

# WORKING THE PIVOT POINTS

TO MAKE AMERICA WORK AGAIN

**Frank Islam • Ed Crego**

**Potomac, MD**

Copyright © 2013, Frank Islam, Ed Crego  
ISBN: 978-0-9846126-2-8

All Rights Reserved. No part of this book may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system without written permission from the author, except for the inclusion of brief quotations in a review.

Printed in the United States of America.

## 4 | Congressional Dysfunction: Beltway Blues

THE 112TH CONGRESS, WHICH WAS IN OFFICE FROM JANUARY 3, 2011, to January 3, 2013, may have been the worst Congress in history.

That's hard to determine objectively. It is easy to determine, however, that the 112th was the least productive Congress ever.

The 112th was also held in exceptionally low regard by the American citizens. Let's look at the facts and the implications they have both for Congress as a pivot point and Congress' working on pivot points in the future.

### **THE 112TH'S REPORT CARD**

If we were to assign a letter grade to the 112th's performance it would have to be an "F" for "farcical." The overall explanation for that grade would be "Present but not accounted for." Come to think of it, they weren't present as much as they were in the past either. Let's look at the 112th's output and effort.

During its two years, the Congress passed 220 laws—18 percent of them related to things like renaming post offices or federal buildings. That was by far the lowest of any Congress in more than half a century. The next lowest was 333 public laws passed by the 104th Congress—almost 50 percent more than the 112th. Excluding these low points,

in the period from 1948 to 2010, in general, Congress tended to pass somewhere between 500 and 600 public laws.<sup>1</sup>

The *Washington Times* labeled this past Congress the “least productive ever” based upon the 112th’s performance on its Legislative Futility Index, which tracks floor activity in both chambers. The Index looks at six measures: time spent in session, number of pages added to the Congressional Record, conference reports between the House and Senate, floor votes, the total number of bills that cleared each chamber and the number of laws enacted that began in each chamber.

*The Times* has been maintaining its Index for 33 Congresses. According to the *Times*, in this Congress:

- The House and Senate produced only 10 conference reports—the worst ever.
- The Senate cleared a total of only 350 bills and had 66 of its own bills signed into law—both the worst ever.
- The House had only 567 bills clear the chamber—the fewest ever—and 162 bills enacted into law—a record low.<sup>2</sup>

These final results and futility throughout the course of its two-year tenure led many knowledgeable observers to evaluate the 112th Congress harshly. While Congress was stuck in the morass of the debt ceiling debacle (which we describe in detail in chapter 2) during the summer of 2011, Norm Ornstein of the American Enterprise Institute wrote an article for *Foreign Policy* titled “Worst. Congress. Ever.”<sup>3</sup> In the next issue of *Foreign Policy*, Sarah Binder of the Brookings Institution agreed with Ornstein in an article titled “Yes, It’s Really That Bad.” As did Beverly Gage, who teaches history at Yale, in her article titled “Trust Me, This Congress Is Historically Inept.”<sup>4</sup>

The comments were not any kinder as the 112th wrapped up its desultory performance in 2013. Walter Hickey of *Business Insider* wrote, “[It was] the least effective and most disliked legislative body in years.” Jonathan Allen of *Politico* wrote, “The 112th Congress came in with a bang, but it is crawling out with the soft whimper of failure.” David Horsey of the *Los Angeles Times* was even more damning. He wrote, “The 112th Congress worked hard on just one thing: competing

to be known as the most worthless, incompetent, do-nothing gathering of lawmakers in the nation's history."<sup>5</sup>

## **YOU CAN'T GET THERE FROM HERE**

So what is it that the 112th Congress did not get done that caused this flood of opprobrium? Ezra Klein described this perfectly in a *Washington Post* blog,

What's the record of the 112th Congress? Well, it almost shut down the government and almost breached the debt ceiling. It almost went over the fiscal cliff . . . It achieved nothing of note on housing, energy, stimulus, immigration, guns, tax reform, infrastructure, climate change, or really anything.<sup>6</sup>

Reading Klein's assessment, it struck us that over the past several years—most especially in the past two—our nation's capital has become a very misdirected place. That's true not only on a political but on an experiential level as well. Trying to drive anywhere in or around the city proves that the transportation grid is a reflection of the gridlock that has dominated the debates or lack thereof in political circles.

You can't turn left on a light—or an issue. You can turn right—from either side of the aisle, at any time. You can make a U-turn anywhere you want—that's what's called Washington logic and consistency.

Washington, D.C., may have more roundabouts than any other city in the United States. And, if you miss your cross street off the roundabout, you just keep going around and around and around and getting nowhere—this is similar to the holding of endless congressional hearings and the drafting of meaningless legislation doomed to failure.

This all reminds us of an old joke that goes something like this: A traveler on a country road comes to a creek where the bridge has been swept away by a recent flood. The traveler sees an old farmer standing next to where the bridge used to be and asks, "Is there a way to backtrack and find somewhere else to get across the creek?"

The farmer responds, "Yep. Just, go back two miles, turn right and . . . No, go back one mile and turn left . . ." The farmer stops for a minute, shrugs his shoulders, scratches his head and then says to the traveler, "Come to think of it, you can't get there from here."

