

POWER VERSUS COUNTRY

POWER VERSUS COUNTRY:

**ARE THE POLITICAL ELITE WILLING
TO SOLVE OUR NATION'S PROBLEMS?**

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Judy – Thanks

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To the people of the United States of America:

“I have chosen to dedicate these my discourses to you in preference to all others; ... I have chosen not those who are princes, but those who, on account of their innumerable good qualities, deserve to be; not those who might shower on me rank, honours, and riches, but those who, though unable, would like to do so. For to judge aright, one should esteem men because they are generous, not because they have the power to be generous; *and, in like manner, should admire those who know how to govern a kingdom, not those who, without knowing how, actually govern one.*” (Italics added.)

Niccolo Machiavelli to Zanobi Buondelmonti and Cosimo Rucellai, upon completion of *The Discourses* in the year 1517, as translated by Leslie J. Walker.

◆ PREFACE ◆

When I started writing this book in 2007, I frankly hoped to influence the way voters thought about the issues for upcoming elections, particularly as those issues related to the Congress of the United States. It was inconceivable to me that Congress, as an institution, could have an approval rating (at the time) of between 20 to 25 percent, and that 95 to 98 percent of the individual members of the House of Representatives could still get reelected every two years.

I had hoped to complete the book before the 2008 election. When I missed my self-imposed deadline, I thought I had also missed the opportunity to present any consideration of my ideas and concerns.

In the intervening period between my initial writing and today, polls have shown the Congressional approval rate dropping drastically, barely toping 10 percent. Therefore, I resolved to complete the book, regardless of its current electoral impact. Upon rereading and editing what had been initially written, it quickly became apparent that updating and expansion were necessary. If you read beyond this preface, you will discover that I identified four problems that, in my opinion, were significant, yet solvable, for the people of the United States but which were not being addressed or resolved, one way or another, by our government (read, here, the *Congress of the United States*) because of purely political reasons. As I reread and edited what had been written, I recognized that, for the most part, the problems that existed as far back as 2006 and before still existed in 2010. Sadly, they continue to exist to the present date.

What does this mean? It either means that the issues I identified as problems were not problems in anyone else's mind, which, I believe, is clearly not the case; or that problems, which if not created but were at least greatly expanded by the Congress controlled by Republicans up to 2006, were not corrected by the post-2006 Democrat-controlled Congress or the split Congress of 2010 to the present due to a lack of political will of the members of Congress.

In my view, the severity of these problems was actually increased by the Democratic Congress, and Congress, as an institution involving both parties, became more divisive and partisan. This reconfirmed my opinion that the individual members of Congress, regardless of party, have their agenda and, for the most part, do not really care how those agenda affect the people of the United States except to the extent they enable the individual members to get reelected. In my opinion, many members of Congress will place politics and their individual interests above a collective duty to the public almost every time.

The results of the general election in 2010 provided an abrupt change for the Congress. The most significant shift in Congressional membership since 1948 occurred as Republicans overwhelmingly regained control of the House of Representatives and narrowed the Democrats' total and significant control of the Senate. Some commentators posited that, in effect, the Republicans actually had "working" control of the Congress.

At the date of this writing, three of these key four problems have not even been addressed, let alone resolved, and they stand no chance of being resolved sometime after the new Congress took office in 2013. The fourth problem has been addressed in a temporary manner as the reader will discover below.

Since 2010, it has been interesting to observe the actions of the Democrat-controlled Senate. Even though the Democrats would not work with the Republicans when the Democrats were in full control of both Houses of the Congress between 2006 and 2010 and could pass any legislation they wanted (and did), the Senate has also refused to work with the Republican-controlled House since 2011 to try to solve the nation's problems (or, as members of Congress like to pontificate, "to do the people's business"). Thus, the Democrats in the Senate have reconfirmed my thesis that the agenda are more important than the actual effect they have upon Americans.

Based upon decades of past action by the Congress, I am not optimistic that many members of the political elite will forgo their self-interest and try to do what is best for the nation. After all, when the Democrats had absolute control of both houses of Congress from 2006 to 2010 and the additional support of a Democrat president from 2009 until the present, they did not offer to work with the Republican minority. It was only after the 2010 elections that shifted control of the House to the Republicans and narrowed the Democrats' control of the Senate, which President Barack Obama described as a "shellacking" for his Democrat party, that the Democrats appeared to realize that there was, in fact, another party in the political debate and suddenly discovered that both major political

parties should “compromise” and “work together” to solve the nation’s immense problems. Unfortunately, actions did not follow the words. For example, even though the Republican House passed three budgets, the Senate did not attempt to adopt any budget during those years, and passing a budget is arguably Congress’ principal function. “Compromising” and “working together” were not concerns of the Democrats, Senator Harry Reid, and Leader Nancy Pelosi when they were in total control of the Congress, and, sadly, they do not seem to be a priority for either party now, particularly after the 2012 reelection of President Obama.

If the politicians forget their personal interests and attempt to solve the problems of the country, the curious question then becomes whether the citizens will accept the necessary, but difficult, changes that I believe are required to solve those four problems and not reprise the 2010 election results.

