Six Amendments: How and Why We Should Change the Constitution:
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Six Amendments: How and Why We Should Change the Constitution:John Paul Stevens:
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John Paul Stevens, one of our most distinguished Supreme Court justices, who died recently, has left us a pattern of what such a justice should be. He was a Republican, appointed by a Republican president, who became over his long tenure a justice with no obvious bias. He was much admired, and the current court would greatly benefit by his example.

One of his last books addresses an issue that has become much more pressing now than when it was written. Justice Stevens reminds us that the Constitution is a living document, intended by its founding writers to be amended as the nature of our society changed. They demonstrated this by amending the original document immediately, pointing the way for all of the other amendments that have followed.

Lest we forget, the Founding Fathers never addressed what they knew would be a sore issue for many times, human slavery. They never considered that women could constitute citizens with political rights equal to men, and certainly never considered how at least one of the original amendments, the 2nd, would quickly become outmoded by technology and use of weapons.

Justice Stevens book makes the case for further amending six standing amendments, and at the end of the book, provides us with the entire Constitution, with his additions highlighted.

A warning: this is a small book, but dense and legal. It was a struggle to read it, but the effort was rewarding. I will summarize each of the six.

1.	The "Anti-Commandeering" Rule. This issue, also known as the Supremacy Clause, provides: "This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The importance of this issue is that state judges cannot rule in violation of national law established by Congress. The problem, however, is that Congress cannot force States to enforce federal laws. It creates a serious risk that the federal response to national catastrophes or acts of terrorism will be inadequate. It also impairs the efficient administration of ordinary federal programs.

An example is the aftermath of the Sandy Hook Elementary School murder. The federal government never compelled the states to provide accurate data needed for a federal background system of gun regulation. (He then offers a number of other issues with unsatisfactory outcomes chronologically, case by case.)

His recommendation: Add "and other public officials" to this amendment, after "the Judges in every State."

2.	Political Gerrymandering.
This may well be one of the worst problems for a one-person-one vote value system. It is a current issue being run through the courts, but it began as early as 1811 in Massachusetts. The governor, Elbridge Gerry, and a majority of both branches of the legislature were Republicans (Jefferson\222s Democratic Republican party), and they redrew the boundaries of the thirty senatorial districts, packing eough Federalists (the other party) into a small number of districts to give the Republicans comfortable majorities in the others. Of the 101,930 votes cast in 1812, a majority of 51,766 were Federalists, but they elected only 11 senators. The Republican minority with only 50,164 votes elected 29 senators. The shapes of the districts looked like salamanders, and newsmen called it "gerrymander."

There are two kinds of gerrymander: political and racial. The Court has consistently condemned racial gerrymandering (until now), but never really addressed political. Historically, both parties have indulged in this manipulation, but today, it is mostly Republicans, the nation\222s minority party.

Two states have gone to the Supreme Court with complaints about gerrymandered

districts that they want corrected after the 2020 census. The Court denied their claim, on the basis of "standing." The states have no standing on this issue. The complaints will have to be brought by civil rights groups, which is now in process.

The Court conservative majority considers reapportionment to be a state issue, until Congress finally addresses this as a national issue with one set of rules.

The consequences of gerrymandering were never explored in the Constitution, but it is a norm that a political party cannot use governmental power to draft bizarre districts just to enhance their party. A controlling political party may not use public funds to pay its campaign expenses, and it is also wrong to use public power just to enhance their own power. Courts have said that gerrymandering is simply an inevitable feature of partisan politics in America.

President Andrew Jackson certainly believed that. He claimed that "to the victor belongs the spoils." He used it to fire everybody from the other party and put in his own choices. In 1971, the newly elected Republican secretary of state of Illinois discharged 1,946 employees. Over 90 of them brought suit. They had been fired because they refused to join the Republican Party; this group were janitors and elevator operators, certainly not political operatives. The question is: does the Constitution permit a Democratic chief of police to dismiss or refuse to hire police officers because they are Republicans? Stephens wrote an opinion that was later taken up by the Supreme Court, using the First Amendment. Workers may have differing political opinions, but that is no business of their employers.

