Good morning. Last time we talked about the political culture and the ideology in the State of Missouri. We said that Missouri really had two different ideologies, conservatism and individualism. And later on in the semester we’ll talk about how those two ideologies work at odds with each other in terms of some public policies, but today we want to talk about how those ideologies are transformed into the Constitution of the State of Missouri. So what we want to do today is talk about mainly the Constitution of 1945, but talk a little bit about the earlier Constitutions as they apply.

And the best way to think about the Missouri Constitution is to think about the purposes of all Constitutions and the best way to start that is just to list the purposes of all Constitutions. Now, this theory or this framework that we’re gonna use today comes from a political scientist, a scholar, whose name was Donald Lutz and he said that all Constitutions served five purposes. All Constitutions serve five purposes. Whether it’s the old Soviet Union Constitution or whether it’s the Constitution of the SGA here at the university, all Constitutions serve these same five purposes.

For comparison’s sake, we’re going to take these five purposes and then compare them in the United States Constitution — so we’ll have a little refresher course from your PLS 101 class — and then we’ll talk about how these purposes are fulfilled by the Missouri State Constitution. So let’s start with the purposes. I’ll define them and we’ll talk a little bit about them, and then we’ll talk about how the U.S. Constitution fulfills those.

The first purpose of a Constitution is to create a form of government. And, as part of creating a form of government, distributes political power. So the first purpose of all Constitutions is to create a form of government and distribute political power.
The second purpose of all Constitutions is to establish the authority of this Constitution. Another way to say this would be under whose authority is this Constitution written. So all Constitutions must establish the authority.

Perhaps the most important thing in some eyes would be limiting the power of government. All Constitutions limit power of government in some way or another. In your American Government class we describe United States system of government as a constitutional system of government. That means a limited government. All Constitutions limit the power of government.

The fourth purpose of Constitutions is to provide for conflict management. All Constitutions must provide some mechanism to manage conflict.

Last but not least, all Constitutions define citizenship. Who does this Constitution apply to? Who is and who is not a citizen, who is protected by this Constitution, who is not protected by this Constitution.

So these are the five purposes that all Constitutions should meet. There are actually more. We just do these five for ease of comparison. Now, as the refresher course, I want to go back to your American Government class and talk about how the U.S. Constitution fulfills these five purposes. So we're just gonna do the same purposes.

The best way to think about this is to think across. Students like to learn vertically. They like to start at the top of the page and go down. Memorize this, then memorize this, then memorize this, then memorize this. The best way to comprehend this material is to learn horizontally. What you want to do is learn the purposes, how the U.S. Constitution fulfills that purpose, and then compare that to how the Missouri Constitution fulfills those purposes.
So let’s go back — let’s go back and I hope you learned something in your American Government class — and ask how does the U.S. Constitution fulfill. So let me ask this question. What form of government does the United States have? No, it’s not technically a democracy. What do we call it? It’s a representative democracy. The word that we use is republican. We elect representatives which means we have a republican form of government. The United States government is not democratic.

How else would you describe the United States government? Think about the different powers between the Federal government and the State governments. We use the word Federal to describe the United States government. The Federal government or the National government has certain powers and the State governments have certain powers. They have separate powers. I’m not gonna talk about today whether they’re equal or not, but there is a division of power between the National government and the State governments. And so the United States form of government is Federal and it is republican.

Distribution of political power? Well, you learned this in your 101 class. There are three branches. Not one branch has all the power. We have the Legislature, the Executive, and the Judiciary. Article 1 of the U.S. Constitution, Article 2 of the U.S. Constitution, Article 3. The purpose of all Constitutions is to distribute political power. The United States Constitution gives some power to the Legislature, gives some power to the Executive, and gives some power to the Judiciary. And so in the U.S. system of government, the form of government is republican and Federal because we elect representatives and the power is divided between the National and the State government, and the distribution of power is done by dividing the United States government into three branches.
If you remember — again, from that American Government class — under the Articles of Confederation there was only one branch. There was just the Legislature, no Executive. So we could take this comparison and go backwards and say how does the Articles of Confederation fulfill these purposes? But for now we’ll just leave it at that.

Number 2, establish the authority. Now, everybody knows the beginning of the Constitution. It starts with “We the people under whose authority is this Constitution written.” It says “We the people.” The Constitution of the United States is written under the authority of the people of the United States. That one’s pretty straightforward. We’ll come back to that when we talk about the difference between the U.S. and the Missouri Constitution.

