EQ: Is our Constitution undemocratic? 
What changes would make it more democratic?

In *Our Undemocratic Constitution* (Oxford University Press, 2006), Sanford Levinson outlines the many ways our constitution is undemocratic and challenges Americans to take action to change it. Some of the many issues he discusses are: how the Senate unfairly privileges small states over large ones; how veto power enables Presidents to override the wishes of the majority of the population; and how citizenship and age qualifications create “second-class citizens.” The following lessons invite students to learn about Levinson’s arguments and develop amendments to make the Constitution more democratic. These learning experiences are aimed at 11th grade American history and 12th grade participation in government classes. Teachers will need 1-3 class periods of 40 minutes each to complete these lessons.

**Learning Objectives:**
1) Students will understand that it is very difficult to make changes to the constitution, in part because the process of amendment require supermajority votes (2/3 majority in Congress and ¾ of states) rather than simple majority votes (whole class discussion).
2) Students will be able to describe one critique of an existing section of the constitution and craft an amendment that addresses the problem (in groups).
3) Students will be able to present an argument, supported by evidence, why their proposal will make the constitution more democratic (in groups).
4) Students will be able to decide which proposal has the most potential to enhance democracy (vote at “constitutional convention”).
5) Students will be able to explain their perspective on whether or not they agree with Sanford Levinson that our constitution is undemocratic (independent writing).

**Common Core Linkages:**
CCSS.ELA-Literacy.RH.11-12.2 Determine the central ideas or information of a primary or secondary source; provide an accurate summary that makes clear the relationships among the key details and ideas.
CCSS.ELA-Literacy.RH.11-12.4 Determine the meaning of words and phrases as they are used in a text, including analyzing how an author uses and refines the meaning of a key term over the course of a text.
CCSS.ELA-Literacy.WHST.11-12.4 Produce clear and coherent writing in which the development, organization, and style are appropriate to task, purpose, and audience.
CCSS.ELA-Literacy.WHST.11-12.10 Write routinely over extended time frames (time for reflection and revision) and shorter time frames (a single sitting or a day or two) for a range of discipline-specific tasks, purposes, and audiences.

**Vocabulary and key phrases:** Simple majority, supermajority, minority party, life tenure, Congress, Senate, House of Representatives, Constitution, Bill of Rights, Amendment, natural-born citizenship, naturalized citizenship, illegitimate, venerator, revisionist, Democrat, Republican, liberal, conservative, judicial independence, political partisanship

**Necessary prior knowledge:** Students should know the processes by which our constitution is amended. Students should have some knowledge of the general outline and contents of the constitution (preamble, articles, bill of rights), and the major debates and compromises surrounding the writing of the constitution (see: http://www.ushistory.org/us/15d.asp).
Outline of Learning Segment

**Hook:** Poll students: At what age do you think someone is qualified to be President of the US? After finding out their answers, explain to students that you must be 35 to be President. Do they think this is fair? In fact, constitutional scholar Sanford Levinson says that people who can vote at age 18 should be allowed to run for federal office. Ask students: Why do you think Levinson believes this is more democratic? *Explain:* today/in the next few days, they will be looking at this case and others to decide whether or not the constitution is undemocratic and should be changed to be more democratic.

**Quiz:** Have students take this quiz on their own or as a group.

*What do you know about Constitutional Amendments?*

1) How many amendments to the constitution have been proposed? [over 10,000]
2) How many have been passed? [27; while 33 obtained the necessary 2/3 vote in Congress, then of these, only 27 got ¾ of the states to vote for them]
3) When was the most recent amendment passed? [27th Amendment, first proposed in 1789, passed in 1992, delays Congressional salary increase until after the next election for representatives]

**Review Quiz and process of amendment:** Congress has considered approximately 11,372 amendments from 1789 to the end of 2008. However, only 27 have passed. Why have so few amendments been passed? Explain that the constitution is very difficult to change. *Ask:* If 50 people are voting for a new policy, how many votes do you need to pass it? Normally, a simple majority of 26 would be needed. However, to change our constitution, there must be a supermajority: 2/3 of Congresspersons must vote for it, and ¾ of all states (38 of 50) need to pass the amendment. Or, 2/3 of the states must vote to hold a constitutional convention, at which ¾ must vote for an amendment (this route to amendment has never been taken).