Welcome to Washington, D.C.! A city where for two years there were no bridges being built (not even to nowhere) and few bridge builders.

In 2011, the Senate did pass a veteran's "jobs" bill with unanimous bipartisan support in both the Senate and House. This might have been viewed as a sign that repair work had begun. In fact, just the opposite was true. The "carve out" for veterans from the President's substantial jobs proposal was a no-brainer.

Voting against this bill would have been like voting against motherhood and apple pie. Voting for it was not a profile in courage but of political expediency. It gave the appearance of doing something when in fact it did very little to address the underlying problems of the American economy. The truth was that this vote was one of avoidance rather than commitment.

The President's American Jobs Act of 2011 was a comprehensive package that included a number of provisions that had previously been endorsed and supported by Republicans. Rejecting it too was a no-brainer. All it required was for partisan politics to prevail rather than reasoned discussion leading to joint problem solving and compromise.

Unfortunately, compromise has become a dirty word in Washington. Compromise was on the wane in our nation's capital before the elections of 2010. It became virtually nonexistent after that.

This is sad, even tragic, given that this nation's constitution was a product of compromise. Those newly elected officials who came to Washington, D.C., in 2011 after the elections of 2010 with a professed admiration and belief in the Constitution and what it represents did not seem to comprehend or chose to ignore this fact.

As we note in chapter 1, the Constitution was not handed down from on high. It was hammered out in the halls and backrooms in Philadelphia by Founding Fathers who frequently didn't agree with one another but saw the necessity for coming together.

This willingness to compromise in order "to form a more perfect union" is best illustrated by Benjamin Franklin.

On September 17, 1787, when the Constitution was read aloud for the first time, Franklin wrote these words, "I confess there are several parts of this constitution which I do not at present approve, but I am

not sure I shall ever approve them.” Franklin continued to request “that every member of the Convention, who may still have objections to it, would with me on this occasion doubt a little his own Infallibility, and make manifest our Unanimity, put his name to this instrument.”<sup>7</sup>

The 112th Congress was a place of no compromise and a setting in which domination or subjugation of a political opponent triumphed over the interests of “We The People.” There were few elected officials with Franklin’s stature, intellect and insights in this most recent Congress.

Infallibility ruled and “my way or no highway” was the mantra. This was the case during the entire 112th Congress for a variety of reasons—most of them political and personal. It was also the case because most of what didn’t get done or what got done was posturing rather than policy making. Here’s a case in point.

## **IN GOD WE TRUST**

In God we trust. So proclaimed the U.S. House in November 2011 when it overwhelmingly passed a resolution to reaffirm that statement as the official motto of the United States.

Congressman J. Randy Forbes (R-VA), the resolution’s sponsor, said the measure was needed because of a “disturbing trend” of ignorance regarding the motto and to “firmly declare our trust in God” as the nation faces “challenging times.”<sup>8</sup> This was another example of misplaced congressional priorities and focus.

Our country was indeed experiencing a “disturbing trend.” And many of our citizens were confronting incredibly “challenging times.” The trend and times, however, were characterized by a dramatic rise in social and economic inequality **and not** by a lack of belief or commitment to the Almighty.

That is why instead of talking about God our legislators should have been consumed with doing all that was required to address these conditions and their root causes. Specifically, they should have been engaged in a thoughtful dialogue about the common good, what should be a public good, and then compromising and collaborating to solve our problems. They should have been working on reaffirming our trust in good as well as God.

The concept of “goodness” has been at the center of philosophical and political discussions dating back to the times of Plato and Aristotle. This was not the case in the United States during most of the 112th Congress—reason and rational discourse were replaced by rancorous rhetoric.

At the end of the constitutional convention, a woman asked Ben Franklin what type of government the constitution was bringing into existence. Franklin responded, “A republic—if you can keep it.” Given the country’s downward spiral, we are in danger of losing that republic and becoming a virtual theocracy controlled by an activist minority group of the rich, powerful and special interests who will dictate the agenda for the majority and the nation.

In his book *The Price of Civilization: Reawakening American Virtue and Prosperity*, economist Jeffrey Sachs described our national condition as follows: “Our society has turned harsh, with the elites on Wall Street, in Big Oil, and in Washington among the most irresponsible and selfish of all.”<sup>9</sup> George Packer, staff writer for the *New Yorker*, in his essay “The Broken Contract: Inequality and American Decline” in the November/December 2011 issue of *Foreign Affairs* magazine, concurred with Sachs and declared, “The more wealth accumulates in a few hands at the top, the more influence and favor the well-connected rich acquire, which makes it easier for them and their political allies to cast off restraint without paying a social price.”<sup>10</sup>

These are not descriptions of a vibrant and vital representative democracy. They are depictions of an eroding value system and a country that favors the rich over the poor, the few over the many, and the business contract over the social contract. They are warning signs that it will not matter how much trust you put in God if you lose the trust of the people.

## **TRUST-BUSTING**

In the early 20th century, Teddy Roosevelt engaged in “trust-busting”—eliminating the powerful control of a few robber barons over the country, its citizens and our democracy. That was a good thing.

In the early part of the 21st century, we had a different form of trust-busting going on—inept, illegal and amoral acts engaged in by



some businesses, politicians and individuals that were destroying the bonds of confidence and faith in each other that bind the citizens and the nation together. That is a bad thing.