Number 3. Again, some people would argue one of the most important parts or maybe the most important part, “limiting the power of government.” Now, there are many ways to talk about limiting the power of government. Let’s ask it this way. What in the U.S. Constitution limits the power of government? What part of the Constitution? What did we add to the Constitution to limit the power of government? The Bill of Rights.

The most common way to look at any constitution, to find limits, is to find something like a Bill of Rights. The first 10 Amendments to the Constitution were added to gain ratification of the Constitution. What’s in there? Well, we just talked about the First Amendment: Congress shall make no law with respect to free speech, freedom of religion with respect to exercise and establishment, freedom of the press, freedom of the assembly — these are all limits because it says, “Congress shall make no law.” So the best way to think about the U.S. Constitution and limiting the power of government is by the Bill of Rights. But that’s not the only way to look at the U.S. Constitution in this regard. There
are parts of the Constitution, inside the Constitution itself beside the Bill of Rights, that also limit the power of government.

Again, you learned things in your American Government class. Ex post facto laws. Making something illegal today and arresting you for doing it yesterday. The Constitution forbids that. That’s an ex post facto law, that’s a limit on the power of government.

Habeas corpus. I ran out of board there. Habeas corpus literally translates in Latin “to produce the body.” What it means is you cannot arrest and hold someone without a charge. You must bring someone before a magistrate, a judge, and justify why they are being held. Now, the United States Constitution says the writ of habeas corpus shall not be suspended except in cases of emergency, which is the justification that President Lincoln used during the Civil War. But the issue of habeas corpus is certainly current today. Holding people without a charge with respect to the war on terrorism. People have argued that that violates the spirit if not the letter of the habeas corpus provision.

In this same list there’s generally three. The third one, Bill of Attainder. The United States Constitution expressly prohibits bills of attainder. There’s many ways to think about it. The easiest way is to say a law written to punish a single individual would be considered a bill of attainder. Laws are designed to apply to everybody. A bill of attainder would be something that would punish one single individual. I declare it illegal for you to wear a Cardinals hat today and I arrest you for it. Well, there’s only one person in the room wearing a Cardinals hat today, so that’s a bill of attainder and it is expressly forbidden by the U.S. Constitution. So Bills of Rights are the most important thing about limiting the power of government in the U.S. Constitution, but let’s not forget ex post facto, habeas corpus, and
bills of attainder.

Let me erase this so we’ll make some room.

Number 4 is conflict management. The United States Constitution manages conflict in a way that you probably don’t think of and it’s related to Number 1. We manage conflict in the U.S. Constitution with two mechanisms that you have to learn about the United States Constitution in that American Government class, and that is separation of powers and checks and balances.

The question is really what’s the best way to manage conflict. You go on a trip with your mother and father. You’re driving to Disney World. You’re leaving from someplace in Michigan, driving to Disney World. What do Mom and Dad do with the kids? They bring CD players, they bring a video player, they separate them, they keep them busy. The best way to manage conflict is to avoid conflict. So Mom and Dad manage conflict by preventing you and your little brother — I see you laughing — preventing you from having conflict.

The United States Constitution avoids conflict, therefore manages conflict with separation of powers and checks and balances. If the Legislature had all the power what would we have? We’d have conflict. If the Executive had all the power we’d have conflict. If the Judiciary had power we’d have conflict. How do we make that work? We have checks and balances. The Legislature must pass the law but the President has to sign it. The House must pass the law but the Senate has to pass the law in the same way. Everyone gets a say which allows each of them their little piece and we avoid conflict by giving each branch.

We talk about separation of powers and checks and balances. Another way to think about it is really shared powers. There’s very little that one — even the Supreme Court, ruling
that something is unconstitutional. We can amend the Constitution. And so in terms of conflict management, the United States Constitution fulfills this purpose of Constitutions with separation of powers and checks and balances.

And, as I just suggested, sometimes that doesn't work. Let me slide this over. We can amend the Constitution. Sometimes conflict cannot be avoided. Sometimes conflict is inevitable. The Civil War would be the best example of conflict in the United States. What do we do with that type of conflict? When the Constitution itself provides for conflict, then the founding fathers provided for a way to manage that conflict and that method is the amending of the Constitution.