Finally, as our Courts have managed to remedy gerrymandering for racial disfranchising, they should be capable of doing the same for political gerrymandering. To do so, the following amendment should be adopted:

"Districts represented by members of Congress, or by members of ay state legislative body, shall be compact and composed of contiguous territory. The state shall have the burden of justifying any departures from this requirement by reference to neutral criteria such as natural, political, or historic boundaries or demographic changes. The interest in enhancing or preserving the political power of the part in control of the state government is not such a neutral criterion."

3. Campaign Finance
There is little doubt that the issue of money corrupting elections in our democracy is a problem. Federal statutes recognize two categories of election speech: the first advocating the election or defeat of a specific candidate, or speech about general issues (taxation, disaster relief, global warming, abortion, gun control).

The law allows business corporations to form and operate political action committees (PACs) that are financed by voluntary contributions from their stockholders and employees. It would be illegal to use minority shareholders\222 money to support causes that those shareholders might oppose.
One such PAC, Citizens United, with enormous funding, released a 90 minute film about then Senator Hillary Clinton, opposing her election. This ran afoul the law that PACs cannot engage in political speech, just issue speech.

The Court sided with Citizens United, deeming Corporations "people" with the right to freedom of speech. Stevens now argues that it is unwise to allow persons who are not qualified to vote (corporations or nonresident individuals) to have a potentially greater power to affect the outcome of elections than eligible voters have.

Barring corporate funding for or against candidates for office has been the law from Teddy Roosevelt\222s time until recently. Corruption of the election process was manifest during Richard Nixon\222s presidency and was remedied by a number of election funding regulations. But now, as a result of the Citizens United ruling, we are seeing the return of big funding, some of it for non-residents (such as Putin in the 2016 election) contaminating our elections. Stevens proposes the following amendment to the Constitution:

"Neither the First Amendment nor any other provision of this Constitution shall be construed to prohibit the Congress or any state from imposing reasonable limits on the amount of money that candidates for public office, or their supporters, may spend in election campaigns."

My own additions to the problem of runaway funding of elections would be to have all federal (and state) elections funded by the taxpayers. We now have an option in our income tax forms to donate to a party. I would suggest the donation be to cover

election costs.

The horrific need for money could be curtailed by shortening the election campaigns, as in Europe, to six or eight weeks, rather than the two years we now have.

The news media will be unhappy with this because it affects their bottom line, but as a piece offering to them, I would recommend that the federally-funded elections include payment to the media for staging public debates among the candidates for office, and paying for media interviews of each candidate. The public would receive the needed information, and the concentration of time devoted to the election would alleviate the election fatigue that now plagues voters.

4. Sovereign Immunity

Sovereign Immunity differs from that discussed in No. 1, which makes the federal government supreme in issues of catastrophic tragedies. This issue is one that Justice Stevens thinks is obsolete and probably should not have been adopted in a democracy.

Sovereign immunity comes down to us from monarchy, when "the king can do no wrong." This notion was supported by the belief that the king was ordained by God, and therefore infallible. Our Founding Fathers, in the Declaration of Independence, contradicted this notion in their list of abuses committed by King George III (the king can do wrong) and Divine Right is contradicted by the separation of Church and State in the First Amendment.

The 11th Amendment provides that the "Judicial power of the United States" does not extend to suits in which a state is sued by a citizen of another state.

This chapter lists case after case in which citizen suits, states, and the federal government clashed, resulting in many unjust settlements. Stevens recommends the following remedy:

"Neither the Tenth Amendment, the Eleventh Amendment, nor any other provision of this Constitution, shall be construed to provide any state, state agency, or state officer with an immunity from liability for violating any act of Congress, or any provision of this Constitution." (I suspect this could be used in the case of states trying to destroy Abortion rights in defiance of national law.)