*Ask:* Why is it easier to win with a simple majority (half plus one) than a supermajority (such as two-thirds or three-fourths)? Why did the founders make it so difficult to change the constitution? Why might this difficult process be viewed as undemocratic—that is, not reflective of the will of people? [Note: More people voting for something might appear to be more democratic than passing something with a simple majority. But the inequity is related to representation, as each state gets one vote (in voting on Constitutional amendment) regardless of the size of its population. So, if most Americans support gay marriage, but they are concentrated in high-population and urban states, they could be outvoted by rural states with low populations (see Liptak, 2013 on “malapportionment” as it operates in the Senate)]

**Review prior knowledge:** Sanford Levinson is a constitutional scholar who argues that the constitution is unduly difficult to change, so it has not kept pace with changes to our country, and that it is in fact undemocratic. He finds support from Thomas Jefferson who warned against “sanctimonious reverence” and veneration of constitutions. Abolitionist William Lloyd Garrison called the Constitution a “covenant with death and an agreement with hell.” Why would these men feel this way? What are some other ways, based on your knowledge, that the constitution might be undemocratic? [Refer to the compromises, as over slavery, that shaped the Constitution]

**Introduce Constitutional Convention:** Levinson believes that the constitution needs numerous changes to make it more democratic. Today, you will read an explanation of one of his proposed changes and why he thinks it is necessary. After reading his explanation, you will read the relevant section from the constitution and put it into your own words. You and your group will then write a new amendment to modify or overturn the undemocratic section, and present it to your classmates for consideration at our own *Constitutional Convention.* After all amendments are presented, the class will vote on which amendment proposal they think will most promote democracy. When you present your case, be sure to explain what you are proposing and why you believe it will make our constitution, and society, more democratic. Provide evidence to support your argument.
Model: Go through a sample amendment to illustrate the kind of language students will use when writing their own. Here is an example:

The Equal Rights Amendment was sent to the states in March, 1972. It expired unratified in 1982.

The text:
Section 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.
Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.
Section 3. This amendment shall take effect two years after the date of ratification.

The Cases: Attached are worksheets on one of the following questions. Groups of students will think of arguments for and against the undemocratic section of the Constitution, gather evidence to support a revision to that section, and write a new amendment. Note that Levinson discusses many ways the constitution is undemocratic, so teachers can create their own cases depending on students’ interests (see, for example, Levinson’s Top Ten Reasons the Constitution is flawed, 2006).

1. Executive Power: Should the president have veto power?
2. Legislative Power: Is our Senate illegitimate?
3. Judicial Power: Is life tenure for SC Justices an idea whose time has passed?
4. Citizenship Qualifications: Does the Constitution create second-class citizens?
5. Age Requirements: Does the Constitution discriminate against young people?

Closure: After presentations, students should vote on which amendment they would like to see passed right away. Require a 2/3 vote, and then review the next steps for it to become an amendment (3/4 vote of the states). Discuss these questions, asking students to recall arguments and evidence: Which amendment would make the country more democratic? If the constitution is so undemocratic, why haven’t these changes already been made? What other changes would you advocate to make the constitution more democratic?

Assessment: Are you a venerator or a revisionist? Ask students to explain their view in a letter addressed to Levinson: Do you agree with Levinson that the constitution is undemocratic? Why/why not? What changes would you like to see? Start with the sentence frame: Dear Sanford Levinson, I am a venerator/revisionist of the Constitution because…

Here are some sources with more information, including a critical review of Levinson’s book:
Executive Power: Should the President have veto power?