Now, the amendments to the Constitution — if you think about it, we haven’t had very many. There’s a grand total of 27. The first 10 were passed in order to get the Constitution ratified. And so if you think about it, really only 11 through 27 have been passed since the Constitution was adopted. That’s not very many amendments. So we don’t have recourse to that part of conflict management that often. And we’ll talk about that with respect to Missouri here in just a second.

But it’s important to remember that the amendment process is part of this conflict management. It is like a steam valve. It’s an escape valve when the pressure is building. Sometimes the pressure explodes as it did in the Civil War, but other times the pressure can be relieved by amending the Constitution. Women’s right to vote. The pressure is building. We amend the Constitution. 18-year-old right to vote. The pressure is building. We amend the Constitution. So the amendment process is an important component to conflict management.
Now, defining citizenship. How does the U.S. Constitution define citizenship? Well, you might be depressed to find out that it doesn’t. The United States Constitution fails to define citizenship. And that takes some explanation because it’s generally a surprising notion. So let’s go over to the other side and we’ll use this Bachelor of Arts that I’ve got.

There’s the Constitution. Article 1, Article 2, Article 3, Article 4, the basic Constitution itself. If you asked where in that Constitution is citizenship defined, the answer would be nowhere. Nowhere in the body of the Constitution is citizenship defined. So where’s it defined? That’s the next suggestion. Thank you very much. We would say, “Okay. It’s not defined in the body of the Constitution but it’s defined in the Bill of Rights, the first 10 amendments.”

And again, let’s think about this in a slightly different way than we usually teach you. Without the first 10 amendments, the United States Constitution would not be adopted. And so I like to think of the Constitution as including both parts. Because if this part, the Bill of Rights, is not adopted, then a majority of states may not adopt this. So this is the Constitution. Now, these Bill of Rights do say what government cannot do to citizens. But nowhere in this or in this does the Constitution actually define what a citizen is. And we could be here forever explaining that, but it is in the later amendments, 11 through 27, that you get a sense of the definition of citizenship.

What happened— if we go back to the Constitutional Convention, what happened is they tried to define citizenship, national citizenship, based on property qualification and they couldn’t agree as to what the proper amount for the property qualification was. Essentially they threw up their hands and they said, “Okay. Forget it. We’ll leave it to the states.”
And so you have a definition of citizenship in 13 different State Constitutions. The founding fathers of the Constitutional Convention could not agree to a definition of citizenship which is why we say that the Constitution as we come to know it fails to define citizenship. However, because they did it on purpose, they left this decision up to the states on how to define citizenship, 1 through 13 State Constitution, Donald Lutz, the author of our purposes, he argues that the United States Constitution does define citizenship because he believes that that is the Constitution. He includes the State Constitutions as part of the Constitution of the United States. Now, he may be the only one that thinks that. If you just look at the text or the Bill of Rights, the original Constitution fails to define. Now, you could put “fails comma.” If we include State Constitutions, then the U.S. Constitution does indeed define citizenship.

We probably went a little overboard there on the U.S. Constitution because what we want to talk about, of course, is Missouri. And, of course, to talk about Missouri is to in many ways restate some of these very same things. And so — okay. I’m sorry we have to do it every semester at the same point. How to you catch a unique rabbit? You ‘neak up on him. How do you catch a tame rabbit? Tame way. I’m sorry. Look at the U.S. Constitution and look at the Missouri State Constitution and what’re you gonna find? You’re gonna find a lot of the tame thing.

And so instead of dwelling on the Missouri Constitution and how it does exactly the same thing, that would be boring. We’re gonna talk about the Missouri Constitution, go over quickly the things that are the same, and then talk about the unique features of the Missouri State Constitution and how Missouri fulfills these five purposes differently than the U.S. Constitution.
And if you think about that, we think about those two purposes — excuse me — the two ideologies. Missouri is individualistic, Missouri is conservative. How Missouri’s Constitution is different than the U.S. Constitution because of those two traits. How Missouri’s Constitution is gonna be different than Kansas’s Constitution, than Massachusetts’s Constitution. This is a very useful way to compare and contrast not State Constitution to U.S., but State Constitution to other State Constitutions. If you understand what we talked about last time, the concept of political culture, then you can see how that political culture is written into, is the foundation of, the State Constitution.