On April 18, 2010, the Pew Research Center released a report titled *The People and Their Government: Distrust, Discontent, Anger and Partisan Rancor*. The Pew study, which was conducted in March 2010, asked people to give their opinions on the effect (positive or negative) that various institutions/groups were having “on the way things are going in the country today.” The *highest positive effect ratings* were given to small businesses (71 percent), technology companies (68 percent), churches and religious organizations (63 percent) and colleges and universities (61 percent). The *lowest positive effect ratings* were given to banks and other financial institutions (22 percent), Congress (24 percent), large corporations (25 percent) and the federal government (25 percent).

The same Pew study asked who “gets more attention from the federal government than they should.” The groups who received the *highest more attention than they should ratings* were Wall Street (50 percent), business leaders (45 percent) and labor unions (34 percent). The groups who received the *lowest more attention than they should ratings* were small businesses (8 percent), the middle class (9 percent) and poor people (17 percent).<sup>11</sup>

In a poll issued on June 4, 2011, Gallup found similarly to the 2010 Pew study that the public’s institutional confidence was waning. The poll’s lead sentence read, “Americans’ confidence in U.S. banks has dipped to a record low 21%.” Only two institutions got lower marks than banks: health maintenance organizations (19 percent) and Congress (13 percent).<sup>12</sup>

These polls showed that we were definitely at a pivot point in terms of the country’s social contract. America and the American dream are held together by faith in our dominant institutions, a belief that the voice of the individual citizen matters and an undeniable hope for upward mobility and personal success. These factors have all been compromised. Public trust is on a teeter-totter.

This trust trauma has captured the attention of commentators ranging from economists to columnists and ethicists. In a June 17,

2011, Sunday *New York Times* article titled “Broken Trust Takes Time to Mend,” Tyler Cowen, a George Mason economics professor, wrote, “America is witnessing a collapse of trust in politics, including the shaping of its broad economic policy.”<sup>13</sup> In the same issue of the *Times*, columnist Maureen Dowd in her article “Moral Dystopia” broadened the trust-busting perspective far beyond politics by asking, “Have our materialism, narcissism, and cynicism about the institutions knitting society—schools, sports, religion, politics, banking—dulled our sense of right or wrong?”

Ms. Dowd turned to James Davison Hunter, a professor of religion, culture and social theory at the University of Virginia, for the answer to that question. She quotes Professor Hunter, “We know more, and as a consequence, we no longer trust the authority of traditional institutions who used to be carriers of moral ideals.” Hunter goes on to assert, “Now we experience morality more as a choice that we can always change as circumstances call for it . . . And what you end up with is a nation of ethical free agents.”<sup>14</sup>

We don’t necessarily agree with Professor Hunter’s conclusions regarding the American culture and individual behavior. We do know, however, that numerous studies have indicated a serious breakdown of trust in our dominant institutions and the potential for an individual to achieve the American dream through education, hard work and determination.

As we pointed out in chapter 1, at the beginning of the 20th century, many businesses felt they were equal, or perhaps superior, to the government. For example, when Teddy Roosevelt brought an antitrust suit against J. P. Morgan’s railroad combine, Morgan said, “Send your man to see my man and tell him to fix it up.” Roosevelt responded, “That cannot be done . . . No private interest can presume to be equal to the government.” And, with that said, President Roosevelt went into the trust-busting business.

Today, near the beginning of the 21st century, we are confronted by a different form of trust-busting. For the United States as we have known it to survive and to avoid moving backward to where we were at the beginning of the 20th century, we must bust the trust busters. We must engage in trust-building.

Trust-building can only be done by government, business and societal leaders coming together and setting their personal and political interests aside and working cooperatively in the interests of the public and the American citizen. Trust-building requires concentrating on and emphasizing what unites us rather than what divides us.

Congress must be central to the trust-building. To be worthy of its trust, Congress must regain the respect of the citizenry.

### **CONGRESS AT THE CROSSROADS**

Unfortunately, as 2013 began, Congress was being held in contempt. That contempt came from the American people.

A poll released in early January by Public Policy Polling (PPP) revealed that contempt is deep and broad. Congress got only a 9 percent favorability rating in the PPP study. That's actually the good news for the institution. The bad news is that the survey respondents rated Congress considerably less popular than a number of other "distressing" things such as colonoscopies, root canals and being stuck in traffic.<sup>15</sup>

These ratings would be funny if they weren't—and they aren't. They were clear indicators of a public that is fed up and turned off by the manner in which Congress is conducting or not conducting its business.

This poll was taken shortly after the vote on the "so-called" fiscal cliff deal and reflected the public's dissatisfaction with the three ring circus leading up to, during and after the vote. Even though a bill was passed, the spectacle surrounding it was ugly and unnecessary.

Columnist Eugene Robinson expressed his disenchantment in a column that he began, "To say that Congress looked like a clown show this week is an insult to self-respecting clowns."<sup>16</sup> Political analyst Bob Schieffer was not quite as condescending in his comments during an interview on *Face the Nation* but he was extremely critical nonetheless.

