Information Institution, Cornell Law School, 11/6/2020, <https://www.law.cornell.edu/wex/federalism>

government to ensure no one branch becomes too powerful. The Constitution lists several enumerated powers for the Legislative, Executive, and Judicial branches. Over the years, the federal government has grown in part due to implied powers that expand the authority of the federal government. The second structure, federalism, provides a balance of power between the federal government and the several state governments<sup>1</sup>. To ensure that the federal government wouldn't wield insurmountable influence over the states, the Tenth Amendment of the U.S. Constitution states that any matters not explicitly under the jurisdiction of the federal government was the responsibility of the states.

## Current Situation

The current balance of power within the United States government is tilted at best. There is rarely any acknowledgement of the formal separation of powers, and it would be accurate to categorize certain branches of government, often the executive branch, as overstepping their constitutionally established boundaries. A prime example of this is the concept of the 'imperial presidency', which has gained traction among conservative academic circles. It is argued that the President's expansive role as Commander in Chief permits actions that would otherwise contradict Constitutional separation principles. The military is a source of strength and although the President is Commander in Chief, it is Congress that has power to decide matters related to engaging in war. While Congress has tried to reclaim power from the executive branch on matters related to war and raising an army, it hasn't been successful because of varying interpretations on the scope of the executive's powers<sup>2</sup>.

<sup>2</sup> Deborah Pearlstein, "Getting Past the Imperial Presidency," *Harvard National Security Journal* 10, no. 2 (2019): 368-404



Furthermore, as the federal government's operations have expanded and as its portfolio of implied powers has expanded, the national government has amassed more power than the state governments. This is not to say that the states are completely powerless. In fact, during the COVID pandemic, the crucial role of the state government was evident, as was the disparity between the policies of states and the national government. Governors took charge of each state's COVID response and managed everything from lockdowns to mask mandates within their jurisdictions. Contrary to what was expected, the federal response was slower, less organized, and at times a direct contradiction to the restrictions placed by the state governments<sup>3</sup>. Most disturbingly, over the past few decades, the practice of cooperative federalism has all but disappeared. In order for the United States government to be truly effective, federal programs need state agencies to ensure that policy is properly implemented. By going through the state agencies, the federal programs also leave room for the states to tweak policies to best suit their unique priorities<sup>4</sup>. The lack of cooperative federalism has made it exceedingly difficult for policy changes to reach all citizens and, as a result, forces the federal government to expand their powers and do the job themselves.

## Bloc Positions

**Conservative-leaning states** | Delegates from states that lean conservative will be more inclined to ratify a Constitution that stresses cooperative federalism, states' rights, and a

---

<sup>3</sup> Beth Duff-Brown, "Federalism meets the COVID-19 Pandemic: Thinking Globally, Acting Locally," Last modified April 6, 2020, <https://law.stanford.edu/2020/04/06/federalism-meets-the-covid-19-pandemic-thinking-globally-acting-locally/>

less powerful and expansive federal government. They may also seek to ensure that the executive branch of their state government acquires more power.

**Liberal-leaning states** | Delegates from states that lean liberal or progressive will likely emphasize the role of the executive in the federal government. They may argue that a stronger national executive can provide better, clearer directions for states.

Regardless of which part of the political spectrum delegates may fall under, delegates should prioritize collaboration as any changes to the Constitution will likely have to be ratified by the states.

## Questions to Consider

- How should the power of the executive be constrained during moments of intense partisanship?
- What additional restrictions should be added to Article 2 to make sure that the role of the executive, especially in military matters, doesn't overstep the purview of the Congress?
- What can the states and federal government do to strengthen cooperative federalism?

<sup>4</sup> Philip J Weiser, "Federal Common Law, Cooperative Federalism, and the Enforcement of the Telecom Act," *NYU Law Review* 76, no.6 (2001): 1695



## Bibliography

Duff-Brown, Beth. "Federalism meets the COVID-19 Pandemic: Thinking Globally, Acting Locally." Last modified April 6, 2020.

<https://law.stanford.edu/2020/04/06/federalism-meets-the-covid-19-pandemic-thinking-globally-acting-locally/>

"Federalism." Legal Information Institution. Cornell Law School. 11/6/2020.

<https://www.law.cornell.edu/wex/federalism>.