So let’s talk about Missouri with respect to these five purposes. We’ll move over here and keep the podium out of the way, and we’ll do the same thing. Five purposes, Missouri Constitution. Now, the first question we ask, form of government. What form of government does Missouri have? And as we’ve already said, in many ways it’s the same. We elect representatives just like the United States. So the Missouri Constitution establishes a republican form of government. So that’s the same. That’s easy.

What about federal? Does the Missouri State Constitution establish power here and power here? Well, a lot of people would argue that counties — if we drew Missouri up here, we can go ahead and draw Missouri. We draw Missouri’s 115 counties. Is that a federal system? It might surprise you, but the answer is no. Missouri does not have a federal system. Missouri has what would be the opposite of a federal system and that is what we call a unitary system.

All governmental power, every last iota of governmental power, is in Jefferson City. Every bit. Any power that Greene County has, that St. Louis County has, that Kansas City has,
that Jackson County has, that any subdivision within the state, any power that they have is
granted to them by the state. All power is held in Jefferson City. And if they can give you the
power, they can take the power away. Missouri has a unitary form of government because
none of the political subdivisions have any independent power. We can talk about home rule
and how that works but we’d be here forever. But even with home rule, it is granted and can
be taken away. So that’s an important difference. Missouri does not have a federal system.
It has a unitary system.

We said the United States is not a democracy. We’ll probably get cards and letters
from the TV audience. What about Missouri? We have to say — and we’ll come back to this
twice here today — we have to say that Missouri is democratic, unlike the United States,
because of one important provision in the Missouri State Constitution. You have the power
as individual citizens of Missouri — without elected representatives, you have the power to
make law and change your Constitution. And that is the power of initiative and referendum.

So with democratic in the Missouri Constitution, you have to recognize that Missouri
unlike the U.S. Constitution, Missouri unlike many other State Constitutions, grants power to
its citizens directly. You take your clipboard to Wal-Mart, you get signatures on a petition, it
goes on the ballot. No courts, no Executive, no Legislature, no interest groups, just you and
your clipboard. It goes on the ballot and in the election you vote on it.

So in Missouri you have democratic — a democratic form of government in the sense
that you have the initiative and referendum process. Now, we’ll come back to this in just a
second and we’ll also come back to this in great detail a little bit later in the course. But for
now, unlike the U.S. Constitution, Missouri has a significant democratic component.
Let’s not forget the distribution of political power under Number 1. Missouri’s Constitution also distributes political power. The numbers are a little bit different — Legislative, Executive and Judiciary. Missouri’s is — I’m sorry — Missouri’s separate differently. It’s the same distribution of power — Legislature, Executive and Judiciary — so the distribution of political power itself is the same. It’s Article 3, Article 4, Article 5. Am I ever gonna ask that on an exam? No, I’m never gonna ask that on an exam.

But there is something different about Missouri with respect to the distribution of political power. This is the Missouri Constitution. You’ll notice something about it. It is — it’s thick. How thick is the U.S. Constitution? Well, it’s about this thick. There’s two reasons why the Missouri Constitution is this thick and we’ll talk about one of them later in the course and we’ll talk about one of ‘em right here and now.

The biggest reason that the Constitution of Missouri is this big is that the powers and duties of Executive branch officeholders are spelled out. The powers and duties of Executive branch officeholders are spelled out in great detail. Now, when we say Executive branch officeholders, you’re thinking governor. No, it’s much more than that. In Missouri we spell out the detail for the governor, for the lieutenant governor, for the attorney general, for the auditor, for the treasurer. We spell out the rules and regulations for the Department of Conservation, for the Department of Social Services. All of those things are expressly defined by the Missouri Constitution. That’s what makes it this thick. It’s important to remember. And we’re gonna come back to that in just a second in terms of what that implication is.

The second thing that you have to recognize about Executive branch officeholders, aside from the powers and the duties, is with Executive branch officers they’re elected. The
United States Constitution, you elect the President and the Vice-President together. In Missouri, you elect the governor and the lieutenant governor separately on separate tickets. You could have a Democratic governor and a Republican lieutenant governor, or the other way around. You elect the secretary of state. In the United States government, the President appoints the secretary of state. You elect the treasurer. You elect the auditor. You elect the attorney general. You have power that is not available to citizens of the United States.