Schieffer began by stating, "Watching the blundering ineptitude and the vulgar partisanship of last week made me think of other days our modern politicians may have forgotten—an era when Washington actually worked." He proceeded to cite examples such as the collaboration between Senators John McCain (R- AZ) and Russ Feingold (D-WI) on campaign reform and Senators Sam Nunn (D-GA) and

Richard Lugar (R-IN) on arms control. Schieffer concluded by observing, “The rearview mirror has a way of making things look better, but those things really happened, and we used to say Washington was a place of giants. You don’t hear that much anymore.”<sup>17</sup>

But we should! The sorry performance of the 112th Congress has brought the perception of this once-esteemed body to an all-time low. Our representatives in the 113th Congress are at a crossroads. How they comport themselves will determine how the public sees them. (See the epilogue of this book for our assessment and predictions regarding the performance of the 113th Congress based upon its performance to mid-2013.)

We write this as citizens who know and have much respect for many current elected officials but with extreme concern for the quicksand in which they are now stuck. We write this as citizens who see politics as Robert Kennedy did, as “an honorable profession.” Kennedy said, “An honorable profession calls forth the chance for responsibility and the opportunity for achievement; against these measures politics is a truly exciting adventure.”<sup>18</sup>

Over the past decade and then some, that “adventure” has become much less worthwhile for many involved or those who would consider engaging in it. That’s because the political environment has become extremely toxic for a variety of reasons, including a broken political process, more bellicose politicians, 24-hour press coverage, extremely partisan pundits, and incessant and inflammatory internet postings.

It didn’t use to be that way. Politics wasn’t bean bag in the past. But, it and the contestants and citizens were somewhat kinder and gentler.

We were reminded of this with the recent passing of Richard Ben Cramer who wrote a great book, *What It Takes*, about the 1988 presidential campaign. The candidates in that campaign were Democrats Joe Biden, Michael Dukakis, Richard Gephardt and Gary Hart and Republicans George Bush and Bob Dole. Cramer treated them all with respect and his in-depth profiles provided insights that caused us to understand and like each one of them.

Margalit Fox’s obituary of Cramer for the *New York Times* explains the reason for this perfectly: “Mr. Cramer’s book is at bottom a psychological study of towering ambition and the toll of public life.

Where it succeeded most notably, in the view of many critics, was in its depiction of the candidates not as mere archetypes but as flesh-and-blood human beings.”<sup>19</sup>

The politician’s life was never an easy one. It is much less so today. The continuous climate of confrontation and combat has squeezed much of the humanity and dignity out of the process. As the PPP poll results attest, it has also substantially shrunk the public’s view of those in office. We are in dire need of a transformation and turnaround.

Americans believe in the God of second chances. The 113th Congress has been given that chance. If it conducts the public’s business with a sense of civility, equanimity and propriety, it will recapture public confidence. If this becomes *déjà vu* all over again, and the 113th replicates the behavior of the 112th, Congress’ prestige will be driven so far underground that it may never again be resurrected.

Just a little more than a century ago, Teddy Roosevelt said, “It is not the critic who counts; not the man who points out how the strong man stumbles, or where the doer of deeds could have done them better. The credit belongs to the man who is actually in the arena.”<sup>20</sup>

Like Roosevelt, we believe the credit still belongs to the “man and woman” in the arena. That arena, however, should not be one for extreme boxing or cage wrestling. It should be an honorable place, where honorable people come to practice an honorable profession, thus earning the citizens’ respect and proving they should be considered “giants” and not “participants in a clown show.”

## **GETTING TO MAYBE**

“Saying No” was the *modus operandi* of the 112th Congress. For far too many of our elected representatives were in that body; as former Senator Tom Daschle (D-SD) said, there were too many individuals focused on “standing their ground” rather than finding “common ground.” Progress for the American economy and Americans was compromised because there were few attempts at compromise.

Now that there is a new Congress, our fondest hope is that the legislators realize that they are in Washington, D.C., to do the people’s business. They are there to solve problems and craft pragmatic

legislation rather than to impose their own personal and partisan agendas and ideologies. They are there to negotiate, not to negate.

We don't expect the members of the 113th Congress to be able to move directly from Saying No to *Getting to Yes* (the title of Roger Fisher and William Ury's classic book on negotiations).<sup>21</sup> But perhaps they can start by Getting to Maybe.

Getting to Maybe establishes a framework for meaningful discourse and dialogue and the consideration of a range of acceptable alternatives, options and trade-offs. From there it should eventually be possible to Get to Yes and by doing so to restore citizen respect for this badly tarnished and increasingly reviled institution.

We are not delusional or naive enough to expect that Getting to Maybe will be an easy task. We recognize that over the past few years, compromise in Congress has become an oxymoron and bipartisanship a dirty word.

On the other hand, we are not skeptical or jaded enough to think that Getting to Maybe is impossible. That's because getting there is a necessity for continuing our democratic system of governance and our country. Put us in the camp of former Defense Secretary Robert M. Gates who, speaking at an event in September sponsored by the Center for Strategic and International Studies and other organizations, said, "My hope is following the presidential elections whatever adults remain in the two political parties will make the compromises necessary to put this country back in order."<sup>22</sup>

It takes courage to compromise—especially when you are reaching across party lines and defying conventional party wisdom. We saw that courage demonstrated by the five senators—Tom Coburn, (R-OK), Mike Crapo (R-ID), Judd Gregg (R-NH), Dick Durbin (D-IL) and Kent Conrad (D-ND)—on the National Commission on Fiscal Responsibility and Reform who voted for approval of the Commission's full report. We have seen it early in the 113th Congress as a bipartisan group of senators worked together on the immigration bill. (See chapter 10 of this book for our discussion on this.)