5. The Death Penalty

In contrast with almost every other representative system of government, the United States still wrestles with administering Capital Punishment. The Court holds that under our Constitution it is permissible for state legislators to conclude that the possibility of being sentenced to death might deter some potential murderers from committing that crime, and that community outrage sometimes demanded retribution for especially vicious crimes. This is not a nationwide law, since many states reject this practice.

Justice Stevens, along with a number of state legislatures, recognize the fallibility of capital punishment, certainly in the face of how many convicted criminals have been found innocent of the crimes supposedly committed. The horror of executing an innocent person haunts judges. Furthermore, the notion of deterrence of crime by such a punishment has little validity.

This chapter provides numerous case studies and disagreements between and among the justices. The statistics of executions of wrongly convicted people are thin, but any such executions would be terrible.

The risk of wrongful punishment can be eliminated by adding five words to the text of the Eighth Amendment, which already prohibits the states as well as the federal government from imposing cruel and unusual punishments. The inclusion of the words "such as the death penalty" iin the text of that amendment would make it read:

"Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments such as the death penalty inflicted."

6. The Second Amendment (Gun Control)

Concern that the anti-commandeering rule (issue 1) hampers the federal government\222s ability to obtain adequate databases that will identify persons who should not be permitted to purchase guns prompted Justice Stevens\222 discussion of the importance of doing away with that rule.

Each year over 30,000 people die in the US in firearm-related incidents, many using handguns. During the months following the massacre of grammar school children in Newtown, Connecticut, many more such massacres have been carried out using high-powered automatic weapons.

Stevens states that the adoption of rules that will lessen the number of those incidents should be a matter of primary concern to both federal and state officials. State officials should be able to legislate what kinds of firearms should be available to private citizens, but constitutional provisions that curtail the legislative power to govern in this area unquestionably do more harm than good.

Stevens notes that the first ten amendments to the Constitution limited powers of the new federal government. Founders worred that a national standing army might pose a threat to the security of the separate states. To address this, the second amendment provided "A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed."

Over the past 200 years, federal judges considered the meaning of this amendment that it applied only to keeping ad bearing arms for military purposes and although it limited the power of the federal government, it did not do so for state governments to regulate the ownership or use of firearms.

Stevens cites numerous cases that were decided this way, all the way to 1991, when after the retirement of Chief Justice Warren Burger was interviewed on the P NewsHour and said: "The Second Amendment has been the subject of one of the greatest pieces of fraud\205.on the American public by special interest groups\205" Burger was referring to the National Rifle Association, which appalled him.

The issue has now gone partisan. In 2008, in a vote of five to four, the Court decided that the District of Columbia\222s ban of handguns was illegal. They said the amendment protects a civilian\222s right to keep a handgun in his home for self-defense. And in 2010, by another vote of five to four, the Court decided that the city of Chicago cannot outlaw the possession of handguns by private citizens (14th. Amendment due process clause). Stevens dissented in both cases. He notes that cities with street gangs face different problems than do rural areas.

The Second Amendment should be modified in the following way:
"A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms when serving in the Militia shall not be infringed."

Justice Stevens admits that emotional claims that the right to possess deadly weapons is so important that it is protected by the federal Constitution distort intelligent debate about the wisdom of particular aspects of proposed legislation designed to minimize the slaughter caused by the prevalence of guns in private hands. These emotional arguments would be nullified by the adoption of his proposed amendment.

The gun debate should be based entirely on facts rather than a fictional interpretation of the Second Amendment. The law should encourage intelligent discussion of possible remedies for what every American can recognize as an ongoing national tragedy.

My own update to this issue is the current discussion of limiting high powered assault weapons to the military alone, banning it and its ammunition from public sale. Removing loopholes from laws requiring background checks for weapon purchases and red-flagging individuals who should be barred from owning weapons are ongoing. The National Rifle Association still has the power to intimidate Republican legislators and our current president, but they could lose this after the next election. The Association is under scrutiny for misuse of funds by its president and from investigations into its receiving funding from the Russian government. We may finally be seeing an end to the misuse of the Second Amendment.

The appendix to this book is the entire Constitution of the United States with the suggested additions and changes in italics. It is good reading.