And so, in terms of distribution of power, powers of duties being spelled out is an important difference — excuse me. The fact that the Executive branch officeholders are elected is different than the United States Constitution. And also we’ll just talk about Judiciary for a second here ‘cause I’ll run out of space. We’re gonna talk about this later on in the semester but it’s worth noting here. The Missouri plan of appointing/electing judges. Missouri, the very first state, in 1940 adopted a plan where we introduced a notion of merit into the judicial process. Missouri’s judges are not appointed and confirmed — nominated by the President, confirmed by the Senate as we have in the United States. The Missouri plan says a commission will give the governor names, he picks one, and then you, the citizens of Missouri, have a say as to whether that judge stays or doesn’t stay in office.

And so the Missouri plan — again, we’ll talk about it in great detail later — the Missouri plan like the election of governmental officeholders puts more responsibility on the shoulders of the citizens of the State of Missouri. You have more power. Of course, that means you have more responsibility as well. And so it’s the same as the U.S. if you just looked at the structure. But when you look inside a little bit more, you’ll see some significant differences between the U.S. and Missouri’s Constitution. That was a lot.
Establishing the authority. United States Constitution says we the people. You want to guess how the Missouri State Constitution starts? That’s exactly right. It starts out we the people. But then it gets just a teeny bit different. Let me turn the page. It says, “We the people of Missouri with profound reverence for the Supreme Ruler of the Universe and grateful for His goodness do establish this Constitution for the better government of the State.” With profound reverence for the Supreme Ruler of the Universe. Who is that? No, it’s not Dr. Kaiser. It’s God. That’s exactly right. We the people with profound reverence for the Supreme Ruler of the Universe.

What’s God doing in the Bill of Rights of the Missouri State Constitution? What red flag or what flag does it sometimes raise? Separation of church and state. Now, we could be here for awhile, arguing about what that means in terms of the U.S. Constitution, but there is some notion in constitutional history of the United States, both the national and the state level, of separation. Now, whether it’s a wall of separation or it’s a picket fence of separation, that’s a different story. But there is something about separation of church and state.

And we the people of the State of Missouri in the preamble — I think I said the Bill of Rights a second ago — in the preamble — why is God — if we believe in separation of church and state, why is God in the State Constitution? Well, it’s an interesting question and we have to talk about a separate part of the Constitution for just a second. Article 1 of the Missouri State Constitution, Sections 5 through 7, and Article 9, Section 8. These two parts of the Missouri State Constitution erect a very substantial wall between church and state. Missouri State Constitution actually has one of the most stringent separations of church and state in the body of the Constitution. Well, that begs the question. If Missouri believes in
stringent separation of church and state, then why is God in the preamble?

Well, it’s an interesting question. Let me give you the best answer that scholars have come up with. You and I — will you wash my car? Okay. Let’s shake on it. All right. We shake on it. What do we have? Well, not quite yet. We want a contract. What do I need to make that a contract? I need a witness. That is the argument about God in the Missouri State Constitution. What constitutional — state constitutional scholars would say is God is not a party to the contract. We are parties in this contract. God is a witness. It is our authority and we call on God to witness that act. It is a very interesting and sometimes delicate question. But if you want to compare the 50 state constitutions, you want to try and figure that balance out between separation of church and state and the body, and the Supreme Ruler of the Universe in the Preamble. So to best understand this, we treat God as a witness to the contract that we establish and so that’s probably the best way. But again, that is very different than just we the people of the State of Missouri.

Limiting the power of government. Of course it’s the same thing. Missouri’s Constitution has a Bill of Rights that limits the power of government. We’ll talk about that here for just a second. It’s the same. It’s a listing. Many of the same things in the U.S. Bill of Rights are protected in the Missouri Bill of Rights, so that’s not all that different. One important difference is where the Bill of Rights is. We just said a little bit ago that the Bill of Rights of the U.S. Constitution was added afterwards to convince people to ratify. “No, we don’t really need a Bill of Rights. No, no. Really, we don’t need a Bill of Rights. Okay, fine. We’ll put in a Bill of Rights if that’s gonna make you happy.” It’s an afterthought. Missouri’s Bill of Rights is first. The first aspect of the Missouri Constitution after the Preamble is the Bill of Rights. It
suggests that the rights of individuals, that individualism that we talked about last class time, that that is paramount in the Missouri Constitution. So the thing you want to talk about is that it’s first.