Introduction: Constitutional scholar Sanford Levinson argues that the power to veto legislation is undemocratic because it enables Presidents to ignore the wishes of a majority of Americans, as expressed by their representatives in Congress. He states, “Presidents can negate the will of substantial majorities in both houses of Congress by vetoing legislation, because an override to the veto requires a vote of two-thirds of each house, rather than the usual simple majority.” In other words, even if a bill initially passed both houses with over 50% of the vote, if the Senate and House of Representatives cannot get a supermajority of 2/3 to vote for it after the President has vetoed it, it will not become law.

Here is the Constitutional section giving the President veto power:

Article 1, Section 7: Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States: If he approve he shall sign it, but if not he shall return it [veto], with his Objections to that House in which it shall have originated, who shall…proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law.

Write a summary of this section:

Levinson’s Argument: According to Levinson, why is this section of the Constitution undemocratic?

Counterargument: What might a supporter of veto power say in response to Levinson?

Evidence: Look at this chart on Presidential vetoes. Since Nixon’s time, how likely is it that Presidential vetoes will be overridden? How does this trend support Levinson’s argument? http://history.house.gov/Institution/Presidential-Vetoes/Presidential-Vetoes/

Look for recent examples when a President vetoed a popular bill. Select examples that support Levinson’s argument: http://en.wikipedia.org/wiki/List_of_United_States_presidential_vetoes

New Amendment: Discuss with your group what changes you could make to make this section of the Constitution more democratic. Based on your ideas, write an amendment to present to your classmates at a Constitutional Convention. Be prepared to explain why you believe this amendment would make the constitution more democratic, using the evidence you found.
Legislative Power: Is our Senate illegitimate?

Introduction: Constitutional scholar Sanford Levinson calls the Senate “illegitimate” because it gives unfair advantage to small states. As he explains, “the Senate is composed of two representatives from each state. That means that small states have equal voting power to large states, regardless of the size of their population. In fact, Wyomingites (the smallest population out of all 50 states and Washington, DC: 560,000) have 70 times the effective representation in the Senate as do Californians (the largest population of all states: 37million). So a party can win 3,000,000 more overall votes in collective races for the Senate and still end up with only 44 seats out of 100 and be treated as the ‘minority’ party.” Today, since more members of the Democratic Party live in urban areas and large states, this power of small states in the Senate tends to favor conservatives and Republicans.

Here is the Constitutional section giving each state two Senators:

Article I, Section 3: The Senate of the United States shall be composed of two Senators from each State [serving] for six Years; and each Senator shall have one Vote.

Write a summary of this section:

Levinson’s Argument: According to Levinson, why is this section of the Constitution undemocratic?

Counterargument: What might a supporter of giving every state 2 Senators say in response to Levinson?

Evidence: Read the excerpt by Adam Liptak to gather evidence to support Levinson’s argument.

New Amendment: Discuss with your group what changes you could make to make this section of the Constitution more democratic. Based on your ideas, write an amendment to present to your classmates at a Constitutional Convention. Be prepared to explain why you believe this amendment would make the constitution more democratic, using the evidence you found.
Equal representation of the states in the Senate is a consequence of the Great Compromise, the 1787 deal that resolved a seemingly intractable dispute between the smaller states and a handful of large ones like Massachusetts, Pennsylvania and Virginia. But the country was very different then. The population was about four million, and the maximum disparity in voting power between states was perhaps 11 to 1. It is now six times greater than that. Even scholars who criticize how voting power is allocated in the Senate agree that parts of its design play an important role in the constitutional structure. With its longer terms and fewer members, the Senate can, in theory, be more collegial, take the long view and be insulated from passing passions.

But those qualities do not depend on unequal representation among people who live in different states. The current allocation of power in the Senate, many legal scholars and political scientists say, does not protect minorities with distinctive characteristics, much less disadvantaged ones.

To the contrary, the disproportionate voting power of small states is a sort of happenstance that has on occasion left a stain on the nation’s history.