Unfortunately, this type of compromise has become more and more unusual. That's because, as E. J. Dionne pointed out in a post-presidential election column, "Democrats, a more moderate and diverse

party, believe in compromise far more than Republicans do.” Dionne explains this is true for both the Democratic Party faithful and their candidates for office and indicates that the Tea Party influence has changed the composition of the Republican Party and their candidates to make them extremely more conservative and unwilling to compromise.<sup>23</sup>

Thomas Mann and Norm Ornstein, two of the foremost scholars on the operations of Congress, made a similar but much more strongly expressed point in their book *It’s Even Worse Than It Looks: How the American Constitutional System Collided with the New Politics of Extremism*, published in early 2012. In it, they write, “Today’s Republican Party . . . is an insurgent outlier. It has become ideologically extreme; contemptuous of the inherited social and economic policy regime; scornful of compromise; unpersuaded by conventional understanding of facts, evidence and science; and dismissive of the legitimacy of its political opposition, all but declaring war on the government.”<sup>24</sup>

This is a harsh assessment and possibly overstates the case. We do know unequivocally, however, that the Republicans and Democrats are at very different points on the compromise continuum. The majority of Democrats tend to be in the middle, malleable and movable, while the majority of the Republicans are far right, intractable and intransigent.

If that’s the situation, how do we begin Getting to Maybe? We recommend the following as starting points:

1. Change the mindset
2. Change the rules
3. Change the methods

*Change the Mindset:* Today many legislators believe aligning themselves with those from the other party on an issue is an act of cowardice and surrender. As long as this attitude prevails and leaders punish those who cross over, the journey to Maybe cannot start. We need to replace it with the understanding that compromise is an act of courage and success. It is a necessary pre-condition for achieving shared solutions, not a capitulation or sacrificing of principles. The subtitle of Fisher and Ury’s book *Getting to Yes* is “Negotiating Agreement Without Giving

In.” That says it perfectly. Negotiating to reach a common ground is getting things done, not giving in.

*Change the Rules:* Steve Kroft did a *60 Minutes* segment titled “The Broken Senate” on the Sunday before Election Day, 2012. During that segment, Majority Leader Harry Reid (D-NV) pointed out that when Lyndon Johnson was leader of the Senate he had to try to override one filibuster compared to 248 for Reid. The filibuster allows the minority to thwart the will of the majority because it requires 60 votes to get a piece of legislation passed. Scholars Mann and Ornstein place it at the top of the list for reform in a chapter they devote to “Reforming U.S. Political Institutions” in their book. The nonpartisan group No Labels also has the filibuster near the top of its 12 proposals to Make Congress Work. We are not in complete agreement with all of the No Label proposals nor with all of the Mann/Ornstein recommendations.<sup>25</sup>

We are in absolute agreement, however, with the need to change the rules and to make Congress work. We should note that the Senate did make a modest change to its filibuster rules early in 2013. But in our opinion, those changes are insufficient to deal with the institutional ossification that almost paralyzes the Senate.

*Change the Methods.* One of the main reasons that Congress doesn’t work is that it has become so balkanized. There is virtually no effort at coming together to work together. It didn’t used to be that way. As Senator Olympia Snowe (R-ME) said in the *60 Minutes* segment when Bob Dole was majority leader, “He would say go to my office at 8:30 in the morning and work it out. He was so intent on making sure that we came up with a solution to the issue that was before the Senate.”<sup>26</sup>

In contrast, today the Senate and House members often convene in private and purely intraparty meetings and sessions where the emphasis is on competition, not collaboration. One such gathering is Democratic caucus lunches, a lot of which, according to former Senator Evan Bayh (D-IN), are about, “OK, we’re a team. We gotta stick together. We got to beat the daylights out of the other side. We can’t afford straying from the team. If you do, that doesn’t help us.”

These one-sided meetings in which a group develops and hardens its own positions without input or participation from the other are counterproductive and conflict producing. They lead to what Fisher



and Ury call “positional bargaining” in which each side opens with a position and then the two positional combatants struggle mightily and frequently futilely trying to reach a common agreement.

To correct this, Fisher and Ury recommend “principled negotiation” as opposed to positional bargaining. The four principles of this approach are (1) separate the people from the problem; (2) focus on interests, not positions; (3) generate a variety of options before settling on an agreement; and (4) insist that the agreement be based on objective criteria.

As we stated, changing the mindset, changing the rules and changing the methods are starting points for Getting to Maybe. There are other areas that need to be addressed in order to Get to Yes. We address them in our congressional pivot point recommendations, which follow.

Our focus here, however, is on getting started on Getting to Maybe. The good news is that what is required is not costly in financial terms. It is elected men and women of good will with the courage to compromise. The bad news is that getting started requires true leadership (both official and unofficial).