Donald P. Bogard
Indianapolis, 2013

PART I

◆ Power! ◆

How Our System has Created a Political Elite

“Nothing is real ... except power.” Richard B. Lee; “Art, Science, or Politics? The Crisis in Hunter-Gatherer Studies;” *American Anthropologist*, Vol. 94, No. 1, March, 1992.

Government, politics, and political discussions can be stimulating activities. They can also be divisive. The latter situation has become more prevalent in the United States during the last few decades. Dissension among politicians is great, and their dialogue is not particularly useful. In fact, it is quite often destructive. Rarely will either major political party cooperate with the other on any issue of significance, and even issues of minor importance can cause much disagreement between or among the participants. This is particularly exhibited in the Congress of the United States and during the periods of divided government, times when the Executive Department is controlled by one party and one or both houses of Congress is controlled by the other party.

The people in America were warned about this likelihood long ago during the period in which the Constitution of the United States was being ratified. In a series of 85 essays, collectively called *The Federalist Papers*, which were addressed to the People of the State of New York—a pivotal state that had not yet voted to ratify or reject the new Constitution—Alexander Hamilton, John Jay, and James Madison explained why the Constitution had been drafted as it was. They tried to explain and rationalize all provisions of the Constitution that might cause the people of New York to reject that document. In “Federalist No. 10,” one of the most famous of the *Papers*, Madison wrote the following:

Among the numerous advantages promised by a well-constructed Union, none deserves to be more accurately developed than its tendency to break and control the violence of faction [described by Madison

as “this dangerous vice”] ... The instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments have everywhere perished; as they continue to be the favorite and fruitful topics from which the adversaries to liberty derive their most specious declamations.

By a faction, I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, *adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.*¹ (Italics added.)

After defining what a faction was, Madison then explained its causes:

The latent causes of faction are thus sown in the nature of men; and we see them everywhere brought into different degrees of activity, according to the different circumstances of civil society. A zeal for different opinions concerning religion, concerning government, and many other points ... ; an attachment to different leaders ambitiously contending for pre-eminence and power; or to persons of other descriptions whose fortunes have been interesting to the human passions, have, in turn, divided mankind into parties, *inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to co-operate for their common good.* So strong is this propensity of mankind to fall into mutual animosities, that where no substantial occasion presents itself, the most frivolous and fanciful distinctions have been sufficient to kindle their unfriendly passions and excite their most violent conflicts. But the most common and durable source of factions has been the various and unequal distribution of property. Those who hold and those who are without property have ever formed distinct interests in society...

*It is in vain to say that enlightened statesmen will be able to adjust these clashing interests and render them all subservient to the public good. Enlightened statesmen will not always be at the helm.*² (Italics added.)

1 James Madison; “Federalist No. 10;” *The Federalist Papers*; New American Library, New York; 1961; pp.77-79.

2 Id; p. 79-80.

Recent events verify the continuing truth of Madison's words, particularly those about property as discussed in the 2012 presidential campaign. Every event or issue is used by one party or the other as a basis for attacking either the proponent of the issue or the party supporting it. There does not seem to be any genuine desire, collectively, to advance the cause of the United States. Perhaps this is to be expected. As John Adams, the second president of the United States, observed, it is easier to tear down than to build up.³

The result of these events is that members of Congress fight for television coverage, accuse members of the other party of all sorts of evil motivation and chicanery, and accomplish very little of substance.

But pure partisan politics is not better for America, currently the world's only superpower, or, therefore, for the world. Every issue is not either black or white; every proponent of an idea is not either blessed with divine wisdom or is the devil incarnate. Opposing, and even ridiculing, those issues, plans, or programs and degrading—sometimes slandering—their proponents for the sole purpose of advancing one's political standing or the standing of his or her faction does nothing to further the dialogue in a productive way or to advance the cause of the United States or freedom in the world.

Calvin Coolidge, after becoming the president of the Senate of Massachusetts in 1914, made a profound, yet, to the author, extremely obvious point in his acceptance speech entitled "Have Faith in Massachusetts":

This commonwealth is one. We are all members of one body. The welfare of the weakest and the welfare of the most powerful are inseparably bound together. Industry cannot flourish if labor languish. Transportation cannot prosper if manufactures decline. The general welfare cannot be provided for in any one act, but it is well to remember that the benefit of one is the benefit of all. The suspensions of one man's dividends is the suspension of another man's pay envelope.

* * *

Do the day's work. If it be to protect the rights of the weak, whoever objects, do it. If it is to help a powerful corporation, do that... Don't expect to build up the weak by pulling down the strong ...

We need a broader, firmer, deeper faith in the people—a faith that men desire to do right, that *the commonwealth is founded upon a*

3 David McCullough; *John Adams*; Simon & Schuster; New York, 2001.

*righteousness which will endure, a reconstructed faith that the final approval of the people is given not to demagogues, slavishly pandering to their selfishness, merchandising with the clamor of the hour, but to statesmen, ministering to their welfare, representing their deep, silent, abiding convictions.*⁴ (Italics added.)

Coolidge was elected vice president of the United States in 1920, and he assumed office in 1921. In 1923, upon the death of President Warren G. Harding, Coolidge became president. He was elected president in 1924 and served until 1929.

