

# IDEAL PRINCIPLES OF EFFECTIVE STATE CONSTITUTIONS

Americans have experimented with state constitutionalism since before the drafting of our national charter. State constitutional drafters and academics, in the course of drafting, enacting, and amending hundreds of state constitutions, have identified principles of a model state constitution particular to the American system of government.



As states across the country examine their constitutions, what core principles should animate reform?



## LEGITIMACY.

Since the Declaration of Independence, Americans have declared “we the people” as the basis of legitimacy for our form of representative government.

Governments are created and sustained by the consent of the governed through the sovereignty of the people. The “**inalienable rights**” recognized in our founding are rooted in the idea of the inherent dignity of people and respect for their ability to choose for themselves their form of government and their representatives through **safe, open elections**.



## BREVITY AND CLARITY.

A constitution is not a super-statute; it is fundamental law.

**Brevity** ensures that excessive constitutional detail does not unduly restrict the flexibility of future leaders to address unforeseen needs and implement reform through the legislative process. The U.S. Constitution, arguably the most successful constitution ever written, consists of only 7,500 words. **Clarity** in constitutional drafting is critical because a constitution binds future generations and will be subject to interpretation by courts.



## STRUCTURALISM.

The founders of the American constitutional system focused extensively on the proper structure of government, and enshrined separation of powers and checks and balances into the very organizational structure of the federal constitution to safeguard against tyranny.

**States should follow this roadmap.** The ideal state constitution makes the legislative branch the largest and closest to the people, with regular elections in properly apportioned districts based on population size, flexibility in legislative organization and procedure, minimum restrictions on legislative power, and provisions for adequate staffing and good pay. An integrated executive branch with executive and administrative powers, subject to legislative disallowance, a line item veto, and limitation on the numbers of sub-agencies are ideal. The federal constitution drafters described the judicial branch as the “least dangerous” branch, having the power of neither the sword nor the purse, but the power of independent judgment and judicial review prior to the taking of rights.



## RIGHTS AND JUDICIAL REVIEW.

**State constitution drafters should devote substantial effort to outlining the individual rights that are protected from infringement.**

These protections include well known rights such as freedom of religion, freedom of expression, rights to property and privacy, and a right to bear arms. In the states, the highest state court can interpret state constitutional protections more broadly than the U.S. Supreme Court has interpreted them, even if written with the exact same wording. In *Marbury v. Madison* the Supreme Court established that the courts implicitly had the right to judicial review to ensure that there was no right “without remedy.”



## AMENDABILITY AND REFORM.

**The power to change is the power to survive.**

All American constitutions contain within them the power of amendment, many through a legislative approval of amendment with ratification by the voters, and some through an automatic call for a periodic constitutional convention. These powers should be protected, and clear mechanisms of amendment that establish a relatively high threshold for action should be established.

## CONCLUSION

Citizens and legislators should take a hard look at their state constitutions and evaluate their effectiveness through the lens of these core principles. Many are in need of reform, having been amended and watered down over the decades. **A rebirth of state constitutionalism is needed to check government growth, protect individual liberty, and ensure long-term success of states.**

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