When Senator Coburn was asked during the *60 Minutes* interview why it has been so difficult to compromise, he responded, “It’s leadership. It’s pure leadership. When the goal is always to win the next election, rather than to put the country on the right course, whether it’s a Republican leading it or the—a Democrat leading it, the Senate is not going to work.”

If the Senate doesn’t work and the Congress doesn’t work, the country doesn’t work. With this new Congress, we will see if we now have courageous leaders who realize this and are prepared to begin the journey to Maybe and to compromise by putting country first rather than party first.

### **PIVOT POINT RECOMMENDATIONS: WORKING ON “YES”**

Subject matter experts have provided numerous excellent recommendations for reforming Congress, political institutions and our governance process. In our opinion, the three most important areas to be addressed relate to creating a framework that will make Congress more

functional, representative and collaborative and thus move it closer to “Yes”. They are:

- Structure: Break Up the Island States of America
- Knowledge: Make Congress Smarter
- Finance: Control the Big Money Interests

### **Structure: Break Up the Island States of America**

- *Implement a national fair districting initiative.*
- *Revamp the primary voting rules and processes.*

Right after the national election, the secessionists received a lot of attention with their petitions to leave the union because Barack Obama won re-election as president. While their appeals were headline grabbing and fabulous fodder for talk radio and cable TV for a short period of time, this group was and is substantively and politically unimportant and impotent.

The issues of true significance for the future of our representative democracy are (1) the structure of the federal congressional districts and the senate and house districts within the states; and (2) the rules for voting in primaries within each state. We examine why and what needs to be done to address these problems with this recommendation

First, however, let's dispense with the secessionists. These folks are what we refer to as the looney tunes fringe of the electorate. They have a right to their own opinion and we would like to see them have rights as individuals clustered together to secede from the United States.

John Donne said “No man is an island, entire of itself.” Nonetheless, we say grant the men, and the few women (Neil Caren's research shows that these petition signers, which numbered approximately 300,000 as of November 16, 2012, were disproportionately male) that were part of this nascent secessionist movement, individual island state status.<sup>27</sup>

Then, take away, all of their privileges and benefits that derive from being part of the United States of America. These would include the use of highways subsidized by federal funds, assistance from the National Guard, defense by our nation's military, access to national parks,

emergency management and medical services, educational assistance, Social Security and Medicare.

We could call these new free-floating entities “barrier island states” or the independent island states. Based upon the initial surge of petitioners, the largest of these new states would be located in Texas with 100,000 signers and the following five states that had 25,000 signers or more: Alabama, Florida, Georgia, Louisiana and North Carolina.<sup>28</sup>

It’s not these artificial island states that we have just invented that threaten our representative democracy, however. It is those individual island states that have been legitimately constructed that put it at risk. Those island states are the federal congressional districts and the senate and house districts in the majority of our states.

Because of gerrymandering, these districts are insular and polarizing by design. The districts are also designed to protect those in office. As Paul Kane noted in his *Washington Post* column on the day after the national elections, “Many incumbents survived because of a redistricting process that left a record low number of competitive seats, cloistering Republicans and Democrats together into geographically odd—but politically homogenous—districts.”<sup>29</sup> If you can’t change the butts in seats, it becomes very difficult to change behavior.

Both parties are very good at gerrymandering, but the Republicans excel at it. Here’s some evidence:<sup>30</sup>

- At the national level, there are 435 congressional districts. In this most recent election, 241 leaned toward Republicans. 194 leaned Democratic.
- The Democrats won the presidency and U.S. Senate seats in Pennsylvania, Ohio, Wisconsin, Virginia and Florida. The breakout of the House winners in those same states follows. Pennsylvania: Republicans 13 seats. Democrats 5 seats. Ohio: Republicans 12 seats. Democrats 4 seats. Wisconsin: Republicans 5 seats. Democrats 3 seats. Virginia: Republicans 8 seats. Democrats 3 seats. Florida: Republicans 17 seats. Democrats 10 seats.
- At the state level, in January 2013, over two-thirds of the states will be under single party control of both the executive and legislative branches: 24 states will be Republican and 14 will be Democratic.

No matter which party or candidate wins as a result of the gerrymandering process, the losers are the potential for bipartisanship and compromise. This problem is compounded by the primary systems in many states that preclude participation by independents and nonpartisans unless they declare as a Republican or Democrat.

According to a 2012 Pew Research Center study, in this national election year 38 percent of voters indicated they were independents compared to 32 percent who declared as Democrats and 24 percent as Republicans.<sup>31</sup> Excluding this large and growing group of voters—who tend to be more centrist and moderate in their positions—from the candidate selection processes means that they tend to be controlled by the fringes (think “Tea Party or conservative” on the right and “liberal or progressive” on the left).<sup>32</sup>

Many of the district island states are controlled by a small group of islanders. They are like-minded folks who choose representatives who resemble them to do their bidding.

We need to break up the island states and their stranglehold on our political process. There are a number of actions that can be taken to accomplish this. The two key ones are:

- Implement a fair districting approach within each state controlled by a nonpartisan independent commission as opposed to politicians.
- Reform primaries to ensure processes and systems that are fully inclusive of the registered voter population rather than those that are restrictive and exclusive.

In the most recent election cycle, California and Florida provided positive examples of how changing the districting and primary approaches can produce different outcomes.