America is now in dire need of statesmen that share those opinions of Madison and Coolidge. The obvious question is why have so many officials of the government, particularly members of Congress, strayed so far from those ideas? Is the power of being in control of the government more important than the decisions that government makes for its people? Can one party or the other really have all of the answers to every question? Does the fact that one party is in power justify the other party doing or saying whatever it desires—true or untrue—so that it can attempt to cause the people to remove the party in power? Why has politics become a full-time career? Why is it that only a relative handful of people in this nation of more than 310,000,000 people are deemed worthy or capable of occupying the decision-making chairs of the government, and, therefore, be allowed to occupy them for 30 or 40 years? Whatever became of the citizen legislature, the presidents that finished their terms and went back to their former homes and occupations, and the people that only wanted to perform their public jobs efficiently and effectively and not use them as stepping stones to higher offices?

The federal government is failing to solve many of the problems facing the nation today, and it is being urged to solve many that are not its responsibility. In fact, many of the problems, such as illegal immigration and Social Security reform, are basically ignored, following superfluous debates, because the politicians are afraid to make decisions that might cause significant voting blocks to remove them from power.

Power! That is the key. Those that have it want to retain it, and those that do not have it want to achieve it. It is as if the effects of the actions of the members of Congress and the other branches of the government upon the country are

4 Robert Sobel; *Coolidge: An American Enigma*; Regnery Publishing, Inc.; Washington, D.C.; 1998.

not important; power is the goal.⁵ This is clearly demonstrated by the fact that the average expenditure by a candidate for a two-year seat in the House of Representatives during the 2007/2008 election, the last year for which complete election costs were located on the Web site of the Federal Election Commission (“FEC”) as of the date of this writing, cost more than \$1.3 million⁶. For the 110th Congress, which ran from 2007 through 2008, rank-and-file members of the House and the Senate were paid a base salary of \$165,200 per year during the first year; leaders were paid more.⁷ During the second year, salaries increased by \$4,100 per year to \$169,300 for rank-and-file members. Therefore, at the time candidates were campaigning for election for that two-year term for the House, the successful members could expect to receive \$330,400 in salary for their million dollar plus expenditures.

Congress, being the open institution it is, has adopted a very convenient way to increase members’ salaries. As late as 1991, members could pass specific legislation to increase their salaries. The last time such a bill was proposed to increase the members’ salaries, the public was outraged because it believed that Congress was doing a less than stellar job. As a result, Congress pulled the bill. Instead, Congress relied upon a previously passed law that provided for annual, automatic adjustments, *unless the Congress votes to decline the increases*. Thus, the members could not get extraordinary increases, but they no longer had to make a public, positive vote to increase their salaries. Several of those automatic increases have, in fact, been declined. In accepting the 2008 increase, *the members voted to oppose a procedural vote that would bring the members’ automatic adjustment increase to the floor for a public vote*, thereby clearing the way for the automatic increase without any public scrutiny.⁸ Democrats, which controlled that Congress, opposed the automatic adjustment, vowing not to accept it unless the hourly minimum wage for workers in the United States was increased. Successfully engineering an increase from \$5.15 to \$5.85 per hour, which, at the time, was less than McDonald’s entry-level wage of \$7.00 per hour, Congress rewarded itself by accepting the \$4,100 adjustment, even though less

5 Charlie Crist was elected governor of Florida in 2006 as a Republican. When it appeared that he was going to face stiff opposition within his party for reelection in 2010, he left the Republican Party and ran for the Senate as an independent. Following his defeat as an independent, he became a Democrat, and, apparently, plans to seek the governorship representing that party.

6 *Federal Election Commission Reports on Congressional Financial Activity for 2000*; “Other Campaign Financial Data;” “Compiled Data From Past Election Cycles;” “Summary Information on House and Senate Campaigns through December 31, 2000.” www.fec.gov/press/press2001/051501/congfinact/051501congfinact.html.

7 <http://usgovinfo.about.com/library/weekly/aa031200a.htm/>.

8 “Members of Congress get \$4,100 pay raise,” *The Miami Herald, International Edition*; January 10, 2008; p.6A.

than 0.5 percent of the nation's workers would be benefited by the minimum wage increase.⁹

Congress' desire to avoid a public vote is understandable because less than 20 percent of the citizens approved the job being performed by that Congress. (In December, 2010, 13 percent of the population of the United States approved of the performance of the Congress, according to a Gallup poll, but that number would decrease even more.¹⁰)

The records of the FEC for the period of 2007-2008 also list the amount spent by the top 50 Senate and top 50 House campaigns through December 31, 2008. According to those records, which were reported by the candidates' election committees, the number one spending Senate candidate was Mitch McConnell (Republican-Kentucky), who, during that period, had spent \$21,306,296 in his reelection campaign. The number two spending Senate candidate, Al Franken (Democrat-Minnesota), spent \$21,066,834. Mr. Franken's opponent in that campaign, Norm Coleman, was number three on the list, and he spent \$19,011,108. Thus, together, Franken's and Coleman's figures show that they spent a total of \$40,077,942 to try to claim one of the 33 seats in the Senate being contested in 2008. Two other candidates for the Minnesota Senate seat, Heather Wilson (Republican) and Michael Ciresi (Democratic Former Labor party) lost in the primary but, nevertheless made the top 50 expenditure list with combined disbursements of \$6,629,755.