Robert A. Dahl, the Yale political scientist, who is 97 and has been studying American government for more than 70 years, has argued that slavery survived thanks to the disproportionate influence of small-population Southern states. The House passed eight antislavery measures between 1800 and 1860; all died in the Senate. The civil rights movement of the mid-20th century, he added, was slowed by senators representing small-population states.

As the population of the United States has grown a hundredfold since the founding, to more than 310 million, the Supreme Court has swept away most instances of unequal representation beyond the Senate. In a series of seminal cases in the 1960s, the court forbade states to give small-population counties or districts a larger voice than ones with more people, in both state legislatures and the House.

“The conception of political equality from the Declaration of Independence, to Lincoln’s Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing — one person, one vote,” Justice William O. Douglas wrote for the court in 1963, referring to the amendments that extended the franchise to blacks and women and required the popular election of the Senate. The rulings revolutionized American politics — everywhere but in the Senate, which the Constitution protected from change and where the disparities in voting power have instead become more extreme.
Judicial Power: Is life tenure for Supreme Court Justices an idea whose time has passed?

Introduction: Constitutional scholar Sanford Levinson argues that Supreme Court justices should not be able to serve for life. In our system, Presidents have the power to choose justices, who are then approved by the Senate. Presidents tend to select justices who are aligned with their own beliefs (for example, a Democrat will appoint a liberal judge while a Republican will choose a conservative one). Justices, who seek to ensure that their political perspectives continue to be represented, might delay their retirement, regardless of how old or incapable they are, until the population elects a President who shares their beliefs. In criticizing this strategy, Levinson asks, “Do you really want justices on the Supreme Court to serve up to four decades and, among other things, to be able to time their resignations to mesh with their own political preferences as to their successors?” This system also means that the Supreme Court can become very unbalanced (toward one side or the other) because every president does not have a chance to select justices.

Here is the Constitutional section giving life tenure to Supreme Court Justices:

Article III, Section 1: The judicial Power of the United States shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

Write a summary of this section:

Levinson’s Argument: According to Levinson, why is this section of the Constitution undemocratic?

Counterargument: What might a supporter of life tenure for justices say in response to Levinson?

Evidence: Read the interview of Sanford Levinson by Bill Moyers to gather more evidence as to why life tenure is undemocratic.

New Amendment: Discuss with your group what changes you could make to make this section of the Constitution more democratic. Based on your ideas, write an amendment to present to your classmates at a Constitutional Convention. Be prepared to explain why you believe this amendment would make the constitution more democratic, using the evidence you found.
BILL MOYERS: Here's one case study in your book that took me back, as well. Because I was taught to believe, growing up, that life tenure for Supreme Court Justices meant they were above politics. And yet, you say this is one of the offenses of our Constitution?

SANFORD LEVINSON: Yes. I think that the original rationale for life tenure is easily defended. That is, you want to protect judicial independence. And the best way to protect independence, it's like tenure, and I'm grateful every day to have tenure at the University of Texas Law School. But one of the things that's obviously true is that every value involves a tradeoff with another value. And so life tenure today, and I don't think it meant this 100 years ago, 200 years ago.

Life tenure today means that there's a perverse incentive on the part of presidents to appoint relatively young members of the Supreme Court, so that they can hang on for 35 or 40 years. Now, I don't think we need that lengthy a term in order to preserve independence. There's a suggestion in [my] book that a single, non-renewable term of 18 years would be enough. There's also the feature, with life tenure that justices obviously don't have to serve until they die. They can choose to resign. Well, when do most judges choose to resign? It ought not be a big surprise that they wait or they try to wait until a president of their own party is in the White House. This is not judicial independence. This is political partisanship.

And so what you have is Justice [Sandra Day] O'Conner waiting until a Republican president is in office to resign. You also have quite frankly, the unseemly efforts of Justice [Thurgood] Marshall and Justice [William J.] Brennan to hang on for dear life until a Democrat got into office. Now, neither of them made it. But if we had simply a non-renewable 18-year term, then no justice could try to gain the system. And I think we'd be better off.
Citizenship Qualifications: Is the Constitution a creator of second-class citizens?