California went from a party primary system to one in which the two candidates with the most votes in an “open congressional primary” moved on to the general election. This resulted, as Juan Williams reported, in seven incumbents losing their seats “as they ran in more diverse districts—in which candidates had to appeal to more diverse neighborhoods and political groups.” Williams continued to comment, “The bottom line is that voters have more choice among candidates

competing for the middle ground, not to be a champion of one political extreme.”<sup>33</sup>

Florida was redistricted by the state legislature according to guidelines set out in a constitutional amendment that banned “gerrymandering” that was passed by the state’s citizens with over 62 percent of the votes cast. The redistricting helped the Democrats pick up four congressional seats and seven seats in the state legislature.<sup>34</sup>

In conclusion, if we want our democracy to work and to represent the interests of all the people and not those at either extreme, we need to succeed and not to secede. To succeed, we need to renew and reform our electoral processes to put the emphasis on the United States of America instead of the Island States of America.

### **Knowledge: Make Congress Smarter**

*Upgrade the quantity and quality of expert knowledge utilized in congressional decision making.*

No, we aren’t advocating brain transplants or remedial education courses. What we do need to do, however, is to ensure that Congress gets access to more comprehensive and objective expert input and insights for consideration in the policy-making process.

In December 2012, the New America Foundation published a paper authored by Lorelei Kelly titled *Congress’ Wicked Problem: Seeking Knowledge Inside the Information Tsunami*.<sup>35</sup> To our knowledge, to this point, that paper has received scant attention from either the politicians or the pundits. The findings in the paper and its recommendations deserve and demand a full review and thoughtful corrective actions.

The opening sentence in Ms. Kelly’s paper reads, “The lack of shared expert knowledge capacity in the U.S. Congress has created a critical weakness in our democratic process.” She continues to note that Congress lacks “basic knowledge management” and it is “not so much venal and corrupt as it is incapacitated and obsolete.”

In our opinion, Kelly’s paper hits the bull’s-eye. It calls the question on the manner in which Congress organizes and operates itself as a “learning organization.” Key points she makes include the following:

- Less than 20 years ago Congress operated one of the world's premier scientific advisory bodies. It had an extensive network of shared expert staff and before 1995, committee staffs were also large and more often shared.
- There is a difference between information and knowledge. Members of Congress and staff do not lack for access to information. But information backed by financial interests and "high decibel" advocacy is disproportionately represented, and because of changes there is a "lack of institutional wisdom."
- There is a "knowledge asymmetry" of "trusted quality expertise" inside the institution. An example is that the committees on Capitol Hill have the "lion's share of expertise" compared to D.C. personal staff and those back home in the state or district.
- There is an asymmetry in two areas: knowledge provision (who is the source) and knowledge sharing (who gets easy access to it).
- Congressional focus on information that addresses the "here and now" of the electoral and budget cycle timelines is typically provided to the members' offices by the "most influential providers" such as lobbyists and the politically oriented.

Key recommendations in Kelly's paper to address these deficiencies include restoring congressional budgets for legislative branch staff on the Hill and in support agencies, improving the capabilities and capacity of the Congressional Research Service, establishing better relations and linkages with universities for knowledge sharing, and strengthening the connections to local experts and media.

This paper resonated and struck a responsive chord with us. One of our key recommendations in the Government chapter of *Renewing* was "Build Congress' capacity and capabilities for performance management."<sup>36</sup> We made that recommendation because we felt then and still feel now that Congress lacked the breadth and depth of experience and expertise required for knowledge and performance management.

If we want high-quality policy and decision making, we need to make the investments in congressional staff and systems that facilitate

and enable that. If we don't, then we will get the performance or lack thereof that we deserve.

### **Finance: Control the Big Money Interests**

*Conduct a study, develop and implement recommendations to control big money interests in the political and legislative process.*

We had originally planned on titling this section “Break the Big Money Stranglehold.” Then we reflected that the goal should be realistic and attainable: Breaking the stranglehold—probably not. Controlling it—maybe so.

In any case, Congress should convene an independent, bipartisan commission to conduct a comprehensive review of political recruitment, candidacy, selection and legislative participation. The Commission's inquiry should include campaign fundraising, legislator financial capacity and the connections between legislation and financing.

The amount of money raised and spent in this past election was absolutely obscene—especially obscene was the involvement of the Super PACs and wealthy individuals who tried to tilt the electoral races in their favor with major contributions. Fortunately, during this past election cycle, that form of “big money” obscenity did not do too well at the polling place. As we point out in the epilogue to the book, in the game of campaign moneyball in 2012, time and again small money and smart money trumped big money.

Regardless of these victories, we need campaign finance reform. As long as the lobbyists, special interests, and those with the biggest checkbooks have the most control over not only who gets nominated, what gets proposed and how business is done, the system cannot and will not heal itself. Those with the money will rule and those with the most money will rule the most.

The Supreme Court's egregious Citizens United decision, with the subsequent influx of “anonymous grassroots” campaign groups, made this situation even worse. It elevated “free speech” of the corporation above that of the citizen. When the corporation's voice can speak louder than the citizen's, democracy is at risk.

Personally, we would like to see a complete reform of financing and walking back of the Citizens United decision and support the positions of the groups who are advocating large-scale changes. At a minimum, there should be transparency and full disclosure from all individuals and organizations supporting candidates, office holders and/or their positions.