On the other end of the list, the number 50 spending Senate candidate was James S. Gilmore (Republican-Virginia), who spent \$2,420,787 in a losing campaign.¹¹ All of those candidates, if elected, would expect to receive a total salary of \$991,200, plus potential annual cost-of-living increases, for their six-year terms.

In the House for the same two-year period, the number one spending candidate was Doug Ose (Republican-California), who spent \$7,914,755 in an effort to win an open seat, *i.e.*, a seat for which the incumbent was not running for reelection, *but he lost in the primary*. Interestingly, Charles Rangel (Democrat-New York), who has represented the Harlem district in Congress for 40 years, ranked 12th in

9 "Not doing a great job with taxpayers' money," by George F. Will; *The Miami Herald, International Edition*; December 27, 2007; p.11A.

10 "The 111th Congress's Final Insult," *The Wall Street Journal*; December 16, 2010; p.A22.

11 2007-2008, Top 50 Senate General Election Campaigns by Disbursements; <http://www.fec.gov/press/press2009/2009Dec29Cong/2009Dec.29>.

the top-50 list and spent \$4,209,400 in his reelection bid, even though he won the contest and received 89 percent of all votes.¹² Number 50 on the House list was W. Blaine Luetkemayer (Republican-Missouri) who spent \$2,778,724 in a winning effort. Ose, Rangel, and Luetkemayer would each expect to receive a total salary of \$334,500, plus potential annual cost-of-living increases, for their two-year terms in the House.

In a press release dated June 9, 2005, the FEC disclosed the full-cycle reports for the period January 1, 2003, through December 31, 2004. That report showed that a total of 2,219 candidates sought the 435 seats in the House (all members of the House have to stand for election every two years) and the 34 seats in the Senate, and, together, they spent a grand total of \$1.157 billion.¹³ Ranking first on the list of top 50 spenders for the Senate was Marion Hull, a Democrat from Illinois, who spent \$28,968,436 and did not even win the primary election. Interestingly, seven of the top 50 spenders for the Senate tried to win the open Illinois seat that was eventually claimed by Democrat Barack Obama. Mr. Obama ranked seventh in the list of 50 spending \$14,532,493. The seven listed Illinois candidates, six of whom were obviously unsuccessful, spent a total of \$70,992,501.¹⁴ On the House side, Illinois again claimed the top prize; Dennis Hastert, a Republican and the speaker of the house, spent \$5,013,947 to win reelection.¹⁵

Power! That is the key.

When the framers of the American constitutions drafted those documents, *i.e.*, the Articles of Confederation and the Constitution, the principal sections dealt with that with which they were most familiar—the legislature. The colonies, while under the control of the king of England, had legislatures, even though the king periodically prohibited them from functioning. In 1774, prior to the beginning of the Revolutionary War, the colonies formed a Continental Congress to consider matters they believed to be of interest to all 13 colonies. Following the Declaration of Independence in 1776, the 13 Colonies, which, by that document, declared themselves to be “free and independent states,” adopted the Articles of Confederation to provide a central government, albeit a weak one. The Articles thus formed the first constitution of the United States of America. That constitution was adopted by the Congress and proposed to the 13 states in 1777. Because all 13

12 2007-2008, Top 50 House General Election Campaigns by Disbursements; <http://www.fec.gov/press/press2009/2009Dec29Cong/2009Dec29>.

13 <http://www.fec.gov/press/press2005/press20050609candidate/20050609candidate.html>.

14 <http://www.fec.gov/press/press20050609candidate/sendisb.pdf>.

15 <http://www.fec.gov/press/press20050609candidate/hsedisb.pdf>.

states had to approve the Articles unanimously, it did not take effect until it was ratified by the 13th state four years later in 1781. The year before final approval, Alexander Hamilton called for the Articles to be repealed and replaced by another constitution that would provide for a stronger central government.

Congress was the central point of government under the Articles. It naturally followed that the Congress would be the key component of the new governmental structure created by the Constitution in 1787. Article I of the Constitution, which is composed of 10 sections, was devoted exclusively to the Congress, and Section 8 of Article I describes the enormous powers of Congress, even though at the time the bulk of the power was thought to rest with the state governments.

Currently, there are a total of 535 voting members of the two bodies of Congress elected to represent the approximate 310,000,000 people in the United States. The House of Representatives has 435 members, each of which is elected for a two-year term to represent a particular district in a particular state. A member of the House represents approximately 700,000 people. Each state is allowed a number of representatives based upon a percentage of the population of the state versus the total population of the United States. Thus, more-populated states such as Florida and California get more representatives than less-populated states such as North Dakota and Wyoming. Each state, regardless of its population, is guaranteed at least one representative by Article I, Section 2, of the Constitution. In each state, the district boundary lines are to be redrawn by the state legislatures based upon the census of the population constitutionally mandated every 10 years.¹⁶ This process is called redistricting. Those boundary lines are drawn by the parties in control of the state legislatures the year following the census and, as such, are envisioned to enhance that party's power and to weaken the other party's power for the congressional elections to be held during the next 10 years.

