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REVERSE REVOLUTION: RUSSIA'S CONSTITUTIONAL CRISIS

Sarah E. Cox[†]

Abstract: Russia is experiencing a crisis that threatens the continued relevance of its Constitution. This is demonstrated first by Vladimir Putin's return to the presidency and the political crisis it has fueled. Second, it is shown by the Constitution's inability to remedy the political crisis due to the collapse of separation of powers and federalism in Russia, and severe party underdevelopment. Part A of this note discusses Russia's political crisis, namely the demise of democracy. Part B discusses the Constitution's injuries, specifically the collapse of federalism, the demise of the separation of powers, and the state's party underdevelopment. Together, these factors signify a constitutional crisis which can be cured only through substantive changes to the Constitution and Russia's electoral laws, and a normative shift in Russian politics.

I. INTRODUCTION

In September 2011, Vladimir Putin, Russia's current Prime Minister and former President, surprised no one when he announced that he would once again seek the Russian presidency.¹ Later in the winter, opposition to his candidacy arose, and a once-inevitable outcome appeared less decided.² Nevertheless, initial criticism of his potential reelection manifested itself as little more than disgruntled complacency,³ and those opposing his reelection ultimately lost steam and focused less on preventing his reelection than on achieving incremental changes to Russia's electoral process.⁴ As a result, Putin regained the Russian presidency in the spring of 2012 with relative

[†] J.D. expected 2013, University of Washington School of Law. I would like to thank all of my peers at the Pacific Rim Law & Policy Journal for their help and encouragement in preparing my article for publication. In particular, I would like to thank Justin Glick, Jessica Montgomery, Joanne Kim, Alec Paxton, Courtney Skiles, and Alyson Palmer for their thoughtful edits and critiques. Thanks also to Dean Kathryn Watts of the University of Washington School of Law, who has been an invaluable mentor to me throughout my time at law school. Thanks also to Greg Cox, Annette Cox, and Emily Cox for their love and support.

¹ See Ellen Barry, *Putin Once More Moves to Assume Top Job in Russia*, N.Y. TIMES, Sept. 25, 2011, http://www.nytimes.com/2011/09/25/world/europe/medvedev-says-putin-will-seek-russian-presidency-in-2012.html?_r=1&scp=1&sq=Putin%20once%20more%20moves%20to%20assume&st=cse.

² See Ellen Barry, *Vast Rally in Moscow is a Challenge to Putin's Power*, N.Y. TIMES, Dec. 25, 2011, <http://www.nytimes.com/2011/12/25/world/europe/tens-of-thousands-of-protesters-gather-in-moscow-russia.html?ref=russia>.

³ See, e.g., Seth Mydans, *Putin's Eye for Power Leads Some in Russia to Ponder Life Abroad*, N.Y. TIMES, Oct. 1, 2011, <http://www.nytimes.com/2011/10/02/world/europe/putins-eye-for-power-leads-some-in-russia-to-ponder-life-abroad.html?scp=1&sq=Putin%20eye%20for%20power&st=cse>.

⁴ *Id.*

ease⁵ and will likely remain in power until 2024, making his reign comparable in length to that of the average Soviet dictators.⁶

Putin's campaign and reelection should sound a warning bell for those who hoped Russia would eventually free itself from the grip of autocracy. Thus far it has not, in large part because the election, while disappointing, was ostensibly legal. Consequently, some Russians have resigned themselves to simply leaving Russia⁷ and the West has begun preparing for a renewed but familiar strain on its relationship with the Kremlin.⁸

Putin's reelection sounds the final death knell for Russia's constitution. This is demonstrated first by Russia's current political crisis, which is evidenced by an acutely unstable political climate and, ultimately, the demise of democracy in Russia. Second, it is shown by the Constitution's inability to remedy this crisis, caused by a breakdown in the Constitution's structure and mandates, specifically the separation of powers, the federalist structure, and a multi-party framework.