Constitutional scholar Sanford Levinson asks, “should America really say that no immigrants need apply to be President?” He argues that the Constitution creates “second-class citizens” because “not every American citizen can hope to grow up to be President.” The Constitution says that you must be a natural-born citizen to become President. That means that you must have been born in the United States in order to become President. People like former California governor, Arnold Schwarzenegger, a naturalized citizen of the USA, could never become President because he was born in Austria.

Here is the Constitutional section requiring Presidents to be “natural-born” citizens:

Article II, Section 1: No Person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President.

Write a summary of this section:

Levinson’s Argument: According to Levinson, why is this section of the Constitution undemocratic?

Counterargument: What might a supporter of natural-born citizenship for the President say in response to Levinson? (See the debate on: Should naturalized citizens be President?).

Evidence: Read the debate to gather more evidence as to why natural-born citizenship is undemocratic.

New Amendment: Discuss with your group what changes you could make to make this section of the Constitution more democratic. Based on your ideas, write an amendment to present to your classmates at a Constitutional Convention. Be prepared to explain why you believe this amendment would make the constitution more democratic, using the evidence you found.
Should naturalized citizens be President? *Scholastic*, 2014

**YES**

My son, Jonah, came to the U.S. from Vietnam as a 4-month-old baby. When his second-grade class studied the presidency, he was told that he cannot run for President when he grows up, even if he wants to. According to the Constitution, only a "natural-born Citizen" can be President.

More than 12.8 million naturalized citizens, including 250,000 foreign-born adoptees like Jonah, are second-class citizens who cannot hold the highest office in the land.

The natural-born-citizen clause violates a central principle of American democracy: All citizens should have equal rights. When written, the Constitution embraced this principle but failed to protect the rights of women and of racial and ethnic minorities. The 14th, 15th, and 19th Amendments have been added to protect these groups. The next step is to remove the natural-born-citizen clause.

The Founding Fathers included the natural-born-citizen clause so no foreign prince could buy his way into the presidency. This concern is no longer relevant. Some people say we still need this clause to ensure that the President is loyal to the country, but naturalized citizens are a very loyal group.

Moreover, the Constitution allows any natural-born citizen, loyal or not, to run for President and relies on voting rights and the judgment of the American people to keep disloyal people from being elected. These protections would work just as well if we let naturalized citizens run for President, too.

By **John Yinger** Professor of Economics and Public Administration, Maxwell School, Syracuse University

**NO**

America has always been open to foreign-born immigrants becoming full and equal citizens—with one exception: Only a "natural-born Citizen" can become President.

This requirement strikes a reasonable balance between our society's openness and the ongoing requirements of national security.

One of the legal conditions for becoming an American citizen is to be "attached to the principles of the Constitution of the United States." New citizens also must take an oath to renounce "all allegiance and fidelity" to other nations and "bear true faith and allegiance" to the United States. But in the case of the presidency we need even more assurance of that allegiance than an oath.

The presidency is unique: One person makes crucial decisions, many having to do with foreign policy and national security. With a single executive, there are no checks to override the possibility of foreign intrigue or influence, or mitigate any lingering favoritism for one's native homeland.

Unlike any other position or office, the attachment of the President must be absolute. Attachment comes most often from being born in—and educated and formed by—this country, unalloyed by other allegiances.

In general, constitutional amendments should be pursued only after careful consideration, when it is necessary to address a great national issue and when there is broad-based support among the American people. That is not the case here.

By **Matthew Spalding** Director, B. Kenneth Simon Center for American Studies, The Heritage Foundation

Does the Constitution discriminate against young people?