This process sometimes backfires. In Indiana in 1981, the Republican-controlled General Assembly redrafted the congressional district boundary lines with the intent eventually to oust sitting Democrats. At the time, the Indiana Democrats had seven members of the House of Representatives and the Republicans had four. Even though the next election in 1982 produced a five to five split, eight years later, when the next redistricting was undertaken, Democrats had eight members of the House and Republicans only had two.¹⁷

The Senate is comprised of 100 members based upon the equality principle, *i.e.*, each state should have the same number of senators—two—as every other

¹⁶ Article 1, Section 2 of the Constitution of the United States.

¹⁷ <http://query.nytimes.com/gst/fullpage.html>.

state. This principle enables the less-populated states to have the same vote in the Senate as the more-populated states. Each senator is elected statewide, and, therefore, represents the entire state. The terms for senators are six years. Only one-third of the Senate is elected every two years, thereby ensuring that the full Senate is never replaced at one time. This process was designed to provide stability, continuity, and experience in the body of Congress that the framers of the Constitution thought would be more deliberative.

The structure of the Congress was heavily debated during the Constitutional Convention, and the Great Compromise—sometimes called the Connecticut Compromise—resolved the debate as outlined above, acknowledging that population should control the House but equality should control the Senate. Because a bill has to be passed by both bodies of Congress to become a law, this manner of representation was devised to protect all states.

During the first several decades of the federal government under the operation of the Constitution, the members of the House, the body of the people, were expected to serve for a short time and return to their homes and regular jobs. Congress was a citizen legislature; people were expected to do their duty and step aside for others to do theirs. The terms for members of the House were only for two years and as the concerns and interests of the people changed, the short terms were expected to cause members to leave (or be defeated in elections) and others to come forward. On the other hand, the members of the Senate, which have to be older than candidates for the House to be elected, were to provide stability, maturity, and experience for the government. Nevertheless, senators were anticipated to serve only one or two terms and then return to their homes and regular jobs. Those attitudes and practices disappeared from the Congress years ago.

In the first half of the 20th century, House elections every two years resulted in an average shift of approximately 13 percent of the seats (56) between the parties.¹⁸ During the second half of that century, the average shift declined to about five percent of the seats (22) every two years.¹⁹ During the 2000 election, columnist David Broder opined that not more than 48 of the 435 seats, barely more than 10 percent, were actually at issue.²⁰

At the beginning of the 111th session of Congress, which encompassed the years 2009-2010 (each two-year term of the members of the House constitutes a

18 James E. Campbell and Steve J. Jurek; “The Decline of Competition and Change in Congressional Elections.” <http://www.acsu.buffalo.edu/jcampbel/documents>.

19 Id.

20 David S. Broder; “Parties Narrowing Efforts to True Tossup Districts;” *The Washington Post*; September 3, 2000; p.A1.

“session”), the average length of time a member had served in the House was 11 years, or five and one-half terms, and the average length of time a member had served in the Senate was 12.9 years, or almost 2.2 terms.²¹ Seventeen members of the House had served more than 30 years²², and seven members of the Senate had served more than 30 years.²³ In the House, John Dingell, a Democrat from Michigan, currently holds the distinction of serving longer than any other member, serving from 1955 to the present.²⁴ In the Senate, the most recent longevity distinction belonged to Daniel Inouye, a Democrat from Hawaii, who served from 1963 until his death on December 17, 2012. The late Robert Byrd, a Democrat from West Virginia, who died at the age of 92, holds the record for time served in the Senate, from 1959 until his death in 2010.

Perhaps even more astonishing regarding the time served is the shift in occupations of the members of Congress. Traditionally, more members of the Congress had been lawyers than any other occupation, followed next by businessmen. At the beginning of the 111th Congress, for the first time, more members of Congress (182 Representatives and 33 Senators) listed their occupation as “public service/politics” than any other occupation.²⁵ Thus, the careers of 215 of the 535 members of Congress (40 percent) have been in government and not in the private sector. While it is not advocated here that the principal occupation group of members of Congress should be the legal profession (even though the author is an attorney), the question naturally follows: Is our government functioning better because it has more career politicians than ever before?

What does all of this mean for the people of the United States? Ironically, for one thing, it may mean that even though members are serving longer in the Congress people are actually less satisfied with the performance of the Congress because there are few regular changes in its membership.

Until 2010, citizens kept reelecting their congresspersons and, somewhat less, their senators to office. The reelection rates of members of the House were 98.5,²⁶ 98,²⁷ 96,²⁸ and 99²⁹ percent for the elections during the period of 1998 through 2004. The reelection rates for senators averaged 91 percent during that same period.

21 Jennifer E. Manning: “Membership of the 111th Congress: A Profile;” Congressional Research Service, The Library of Congress. <http://www.senate.gov/CRSReports/crs-publish.cfm?pid>.

22 http://en.Wikipedia.org/wiki/List_of_current_United_States_House.

23 http://en.Wikipedia.org/wiki/List_of_current_United_States_Senate.

24 Manning, *ibid*.

25 *Id*, at footnote 5.

26 <http://www.cusdi.org/reelection.htm>. Only six of 401 incumbents seeking reelection lost.

27 http://en.wikipedia.org/wiki/Congressional_stagnation_in_the_United_States.

28 <http://usinfo.state.gov/products/pubs/election04/congress.htm>.

29 <http://www.thisnation.com/question/016.html>. Only five of 401 incumbents seeking reelection lost.