The second thing that we want to talk about is the different things that are in the Missouri State Constitution with respect to rights that are protected. And perhaps one of the more controversial ones, Article 1, Section 23. Section 23 says you have the right to bear arms in defense of home, person, and property. The Missouri State Constitution says you have the right to bear arms in defense of home, person, and property. Yeah, I know the second amendment to the U.S. Constitution, but the Second Amendment to the U.S. Constitution says in order to maintain a well regulated militia, the right to keep and bear arms, and so on.

What would you — you want to — somebody’s breaking into your house, someone’s breaking into your car, and you want to shoot them. Do you want the U.S. Constitution and the well regulated militia and what it entails and means or do you want the right to keep and bear arms in defense of home, person, and property? You want the State Constitution. If you want to shoot somebody with a handgun, we’re gonna vote again or the legislature is going to introduce the concealed weapons law. Now, do I want to base my arguments on the U.S. Constitution or the State Constitution? And the answer is, if you think about this a little bit more, I want to look at Article 1, Section 23, the right to keep and bear arms in defense of home, person, and property. If I want concealed weapons, I want to focus on that amendment, not the U.S. Constitution. If I want to get rid of — if I’m opposed to concealed weapons or handguns, I need to focus my efforts on the Missouri State Constitution — not the U.S.
Constitution.

So we’ll start with that one because it’s just a teeny bit controversial. Section 22B is one of my personal favorites. Section 22B says that women are exempt from jury duty. No, don’t get too excited. It’s not true today. But women are exempt from jury duty. Why? Where should women be? Women should be at home, taking care of the children. Is it because women aren’t smart enough to be on juries? No, it is not. It is that women have a responsibility to be elsewhere. Now, the court case, Duran v. Missouri -- the United States Supreme Court, the case of Duran v. Missouri, has said this part of the Missouri Constitution, Section 22B, is unconstitutional. Another way to say it is 22B in the Missouri Constitution violates the federal constitution. The issue was over a jury of your peers. If women are exempt from jury duty, then a woman would not necessarily get a jury of her peers. And so the U.S. Constitution supersedes — it’s the supremacy laws — the U.S. Constitution supersedes the Missouri. Now, the Supreme Court said it’s unconstitutional but it’s still there. And that’s worth talking about.

Section 29 in Missouri— and this is again a political culture issue — Section 29 says you have the right to be union. Technically, you have the right to organize and bargain collectively, but what it means is you have the right to be union. We talked about the Rust Belt. We talked about individualistic political culture and where you find that. If you trace that map, that Rust Belt individualistic political culture, you will find in many of those states a right to be union because it is associated with that political culture. And again, go outside of that political culture, you’ll find states that do not have the right to be union. In Missouri there was an amendment proposed essentially to counteract this, a right to work law in the ‘70s.
Violence, bloodshed, all over that particular constitutional amendment proposal and it really comes back to, which we’ll talk about later in the semester — it comes back to sometimes the tension between individualism and conservatism. So the right to be union, in Section 29 versus that proposed right to work, is really the early example of that conflict.

Well, let’s also talk about some of the other limits that maybe are a little bit fuzzier in some sense. Let’s go back up to Number 1. You elect the lieutenant governor and all the Executive branch officeholders. You have a say in whether or not the judges will stay in office or not with retention elections. That means you have the power to limit the power of Missouri government. So some of these provisions overlap just a little bit.

But let’s talk about some of the other limits besides habeas corpus and so on, and beside the Bill of Rights. Let me erase some of these and let’s talk about two others, both of which we’re gonna talk about later in the semester.

Term limits. The citizens of Missouri in 1992 voted to pass term limits. So you can only serve so many years in the House, you can only serve so many years in the Senate. How many years we’ll talk about later on in a couple of days. And then there’s a max total. You limit the power of the individuals in office by limiting the number of terms that they can serve. And so term limits is an important difference between the Missouri State Constitution and the U.S. Constitution. Now, there are proponents if you want to impose term limits here at the U.S. level, but that’s gonna take U.S. Constitutional amendment.

Probably the most significant limit, certainly today when we’re thinking about the State budget, we’re thinking about rising tuition costs, we have to talk about the Hancock Amendment. The Hancock Amendment is one of the limits to the power of government in
Missouri. It’s Article 1, Section 10. Article 1, Section 10, is the Hancock Amendment.