Part II of this note will provide an overview of the formation and adoption of the Russian Constitution and Putin's rise to power. Part III will discuss the symptoms of the constitutional crisis mentioned above. It will describe the present political crisis, compiling and describing symptoms of the unstable environment, as well as analyze the breakdown of the 1993 Constitution and its consequent inability to resolve the political crisis. Finally, Part IV will suggest remedies for the constitutional crisis which Putin's control has created, proposing particular methods for strengthening the other branches of the Russian government, especially the judiciary, through the Constitutional Court.

⁵ Ellen Barry, *Vladimir Putin Takes Helm as Police Punish Moscow Dissident*, N.Y. TIMES, May 7, 2012, http://www.nytimes.com/2012/05/08/world/europe/vladimir-putin-returns-to-presidency-in-russia.html?_r=1&pagewanted=all.

⁶ For example, Leonid Brezhnev led the Communist Party, and therefore the Soviet Union, for eighteen years. EDWIN BACON & MARK SANDLE, *BREZHNEV RECONSIDERED 1* (Palgrave MacMillan Ltd. 2002). If Putin is reelected, he could obtain control of the Russian executive branch for an additional twelve years, per recent legislation extending presidential terms to six years. Lucian Kim, *Russia's Approaching Nonelection*, N.Y. TIMES, June 29, 2011, <http://www.nytimes.com/2011/06/30/opinion/30iht-edkim30.html?pagewanted=all>. Together with the eight years he has already served as President and the four he has served as Prime Minister this will total twenty-four years as Russia's leader. Furthermore, while a Russian President may not hold office for more than two terms in succession, nothing prevents Putin from moving to Prime Minister for another term and then back to President. See KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF][CONSTITUTION], § 1, ch. 4, art. 81, cl. 3 (Russ.) ("No one person shall hold the office of President of the Russian Federation for more than two terms in succession.")

⁷ See Mydans, *supra* note 3.

⁸ See, e.g., David M. Herszenhorn & Ellen Barry, *Putin Contends Clinton Incited Unrest Over Vote*, N.Y. TIMES, Dec. 8, 2011, http://www.nytimes.com/2011/12/09/world/europe/putin-accuses-clinton-of-instigating-russian-protests.html?_r=1&hp=&pagewanted=print (reporting Putin's accusations of United States Secretary of State Hillary Clinton for inciting outcries against Putin).

II. THE 1993 CONSTITUTION AND PAST POLITICAL PRACTICES HAVE ESTABLISHED A SUPER-PRESIDENTIALIST GOVERNMENT IN RUSSIA

The demise of the Soviet Union in 1991 created the need for a leader who could unify Russia and bring about stability. This section will provide background on the formation of Russia's Constitution, explaining how Boris Yeltsin initially assumed Russia's leadership role. This section first describes how Yeltsin oversaw and largely controlled the process of drafting and adopting a presidentialist democratic constitution within a year of assuming the presidency. Second, it explains the structure of government established by Yeltsin's constitution, emphasizing in particular how it held the key to its own demise. Finally, it will explain how Russia's presidentialist government and Yeltsin's "anointment" of his successor allowed Vladimir Putin to consolidate power and undermine the Constitution's structures.

A. *The 1993 Constitution Establishes a Super-Presidentialist Democracy*

During the Soviet Union's sharp decline in the late 1980s, the calls for reform by Boris Yeltsin, a young reformer and republican separatist, became increasingly popular.⁹ In 1990, he led the Russian Republic to declare independence from the Soviet Union and helped push then Soviet president Mikhail Gorbachev out of power.¹⁰ Though Gorbachev attempted to patch up the broken union, party extremists, the Komitet Gosudarstvennoy Bezopasnosti or Committee for State Security ("KGB"), and the military staged a coup and arrested Gorbachev.¹¹ The coup failed, however, largely due to mass protests and Yeltsin's opposition leadership.¹² Though Gorbachev returned to Moscow, he was politically obsolete, and Yeltsin easily assumed power.¹³

In the spring of 1993, Yeltsin, then Russia's president, proposed a new Russian constitution and presented a draft to the Russian people.¹⁴ In July, a Constitutional Conference comprised of two representatives from each Russian Federation met.¹⁵ After making over 200 amendments, the

⁹ Steve G. Marks, *The Historical Context*, in UNDERSTANDING CONTEMPORARY RUSSIA 78 (Michael L. Bressler ed., Lynne Rienner Publishers 2009).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Christina M. McPherson, *Russia's 1993 Constitution: Rule of Law for Russia or Merely a Return to Autocracy?*, 27 HASTINGS CONST. L.Q. 155, 156 (1999-2000).