Democrats won control of the Congress in the November, 2006, election, and the 110th session of Congress encompassed the years 2007 and 2008. PollingReport.com lists the job rating of Congress as reflected in national polls, including FOX/Opinion Dynamics RV, NBC/Wall Street Journal, USA Today/Gallup, AP-Gfk, Gallup, CBS/New York Times, CNN/Opinion Research, L.A. Times/Bloomberg, ABC/Washington Post, NPR LV, and others.³⁰ January, 2007, polls showed that congressional approval ratings were consistently in the low- to mid-30 percent range and disapproval ratings were between the mid- to upper-40 percent range. At the end of 2007, the numbers had changed dramatically. Seven polls were taken in December and five of those seven revealed approval ratings of 21 to 25 percent³¹; disapproval ratings for all seven polls were between 64 and 70 percent.

In 2008, things only got worse for the Congress, and, therefore, the people. As detailed in PollingReport.com, 67 polls were conducted in 2008. Not including one ABC/Washington Post poll taken between January 30 and February 1, which showed an approval rating of 33 percent, the other 66 polls listed the range of approvals between 12 and 28 percent. More profoundly, more than 50 percent of those polls—34 of 67— listed approval ratings below 19 percent.³² One observer, Simon Tisdall, writing in Washington for *The Guardian*, a British publication, noted on October 1, 2008, that Congress' approval rating was "10% and falling."³³ Significantly, on the other side of the ledger, in those 67 polls, Congress' disapproval ratings ranged between 59 and 81 percent; and 52 of the 67 polls had disapprovals of 70 percent or higher. Of the 15 polls below 70 percent, 11 listed disapprovals between 67 to 69 percent, and the remaining four were all conducted before mid-February, 2008.³⁴ Three congressional job approval polls were conducted in January, 2009, following the decisive victory by Democrat Senator Obama to be the president, the significant increase in the control of Congress by the Democrats, and the developing euphoria of Senator Obama's inauguration. The ratings did not show much improvement: Congressional approval ratings were 19, 23, and 23 percent, and disapproval ratings were 68, 68, and 76 percent.³⁵

The people's approval rating of Congress as an institution in June, 2007, was

30 <http://www.pollingreport.com/CongJob.htm>.

31 There were two outliers in those seven polls, one showing an approval rating of 18 percent and one showing an approval rating of 32 percent.

32 <http://www.pollingreport.com/CongJob.htm>.

33 <http://www.guardian.co.uk/world/2008/oct/01/georgebush.congress>.

34 <http://www.pollingreport.com/CongJob.htm>.

35 Id.

only 23 percent.³⁶ This rating was an 8 percent decline from a previous poll conducted in April, 2007, and it is a surprising statistic in view of the fact that the June poll was conducted only five months after the Democrats had regained control of the Congress from the Republicans. That rating shows that despite the election that brought about a change in the control of Congress, after the change the people still did not exhibit much support for Congress as an institution. In a poll taken between October 13 and 16, 2006, three weeks before the above-mentioned election, the congressional approval rating was at 16 percent³⁷, which was similar to a previous low score of 15 percent in 1992.³⁸ But those ratings turned out to be “good.” Following the 2008 election, with the Democrats firmly in control, the congressional approval rating, according to Gallup, rose to 39 percent in March, 2009, but fell to 21 percent by October.³⁹ The approval rating continued to fall thereafter, reaching just 10 percent in February and August, 2012.⁴⁰ The flip side of those records is that the public is not just disinterested; an August, 2011, poll showed that fully 84 percent disapproved of the job Congress was doing.⁴¹ Another contemporaneous poll taken by the Associated Press-GfK between August 18 and 22 found that congressional approval had dropped to 12 percent, the lowest in AP-GfK polling. That number was down from 21 percent just two months earlier.⁴²

While the American public clearly has a disdain for Congress, these polling numbers may not be of much significance. CBS News reported on April 18, 2005, that only 37 percent of the people thought that what Congress had done was good for the country and 41 percent thought what it had done was bad for the country. When asked to name *anything* Congress had done, 68 percent were unable to do so.

In August, 2011, following a bitter battle and stalemate in Congress regarding an effort by President Obama to get the Congress to raise the debt ceiling (the amount of money the federal government can legally borrow), Congress’ approval

36 NBC/WSJ Poll; June 14, 2007. <http://www.msnbc.msn.com/id/19209733/>. The poll was conducted between June 8 and June 11, 2007, and had a margin of error of +/-3.1 percent. A total of 1008 adults were polled. That same poll also showed that President George W. Bush’s approval rating was only 29 percent, which was down six points since the previous poll in April, 2007. Thus, Congress had a lower approval rating than an unpopular president.

37 NBC/WSJ Poll; June 14, 2007. <http://www.msnbc.msn.com/id/19209733/>. <http://www.pollingreport.com/Congjob.htm>.

38 http://www.pbs.org/newshour/bb/politics/july-dec06/congress_10_19.html.

39 <http://www.gallup.com/poll/123941/approval-congress-falls-21>.

40 <http://www.gallup.com/poll/156662/congress-approval-ties>.

41 Ben Chappell; “Congress’ Approval Rating Plummetts, Especially Among Independents.” <http://www.npr.org/blogs/thetwo-way/2011/08/16/139676644/congress-approval-rating-pl...8/17/2011>.