*Constitutional scholar Sanford Levinson argues that the wishes and needs of young people tend to get ignored by the federal government because of the age requirements for federal office. So those of you who have reached the voting age of 18 still have to wait to run for national office, because the Constitution says that to run for the House of Representatives, you must be 25 years old, for the Senate, you need to be 30, and to be President, you must be 35. Because of these requirements, Levinson believes that youth interests are not represented in our government and this may explain why so few young people go out to vote.*

**Here are the Constitutional sections outlining age requirements for federal office:**

*Article 1, Section 2: No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.*

*Article 1, Section 3: No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.*

*Article II, Section 1: [No person shall] be eligible to that Office [President] who shall not have attained to the Age of thirty five Years, and been fourteen Years a Resident within the United States.*

Write a summary of these sections:

**Levinson’s Argument:** According to Levinson, why are these sections of the Constitution undemocratic?

**Counterargument:** What might a supporter of age requirements say in response to Levinson? See article by Zach C. Cohen.

**Evidence:** Read Cohen’s article about a Maryland community that reduced the age requirements for running for office to gather more evidence as to why life tenure is undemocratic.

**New Amendment:** Discuss with your group what changes you could make to make this section of the Constitution more democratic. Based on your ideas, write an amendment to present to your classmates at a Constitutional Convention. Be prepared to explain why you believe this amendment would make the constitution more democratic, using the evidence you found.
College Park decreases age limit for public office to 18, allowing Maryland students to run
By Zach C. Cohen, Published: February 12, Washington Post

The College Park City Council voted this week to allow 18-year-olds to run for public office, opening up the opportunity for students at the University of Maryland to seek council seats or the mayor’s office.

Under the new rules, adopted in a 5 to 3 vote Tuesday, anyone older than 17 who has lived in College Park for at least a year can seek elected office in the city, which is home to U-Md.’s flagship campus. The rule would allow U-Md. students who did not grow up in College Park to run for office by their sophomore year.

The city previously required candidates for mayor to be at least 25 and candidates for council to be at least 21.

Student leaders at U-Md. wanted the student body to have the opportunity to serve in public office and the old requirements “effectively cut out three quarters of the student population from being able to run for council and mayor,” said Samantha Zwerling, president of the U-Md. Student Government Association.

Council member Marcus Afzali introduced a bill in December seeking the age limit change, saying that “all adult residents of our city should have the same rights and responsibilities.” Council members Robert Day and Patrick Wojahn joined the effort.

Students and council members credited ongoing cooperation between the university and the city as a significant element of the decision. Students already are involved in day-to-day operations of local government through committees, and the university has extended its police jurisdiction to monitor off-campus student activity. Advocates saw this change as the next step in bridging “historic tensions” between the campus and the city, Wojahn said.

“We still feel like there’s some sort of divide between the students and long-term residents,” said Catherine McGrath, the student liaison between U-Md. student leadership and the City Council. “We thought this would be a great way to further engage students in city politics. . . . We have just as much a long-term interest in this community as a resident would.”

McGrath said many teenagers don’t have the experience to run for office, but she said that those who believe they can ably serve should have the chance to do so.

Some College Park residents, including Suchitra Balachandran, president of the West College Park Civic Association, opposed the change. Balachandran said U-Md. students typically have not lived in the city long enough to understand it or the greater off-campus community.

“It is neither wise nor prudent to amend our charter to allow an 18-year-old from another part of the state or even from out of state to run for Council and presume to be able to represent residents of a district that he or she has had very little time to get to know,” Balachandran wrote in an open letter to the City Council. Balachandran proposed that a decrease in the minimum age should be accompanied by an increase in the amount of time a person must live in the city before running.

Maryland Assistant Attorney General Jeremy McCoy told the House of Delegates that such a change “would be constitutionally suspect” because it would deny equal protection of the law and would impinge upon the right to vote, according to a letter included in the council’s agenda for Tuesday’s meeting.

Day said he hopes that the new rules inspire other changes in College Park and beyond. “Hopefully we start that ripple effect, knocking down some walls, like Robert Kennedy said,” he said. “We stood up, we made a stand, and I think it’s the right one.”