Pearlstein, Deborah. "Getting Past the Imperial Presidency." *Harvard National Security Journal* 10, no. 2 (2019): 368-404

Weiser, Philip J. "Federal Common Law, Cooperative Federalism, and the Enforcement of the Telecom Act," *NYU Law Review* 76. No.6 (2001): 1692-1767



## Topic 2 | Statehood and Representation

### History

The issue of representation within the United States government has been contested since the country's inception. In the United States Congress, the House of Representatives has been the chamber closest to the citizenry. Over time, the House has expanded and currently has 435 members. The Senate, meant to be more occupied with ensuring checks on the other branches (confirming justices to the bench, confirming Executive cabinet appointments), has 100 members with two senators from each state. With the ratification of the 17<sup>th</sup> Amendment, voters have directly voted for their senators since 1913 (previously state legislatures chose senators)<sup>5</sup>, giving the citizens more voice in the Senate. Together, the United States Congress is supposed to represent the people.

However, not every U.S. citizen is represented in the House. Puerto Rico and the District of Columbia (D.C.) are not states and therefore are not represented in the House or Senate. Puerto Rico is unincorporated U.S. territory and calls for independence have existed on the island since the 1930s. Washington D.C., though treated like a state in some ways, isn't one.

Furthermore, the issue of representation extends beyond statehood and also concerns the Electoral College. In the past twenty years,

---

<sup>5</sup> "Direct Election of Senators," United States Senate, accessed November 18, 2020, [https://www.senate.gov/artandhistory/history/common/briefing/Direct\\_Election\\_Senators.htm](https://www.senate.gov/artandhistory/history/common/briefing/Direct_Election_Senators.htm)

there have been several occurrences where, for the presidential election the winner of the Electoral College has lost the popular vote, ushering in claims that the College is not truly representative of the wishes of the people.

### Current Situation

Because Puerto Rico exists as unincorporated territory of the United States, it isn't officially represented in the House or Senate. Furthermore, as long as Puerto Ricans live on the island, they are unable to vote for the President (Puerto Ricans living in the US can vote in the Presidential race), although they can serve in the US military. Puerto Rico's population has always been in favor of statehood, but in recent years the calls for formal recognition have grown louder. A survey from 2010 showed that over 60% of the population favored statehood. 5% of the population supported independence and the establishment of Puerto Rico as an independent country. While the support for statehood largely exceeded support for independence, Puerto Rico has a rich history of nationalism. It will be up to the delegates to decide whether Puerto Rico should be admitted as a state or should be given independence<sup>6</sup>.

On a slightly different plane, The District of Columbia is governed extensively by the United States Congress despite it not being a state. The US Congress sets the budget for the District and D.C. citizens vote only for their Mayor and Council Members. Washington D.C.

<sup>6</sup> Christine Graf, "STATEHOOD: Puerto Rico's Uncertain Future," Faces 34, no.1 (2017): 12-15.



lacks representation in the House and Senate though an Amendment to treat the District as a state has been proposed since 1978 and has been ratified by a few states<sup>7</sup>.

Finally, delegates should work toward determining whether the current Electoral College system is the best for selecting the President. Critics of the College argue that in addition to not accurately representing the wishes of the majority of people, the College over-represents the wishes of the few<sup>8</sup>. Defenders of the College argue that the system protects federalism by giving small states a more equal role alongside more populous states in determining the winner of a presidential election<sup>9</sup>.

## Bloc Positions

**States with Smaller Populations** | Delegates from states with smaller populations would likely be in favor of maintaining the Electoral College to preserve their weight in deciding the election.

**States with Larger Populations** | States with larger populations would generally be in favor of moving towards a national popular vote to determine the President.

Something worth keeping in mind- because there are a fixed number of representatives in

---

<sup>7</sup> John S. Baker, Jr. and Anderson Bellegarde Francois, "The Twenty-Third Amendment," *Interactive Constitution*, accessed November 18, 2020.

<sup>8</sup> Darrell M. West, "It's Time to Abolish the Electoral College," Policy 2020 Brookings, Brookings Institute, accessed November 18, 2020, [https://www.brookings.edu/wp-content/uploads/2019/10/Big-Ideas\\_West\\_Electoral-College.pdf](https://www.brookings.edu/wp-content/uploads/2019/10/Big-Ideas_West_Electoral-College.pdf).

<sup>9</sup> Luis Fuentes-Rohwer and Guy-Uriel Charles, "The Electoral College, the Right to Vote, and out Federalism: A comment on

the House, adding Puerto Rico and D.C. as states would mean some states (New York, Florida, Texas, and Montana) would receive fewer representatives in the House<sup>10</sup>.