42 Laurie Kellman and Jennifer Agiesta; “Approval of Congress lowest in poll’s history;” *The Indianapolis Star*, August 26, 2011; p.:A3.

dropped to 10 percent and its disapproval rating hovered at 81 percent.

Clearly, these two points—low approval ratings but high reelection numbers—do not appear to go together. How can the approval rating of Congress be 12 percent or less, and 90-plus percent of the members keep getting reelected? One reason is that, contrary to the first half of the 20th century when an average of 55 seats changed every two years, now almost all of the seats in the House, thanks to political redistricting, are “safe” seats, meaning that once a person is elected to fill that seat he or she is unlikely ever to be defeated. Political parties in the states have total control of the drawing of the district boundary lines, and, as a result, only 30 to 40 “races” in the country for the House every two years are likely to be severely contested. Exceptions may exist if there is a major disruption in the government, usually called a realignment election, or the person dies, retires, or is involved in a major scandal. However, even a major scandal is not a guarantee that a member will be defeated. Congressman Charlie Rangel (Democrat-New York), who was the chair of the House Ways and Means Committee, the committee that is, among other things, charged with drafting the United States Tax Code, was charged by the House with several ethics violations, including failure to report and pay taxes for income earned from rental property he owned in the Dominican Republic. Despite those charges, Rangel was overwhelmingly reelected in November, 2010, with 89 percent of the vote. The House voted to censure Rangel in December, 2010, which is one step below expulsion.

A second reason for high reelection rates in face of low approval ratings is that most people think their Congressperson is great; it is the other 434 members of the House (and the other 98 members of the Senate) that are causing the problems. Therefore, because the members of the House are elected by districts, the people keep reelecting the same persons every two years, regardless of the performance of the Congress as a whole and regardless of the performance of its individual members.

PART II

◆ PROBLEMS THE FEDERAL GOVERNMENT HAS FAILED TO RESOLVE ◆

Problem One: Congressional Perks

“In framing a government which is to be administered by men over men, the greatest difficulty lies in this: you must first enable the government to control the governed; *and in the next place oblige it to control itself.*” James Madison; *The Federalist Papers*; Number 51 (Italics added)

Even though the president is required to propose a budget for the operation of the federal government each year and he gets the credit or blame for the outcome of any budget that is passed, it is the Congress that is responsible for determining what that budget will actually contain, including the amounts and categories of expenditures by the Congress. Historically, the members have done a great deal to take care of themselves in those budgets. The Constitution provides in Article 1, Section 6, that the “Senators and Representatives shall receive a compensation for their services, *to be ascertained by Law.*” (Italics added.) Because Congress is charged with the power to pass, or “ascertain,” the laws, the members pass laws to set their salaries. How many of us would like the ability to go to our bosses and say that we have determined that our salary for the next year will be increased by the amount we think is appropriate?

Congress has availed itself of that right several times since 1789. Some of those increases have been remarkable. In 1965, members raised their salaries from \$22,500 per year to \$30,000, a 33 percent increase. In 1991, they raised

their salaries from \$96,600 to \$125,000, nearly a 23 percent increase.⁴³ While the 1991 increase was not as large as the 1965 increase on a percentage basis, it was a \$28,400 increase on an actual dollar amount. Not bad for a one-year increase. In fact, that 1991 increase was nearly twice the average annual salary of an individual American worker (\$14,617) and was almost as much as the median annual household income (\$30,126).⁴⁴

The members of Congress earned \$174,000 in base salary for the years 2011 and 2012 (the two years of the 112th Congress). Leaders, however, receive considerably more. The majority and minority leaders of both houses of Congress received \$193,400 for 2010, and the speaker of the house was paid \$223,500.⁴⁵ The members are entitled to an automatic cost of living adjustment (“COLA”) every year, unless they vote *not* to accept it. In addition to other benefits, they currently get free parking, exemption from parking tickets, private discounted fitness centers, and preferred parking at the two major Washington airports.

The pension plans are very generous. Members contribute 1.3 percent of their salary toward their retirement and since January 1, 1984, despite internet protestations to the contrary, they have also been required to pay Social Security taxes. When eligible to draw their pensions, not including Social Security—and they have to work five whole years to be eligible to collect their full pension—the amount is based upon the average of their three highest salaries, but “... the starting amount of a Member’s retirement annuity may not exceed 80% of his or her final salary.”⁴⁶ In reality, the payout is unlikely to be that large. When Representative Mark Souder (Republican-Indiana) resigned in May, 2010, his pension was estimated to be approximately \$54,500.⁴⁷ Souder had 25 years of federal government employment when he resigned. Nevertheless, his pension was considerably greater than the \$48,675 Indiana median household income as measured by the United States Census Bureau.⁴⁸

The taxpayers of the United States also pay for members of Congress to have three fully staffed offices. One office, of course, is in Washington. For calendar year 2008, members of the House were granted between \$1,299,292 and \$1,637,766 per year to staff and operate their Washington offices. Included in that

43 Ida A. Brudnick, Analyst on the Congress, Government and Finance Division, Congressional Research Service; “CRS Report for Congress; Salaries of Members of Congress: A List of Payable Rates and Effective Dates, 1789-2008.” <http://www.senate.gov/reference/resources/pdf/97-1011.pdf>.