Essentially it is the balanced budget amendment. The Hancock Amendment specifies that Missouri has a balanced budget, that Missouri will not spend more than it takes in in any given year. That’s Part 1.

But let’s talk about that for just a second. Missouri can’t go into debt. As we talked about, Missouri is a conservative state. Missouri went into debt and that has affected Missouri’s constitutional theory ever since. The Hancock Amendment puts in writing in the Constitution we will have a balanced budget. If we have a surplus, it goes back to the taxpayers. That’s only one part of the limit, though. Let’s talk about the second one.

The second part of the limit is a local aspect of it. The statewide implication is the balanced budget but there’s also local. The Hancock Amendment says that no tax, license, or fee can be increased without voter approval. So the State of Missouri can’t raise taxes without voter approval. The City of Springfield cannot raise taxes without voter approval. The Battlefield Fire Protection District cannot raise its fees, and so on, without voter approval.

And so the Hancock Amendment is a limit at both the state level and the local level with respect to taxes, licenses and fees. Again, it’s a limit on the power of government but it’s a limit held by you, the citizens, as we talked about with respect to the election of other officeholders.

Okay. The most recent — probably the most recent amendment to the Constitution in the Bill of Rights, Number 32. The most recent amendment to the Constitution in this regard is Number 32 and it’s what’s called the crime victims rights. We oftentimes think about the Bill of Rights of the United States Constitution as protecting the rights of criminals, and
certainly some of that is true in the Bill of Rights of the Missouri Constitution.

The crime victims rights, one of the most recent amendments to the Constitution, assigns specific rights to the victims of crime. In the sense—how is this related to the power of government? It’s a fair question. You are entitled to be informed of all proceedings of someone who is charged with doing—you’re robbed. When that person comes to trial, you are entitled to be informed, you are entitled to be present, you are entitled to restitution. If someone is let out of prison early, for example, you are entitled to know that this person has been released from prison or will be released from prison. At hearings for parole, you are entitled to be present.

The Amendment, Section 32, to the Bill of Rights says that you, the victim of crime, also have rights. And it’s a limit to the power of government in the sense that it’s not private, it’s not secret. You are entitled to know these things and the United States—excuse me—State of Missouri cannot keep this information from you. So in that sense it is also a limit in the power of government. So the Missouri Constitution has a Bill of Rights just like the U.S. Constitution, but it has very many things that are different. So in terms of how does the Missouri Constitution limit the power of government there are some significant differences.

All right. We’ll move on just a little bit. We’ll go to conflict management. Conflict management. Well, we have essentially the same thing, separation of powers. Checks and balances. So that part is exactly the same. We also have an amendment process that’s exactly the same except for—I said we’d come back to it—you can amend the Constitution, that steam valve. You have control over it. To amend the United States Constitution there are a couple of mechanisms, but it takes an awful lot which might explain why we have so few
amendments. To amend the Missouri Constitution doesn’t take as much effort. It is — easily is too strong a word, but it can be amended through that initiative and referendum process. You, the citizen of Missouri, as I said before, have the power to amend the Constitution.

I said there were two reasons that the Missouri Constitution is thick. The Missouri Constitution is thick because the powers and duties of executive branch officeholders are spelled out and the Missouri Constitution is thick because it has been amended so many times. And increasingly, as we’ll talk about a little bit later on in the course, it has been increasingly amended through this initiative and referendum process. At the U.S. Constitutional level you don’t have control over the steam valve. But if you want to amend this constitution tomorrow, you take your clipboard to Wal-Mart and you amend your constitution. And so the amendment process, while it fulfills the same function in terms of providing for conflict management, it also allows you in different ways to amend the Constitution yourself. So again it’s part of that democratic feature that we addressed earlier.

There is one additional feature of the Missouri Constitution that is different and it also is part of the conflict management system. The Missouri State Constitution mandates periodic review. The Missouri State Constitution stipulates every 20 years the voters of Missouri are asked, “Should we call a new Constitutional Convention?” Now, the current Constitution was adopted in 1945. The last time we voted on this was the year 2002. It’s pretty obvious we haven’t had a new Constitutional Convention because we’re on the 1945 Constitution. The voters have consistently said no. The Constitution mandates a periodic review. Every 20 years we’re gonna vote whether we should have a new Constitutional Convention and every time it’s come up since the 1945 Constitution you have said no.
Now, how’s that a limit on the power of government? Again, it’s an interesting question. But instead of just letting the Constitution go, the Constitution specifies that every 20 years you have to decide yourself whether you’re satisfied with the Constitution of the State of Missouri again. The Missouri Constitution puts the power into your hands instead of simply leaving it with government.