## Questions to Consider

- Should the revised Constitution admit Puerto Rico as a state or should Puerto Rico be an independent nation?
- Should the Electoral College be abolished and replaced with a national popular vote? Is a popular vote the best replacement for the Electoral College?
  - a. Regardless of which voting format is chosen, how should states ensure that minority voters and votes aren't oppressed and have a say in the outcome of a presidential election?
- Should the House of Representatives be expanded with the addition of Puerto Rico and D.C. as states?
- Should the Senate, which frequently deals with more serious matters than the House, be expanded at all, or is it fine the way it is?

a Lasting Institution," *Florida State University Law Review*, 29, no. 879 (2001): 909.

<sup>10</sup> Dudley L. Poston Jr. and D. Nicole Farris, "The Political Implication of D.C./Puerto Rico Statehood," last modified October 6, 2020, <https://centerforpolitics.org/crystalball/articles/statehood-for-washington-d-c-and-puerto-rico-background-and-political-implications/>



## Bibliography

- Baker, John S. Jr. and Francois, Anderson Bellegarde. "The Twenty-Third Amendment." *Interactive Constitution*. Accessed November 18, 2020.
- "Direct Election of Senators." United States Senate. Accessed November 18, 2020, [https://www.senate.gov/artandhistory/history/common/briefing/Direct\\_Election\\_Senators.htm](https://www.senate.gov/artandhistory/history/common/briefing/Direct_Election_Senators.htm)
- Fuentes-Rowher, and Guy-Uriel Charles. "The Electoral College, the Right to Vote, and out Federalism: A comment on a Lasting Institution." *Florida State University Law Review*. 29. no. 879 (2001): 909.
- Graf, Christine. "STATEHOOD: Puerto Rico's Uncertain Future." *Faces* 34, no. 1 (September 2017): 12–15
- Poston, Dudley L. Jr. and D. Nicole Farris, "The Political Implication of D.C./Puerto Rico Statehood." Last modified October 6, 2020. <https://centerforpolitics.org/crystalball/articles/statehood-for-washington-d-c-and-puerto-rico-background-and-political-implications/>
- West, Darrell M. "It's Time to Abolish the Electoral College." Policy 2020 Brookings. Brookings Institute. Accessed November 18, 2020. [https://www.brookings.edu/wp-content/uploads/2019/10/Big-Ideas\\_West\\_Electoral-College.pdf](https://www.brookings.edu/wp-content/uploads/2019/10/Big-Ideas_West_Electoral-College.pdf).

<sup>11</sup> "Privacy," *Legal Information Institute*, accessed December 3, 2020, <https://www.law.cornell.edu/wex/privacy>.

<sup>12</sup> Phoebe Varunok, "The Georgia Life Act: Limiting Women's State Constitutional Right to Privacy,"

## Topic 3 | Bill of Rights 2: Electric Boogaloo

### History

The Constitution is not a fixed document and amendments have been added over the years to reflect the Constitutional questions that have risen since 1789. In particular, the issues of privacy and individual rights have loomed over the document and the court system.

The right to privacy is not explicitly written in the constitution. Instead, the courts have established this right through the interpretation of different protections listed across several amendments including the First, Fourth, and Ninth Amendments, as well as the Due Process Clause of the 14<sup>th</sup> Amendment. The right to privacy was first established in *Griswold v. Connecticut*, but only "narrowly". It was specifically established "to find a right to privacy for married couples, and only with regard to the right to purchase contraceptives"<sup>11</sup>. Judicial opinions from *Roe v. Wade* and *Planned Parenthood v. Casey* further delved into the issue of privacy and established that an individual's choice to terminate their pregnancy was "a private liberty", and therefore, abortion was protected by an interpretation of the Constitution that accepted that the right to privacy was implicitly a part of the Constitution and the Bill of rights.<sup>12</sup>

Constitutional questions about privacy haven't always concerned abortion. In 1967, the case

*American University Journal of Gender, Social Policy & the Law* 28, no. 2 (2019): 247–70.



U.S. vs Katz (which expanded the scope of the 4<sup>th</sup> Amendment) established that phone conversations, even if they were outside of your own home, were private. Additionally, in 1976, US v Miller, established that when you voluntarily turned over information, you forfeited your “Fourth Amendment protections”<sup>13</sup>, essentially abdicating your right to privacy for that specific piece of information.

One of the most important aspects of modern constitutional law is the incorporation doctrine. The incorporation doctrine is the process by which the amendments in the Bill of Rights has come to be applied to the individual states as well as the federal government. This doctrine operates through Section 1 of the 14<sup>th</sup> Amendment, which extends due process rights and equal protection of the laws to citizens of the states. This clause has been the foundation of civil rights legislation, as well as the gradual incorporation of the Bill of Rights throughout past century.