44 “Current Population Reports: Consumer Income Series P-60, No. 180; Money Income of Households, Families, and Persons in the United States: 1991;” U.S. Department of Commerce, Economic and Statistics Administration, Bureau of Census. <http://www2.census.gov/prod2/popscan/p60-180.pdf>.

45 <http://usgovinfo.about.com/od/uscongress/a/congresspay.htm>.

46 <http://usgovinfo.about.com/library/weekly/aa031200a.htm/>.

47 *The Indianapolis Star*; May 23, 2010; p. B3.

48 *Id.*

amount was \$874,951 for salaries for up to 18 staffers, at least \$194,980 for office expenses, and a “travel allowance.” The travel allowance is quite generous. For 2010, members were paid—regardless of whether they took the trips or not—64 times a rate per mile based upon the distance between Washington, D.C. and “the farthest point in a member’s district” plus 10 percent. If, *e.g.*, the distance for travel is 500 miles or less, the rate is \$0.96 per mile. As the distance increases, the rate drops to \$0.43 per mile for distances between 2,500 and 2,999 miles, but for trips beyond 3,000 miles the rate jumps to \$1.32 per mile. As a point of reference, for 2011, business taxpayers were allowed deductions from their taxes of \$0.55.5 cents per mile for business travel. For all trips up to 2,249 miles, members have seen fit to provide higher mileage allowances for their travel than the Internal Revenue Service allows business travelers.⁴⁹ For each trip the congressperson never makes in a year, the allowance is all gravy.

For 2008, members of the Senate were granted between \$2,757,743 and \$4,416,993 to pay for their Washington offices.⁵⁰ Included in those amounts were allowances for administrative and clerical support and office expenses, which vary depending upon the size of the state the senator represents, and a set amount of \$481,977 for legislative assistance for three staffers.⁵¹

One of the more interesting perks the members have granted themselves is the franking privilege, the right to mail “vital” communications to their constituents free of charge. This privilege is as old as the nation, dating to November 8, 1775, in a law enacted by the American Continental Congress.⁵² The privilege is especially useful during reelection campaigns, although since 1997 the prohibition against pre-election mass mailings has been extended to 90 days before an election.⁵³ Members send out surveys and newsletters to solicit their constituents’ “opinions” and to let the voters know what the members are doing for them. Those mailings usually have the member’s name in multiple places and the newsletters also include several pictures of him or her, usually with some constituent or showing the member chairing an “important” committee meeting.

Committees are important to Congress. In the 112th Congress, there were 25 committees and a total of 106 subcommittees in the House. In the Senate, there were 28 committees and a total of 73 subcommittees. Each committee and

49 “Congressional Salaries and Allowances;” Congressional Research Services, Ida A. Brudnick, Analyst on the Congress, Government and Finance Division, “Prepared for Members and Committees of Congress; Updated October 1, 2008.”

50 *Id.*

51 *Id.*

52 “*What is the Frank?*”; Chairman Daniel E. Lungren; Committee on House Administration, 112th Congress. <http://cha.house.gov/index.php?view=article&catid=27%3Amenu-item&id=170%3Awhat>.

53 *Id.*

subcommittee has a chairperson, selected by the party that controls the majority of seats in the House and in the Senate, respectively. Thus, more than 43 percent of all Members in the House can claim to be a chairperson of some committee or subcommittee, and in the Senate 100 percent of the Members can make that claim. This “chairperson” title is very impressive for each Member to highlight in the newsletters sent to the constituents back home.

These mailings get the members’ names in front of the voters without the need to spend campaign funds for that purpose. Their challengers, of course, do not have that advantage. As the law currently reads, the official mail allowance is not much of an allowance: “Beginning with FY1999 [October 1, 1998-September 30, 1999] Members of Congress may use any portion of their official budget for mailings.”⁵⁴ One might suspect that during election years that “portion” will be higher than in nonelection years, although the members have prevented themselves from loading up the mailbags in the three months immediately preceding an election.

Each member of Congress is also allowed to have an office in his or her home district or state. The staff and expenses for that office are also paid for by the taxpayers, and the franking privilege applies to that office. The third office is usually a mobile office that allows the member’s staff to visit cities and towns in the member’s district or state to provide “services” to the constituents.

An ongoing investigation by *The Wall Street Journal* has revealed that members of Congress have another way to increase their cash flow. When members travel to foreign countries, they are provided per diem funds by the State Department to cover their costs for three meals per day and expenses. Those funds can amount to \$250 per day or more. “Congressional rules say they must return any leftover cash to the government. They usually don’t.”⁵⁵ The *Journal* interviewed 20 current and former members of Congress. “Lawmakers use the excess cash for shopping or to defray spouses’ travel expenses. Sometimes they give it away; sometimes they pocket it. Many lawmakers said they didn’t know the rules demand repayment.”⁵⁶ Even though the money is for the expenses of the members and not to be used for their spouses, that is not always the case. As Representative Souder stated, “[t]he extra money and the plus-ups are really for the spouses.”⁵⁷ Again, if the members are only making \$174,000 per year, they obviously cannot afford to pay

54 Lungren; *ibid.*

55 “Lawmakers Keep the Change;” *The Wall Street Journal*; March 2, 2010; p. A3.

56 *Id.*

57 *Id.*