Now, why have you said no every time it’s come up? Is it because your imminently satisfied? That’s probably never true. But it’s much easier to amend the Constitution, go through the initiative referendum process and the other mechanisms which we’ll talk about, but you’ve just amended it if you don’t like it. And so the Constitutional Convention call has been rejected each time because you continually amend the Constitution instead.

All right. We’re gettin’ down to the bottom. We said the United States Constitution fails to define citizenship. That is not true with respect to Missouri. Missouri’s Constitution has always defined citizenship. And if you think about Missouri Constitution history — I don’t know if this chair is gonna be in the way. We’ll move it. If you think about Missouri Constitution history in that first section, Missouri’s Constitution is all about defining citizenships.

So if we go back to 1820, what’s the issue? The issue is slavery. Shall Missouri come into the Union as a slave state? One of the most significant controversies on the national scene is how Missouri shall be admitted to the Union. So if you think about defining citizenship, it’s not whether Missouri does or does not define citizenship. It’s how the Missouri State Constitution defines citizenship.

Well, let’s go back. Let’s go to 1820. Who is excluded from the 1820 Constitution?
Slaves. The 1820 Constitution denies citizenship to blacks. And, if you think about it, that’s in no way different than the United States Constitution of 1820. The Missouri Constitution of 1820 denies citizenship to blacks. As part of Missouri’s admission to the Union, Missouri comes in as a slave state. Then we fight the Civil War and we have a new Constitution.

We have a Constitution of 1865, the Constitution written after the Civil War. Well, you have to ask yourself who’s in charge of Missouri after the Civil War? Well, it’s essentially the Union. And the definition of citizenship changes dramatically. It actually reverses. Missouri’s Constitution of 1865 has what’s called the ironclad oath. The ironclad oath disenfranchises almost half of the citizens of Missouri and then grants citizenship to the group that was denied according to the 1820 Constitution.

After the Civil War Missouri’s Constitution is rewritten and the expression is to the victor go the spoils. The Missouri State Constitution is rewritten in such a way as to punish Confederates and Confederate sympathizers, so the ironclad oath takes their right of citizenship away. Cooler heads prevail — 1875. The Constitution of 1875 removes the ironclad oath. And so it refranchises or gives these citizenship rights of former Confederates and Confederate sympathizers back to them. And so if you think about the definition of citizenship in the Missouri Constitution, again it’s not the does or does not. It’s how it defines citizen.

And so let’s talk about the 1945 Constitution, the Constitution we operate under today, and how it defines citizenship. The Constitution of 1945 defines citizenship in three ways. And basically to define citizenship there’s a shortcut. What you want to do to find out who’s a citizen is to go through the Constitution and find out who can vote. And to find that, you’ll find
Article 7, Section 2, of the current State Constitution which was adopted in 1945. Article 7, Section 2, defines citizenship with respect to voting in three ways.

First of all, you have to be 18. Second, if you are convicted of a felony — which we’ll talk about when we talk about the judiciary — if you are convicted of a felony, then those rights of citizenship are taken away. They can be regained. They can be regained. But if you’re — according to Article 7, if you’re convicted of a felony, those citizenship rights can be taken away. And then mental capacity is also included in the voter qualification. Now, mental capacity. I volunteered to be the decider but they won’t let me. Mental capacity. If you’ve had this class, then it’s okay for you to vote. If you haven’t had this class, then you can’t vote. Mental capacity is a polite way of saying— we don’t say mentally retarded but that’s what we mean.

In the Missouri Constitution there’s something equivalent. Article 1 of the Missouri State Constitution says, “All persons are entitled to equal rights and opportunities.” Article 1 says, “All persons are entitled to equal rights and equal opportunities.” Who does “all persons” apply to? It’s a question of defining citizenship. Who are entitled to equal rights? What does equal mean? The issue of the funding formula that we’re gonna talk about. What does equal education mean? What does equal spending on mean? These are questions that are rooted in the definition of citizenship.