One of the more interesting changes over the past several years and even before is the increasing economic distance and differences between the elected officials in Washington, D.C., and the people they represent. The Center for Responsive Politics released a report in December 2012 that revealed that the median net worth of the members of Congress went up 15 percent from 2004 to 2010. During that same time frame, the net worth of the top 10 percent remained essentially flat and the median net worth of all Americans dropped 8 percent.<sup>37</sup>

Looking back further, in 1984 the median net worth of a House member, adjusted for inflation, was \$280,000. By 2009, the adjusted median net worth of a House member was \$725,000; adding in the Senate members raises the median net worth to \$913,000. This compares to the adjusted median net worth of the average American in 1984 of \$20,600 and \$20,500 in 2009.<sup>38</sup>

It is obvious that the people sitting on the seats in Capitol Hill are doing much better than the people sitting in the seats around the dining room tables in most of the homes in America. And the economic circumstances of those holding the seats in Congress are continuing to improve as well.

This is attested to by the fact that the 112th House freshmen class of 106 members elected in 2012 had an inflation-adjusted median net worth of \$864,000—26 percent higher than the median net worth of the freshmen elected in 2004. One of the likely causes of this is the increasing cost of political campaigns. According to Eric Lichtblau of the *New York Times*, in 2010 a successful Senate run cost around \$10 million and a successful House race cost \$1.4 million. Since 1976, according to the Federal Election Commission, the inflation-adjusted average cost of a successful House race has quadrupled.<sup>39</sup>

It is apparent that national politics is becoming a rich person's game. Lichtblau notes that "Congress has never been a place for paupers."



He goes on to observe, however, “But, rarely has the divide appeared so wide.”

The size of that divide matters because, as Peter Whoriskey points out in an article for the *Washington Post*, academics have found that “The growth of income inequality has tracked very closely with measures of political polarization, which has been gauged using the average difference between the liberal/conservative scores for the Republican and Democrat members of the House. Whoriskey cites studies that show that a person’s financial circumstances, life experience and occupations all play a role in how they legislate.”<sup>40</sup>

The bottom line from all of this is we are increasingly getting those with better bottom lines in Congress. As part of this Commission study, we need to investigate alternatives such as public financing and campaign spending limits to give those of more modest financial means a fighting chance in electoral contests. We know there are no easy answers here but we need to ask the tough questions. It may be that the media bringing these economic differences to the public’s attention will help to level the economic playing field somewhat and brings things more into balance.

Balance is also what Lorelei Kelly calls for in the development of our public policy. Right now that policy debate process is controlled by lobbyists. Kelly says that retired representative Lee Hamilton (D-IN) sees lobbyists as part of the normal deliberative process but quotes him as follows: “Our challenge is not to shut it down but to make sure it’s a balanced dialogue.”<sup>41</sup> Kelly’s recommendations could help to establish that balance.

One other area that should be addressed in terms of balance is the relationship between the financial interests of elected officials in Congress and their investments and contract awards. In late 2011, Peter Schweizer created a brouhaha with his book *Throw Them All Out*, which showed among other things a connection between high-level briefings of members of Congress and the sale and purchase of stock.<sup>42</sup>

Two 2011 studies of the investment portfolios of congressional members showed different results. One indicated the portfolios outperforming the market. The other found the portfolios performed somewhat worse.<sup>43</sup> We do not have enough information to determine

which study is valid nor do we want to. What we want to do, however, is to invoke the full transparency and disclosure principle.

It is common knowledge that those who support winning politicians do have a relative advantage in terms of support for contracts/investments, appointments to positions and even invitations to dinners and special events. It would seem to us that an easy way to deal with this issue is just to append a page to each piece of legislation, appointment, or any other form of transaction that notes the contributions or input of those who are the beneficiaries of the congressional action. That would bring things more into the sunlight and make the work of good government and investigative reporters easier if not quite as revelatory.

In conclusion, we need to address and solve those problems that are the root causes of our electoral dysfunction. If we do not, our country and its citizens will be stuck in a perpetual cycle of electoral rigor mortis.

The American voting public will replace one set of “rascals” with another set of “rascals” and expect better results. It won’t happen! The reason for this is that the overriding issue is just not who sits in the seats in Congress but the fact that we have a broken political governance system. Until we fix that system, the most that can be expected are marginal or incremental changes around the edges.

Congressional dysfunction will continue. And we as citizens will continue to suffer the Beltway blues.



## Pivot Point Report Card

### Instructions

This report card is provided to allow you to reflect upon and assess the progress in this pivot point area. To use the report card:

1. Review the recommendations for the area.
2. Evaluate the progress made in the area to date and assign a letter grade using the system that follows: A–excellent progress. B–substantial progress. C–some progress. D–little progress. F–no progress.
3. Describe the nature of the progress and the rationale for your rating.

We will be posting our assessment for this area on an occasional basis. To see that assessment and to provide your input and feedback on the area, visit <http://www.workingthepivotpoints.com>.

### Recommendations

- Working on “Yes”
  - Structure: Break Up the Island States of America
  - Knowledge: Make Congress Smarter
  - Finance: Control the Big Money Interests

### Grade

### Reason