## Current Situation

Today, too, the constitutional question of privacy is brought up in a variety of cases, though we most commonly associate it with cases dealing with abortion. Recently, the right to privacy was evoked to challenge Georgia’s Life Act. This act, which limited access to abortion in the state of Georgia, is

---

<sup>13</sup> Josephine Wolf. “Losing Our Fourth Amendment Data Protection,” *The New York Times* (New York, New York), April 28, 2019.

<sup>14</sup> Phoebe Varunok, “The Georgia Life Act: Limiting Women’s State Constitutional Right to Privacy,” *American University Journal of Gender, Social Policy & the Law* 28, no. 2 (2019): 247–70.

unconstitutional according to some scholars because it violated “the protection of the family and intimate life matters” due to its “intrusive restrictions”<sup>14</sup>.

The privacy debate extends to other issues as well. For example, in the past, there have been legal cases about searching student’s lockers, backpacks and other personal items in schools. The consensus on such cases appears to be that school officials have the right to search personal belongings if and only if they have enough good reason to search the student, though some debate still exists<sup>15</sup> (ACLU). Furthermore, some scholars argue that at a time where social media has become increasingly more important, “the Fourth Amendment requires a greater degree of privacy protection for social media data”<sup>16</sup> to ensure privacy on the internet. Similarly, data from apps, in particular location data, is not protected under the Fourth Amendment, and the Supreme Court has left open the possibility that it may be legal for the government to have access to location data<sup>17</sup>.

Outside of Fourth Amendment litigation, disputes surrounding the extent of the Bill of Rights’ protections includes the Eighth Amendment’s right against cruel and unusual punishment, First Amendment freedoms of speech and religion, contemporarily regarding

<sup>15</sup> “Students: Your Right to Privacy,” *ACLU*, accessed December 3, 2020, <https://www.aclu.org/other/students-your-right-privacy>

<sup>16</sup> Brian Mund, “Social media Searches and the Reasonable Expectation of Privacy,” *Yale Journal of Law and Technology* 19, no. 1 (2018): 237-273

<sup>17</sup> Josephine Wolf. “Losing Our Fourth Amendment Data Protection,” *The New York Times* (New York, New York), April 28, 2019.



COVID-19 related restrictions on group gatherings, the Second Amendment and gun regulation, and more. Much of this committee's work on this topic will be to ask how these protections, written in the late 18<sup>th</sup> century, apply to today and what rights and protections are necessary to maintain a free American democracy for the future. How does modern life, and all of the progress it entails, impact our conception of the rights we hold to be of vital importance?

## Bloc Positions

**Conservative-Leaning States** | Delegates from states that lean conservative would likely be in favor of a stricter interpretation of the Constitution and may want to limit language that broadly defines rights and expands protections against the government.

**Liberal-Leaning States-** Delegates from these states would likely advocate for broader protection of rights and may be particularly interested in privacy rights.

## Questions to Consider

- How broad should an amendment regarding privacy be?
- Are there instances where the government needs access to citizens' data due to national security reasons? If so, would national security trump people's right to privacy?
- What roles do social media and data sharing play in privacy protection? How does the sharing of data between third parties affect this discussion?
- Should medical procedures (like abortion) that are deeply private and personal be protected under this

amendment? How do you ensure protection for these procedures?

- What instances would allow governments to seemingly impede constitutional rights? For example, does the COVID-19 pandemic's danger permit state and local governments to prohibit religious organizations or political groups from hosting large meetings?
- How should we determine vagueness in the Bill of Rights? For example, should we interpret the Eighth Amendment to protect against modern notions of cruel and unusual punishment, or notions from 1789? Do modern firearm capabilities and the existence of a standing army change the protections of the Second Amendment?

## Bibliography

- Mund, Brian. "Social media Searches and the Reasonable Expectation of Privacy." *Yale Journal of Law and Technology* 19, no. 1 (2018): 237-273
- "Privacy." *Legal Information Institute*. Accessed December 3, 2020. <https://www.law.cornell.edu/wex/privacy>
- "Students: Your Right to Privacy." *ACLU*, Accessed December 3, 2020. <https://www.aclu.org/other/students-your-right-privacy>
- Varunok, Phoebe. "The Georgia Life Act: Limiting Women's State Constitutional Right to Privacy." *American University Journal of Gender, Social Policy & the Law* 28, no. 2 (2019): 247-70.



Wolf, Josephine. "Losing Our Fourth Amendment Data Protection," *The New York Times* (New York, New York), April 28, 2019.