¹⁵ *Id.* at 157.

Conference approved the Constitution.¹⁶ Concurrently, the Russian Congress published its own draft constitution.¹⁷ In response, Yeltsin attempted to disband the Congress using the emergency powers granted to him via the 1978 Constitution.¹⁸ Though the Congress initially refused to leave power, Yeltsin eventually overcame its opposition with the support of the military.¹⁹ On November 9, 1993, Yeltsin proposed a new draft of his constitution, and declared that a popular referendum would be held to adopt his constitution. Approval required 50% for adoption.²⁰ On December 12, 1993, Russians adopted the Constitution with 60% of the vote, and the 1993 Constitution became Russia's first democratic Constitution since 1906.²¹

B. The Governmental Structure Enshrined in the Constitution Revolves Around the Executive Branch

The government structure set forth in the 1993 Constitution has never been without criticism, as it focuses primarily on the strength of the executive and the relative weakness of the legislature and judiciary.²² Indeed, the 1993 Constitution represents a "presidentialist" form of government, which centralizes power in a strong executive, and focuses on stability and unity.²³ The president is the head of state, and the "guarantor of the Constitution of the Russian Federation, and of human and civil rights and liberties²⁴ and freedoms," and the "Supreme Commander-in-Chief of the Armed Forces."²⁵ Furthermore, the president may dissolve the State Duma, the lowest house of the Russian legislature, if it exercises too rigidly its checks on the president's power.²⁶ Additionally, a president is given substantial and virtually unchecked legislative powers,²⁷ veto power,²⁸ and the ability to impose martial law²⁹ and states of emergency.³⁰

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Lee K. Metcalf, *Presidential Power in the Russian Constitution*, 6 J. TRANSNAT'L L. & POL'Y 125, 133 (1996).

¹⁹ See McPherson, *supra* note 14, at 157.

²⁰ *Id.* at 158.

²¹ *Id.*

²² *Id.* at 155.

²³ See Metcalf, *supra* note 18, at 125.

²⁴ KONSTITUTSIYA ROSSIISKOI FEDERATSII [KONST. RF][CONSTITUTION] § 1, ch. 4, art. 80, cl. 2 (Russ.).

²⁵ *Id.* § 1, ch. 4, art. 87, cl. 1 (Russ.).

²⁶ For example, the president can dissolve the State Duma if it refuses to confirm his or her candidate for prime minister three times, or if it expresses a no-confidence vote in the president twice in three months. See McPherson, *supra* note 14, at 155.

²⁷ The president may unilaterally pass laws in the form of decrees and executive orders. See KONSTITUTSIYA ROSSIISKOI FEDERATSII [KONST. RF][CONSTITUTION] § 1, ch. 4, art. 90, cl. 2 (Russ.) ("The

The 1993 Constitution provides for a bicameral legislature, called the Federal Assembly.³¹ The lower house of the Federal Assembly is the State Duma.³² The upper house is the Federation Council, which is comprised of two councilors for each member of the federation.³³ The 1993 Constitution also calls for a popularly-elected president limited to two consecutive four-year terms.³⁴

Additionally, the Constitution sets up a judiciary,³⁵ which includes a Constitutional Court,³⁶ a Supreme Court,³⁷ and a Supreme Arbitration Court.³⁸ At the request of the President, the State Duma, one-fifth of the members of the Federation Council or deputies of the State Duma, the Supreme Court, the Supreme Arbitration Court, or the local bodies of government, the Constitutional Court may resolve cases about compliance with the Constitution of the Russian Federation.³⁹ The Supreme Arbitration Court of the Russian Federation resolves economic and other disputes considered by arbitration courts, supervising their compliance with federal legal procedures.⁴⁰ The Supreme Court is the highest body adjudicating civil, criminal, administrative and other matters triable by general jurisdiction courts, and supervises other courts' compliance with federal procedural forms.⁴¹

decrees and orders of the President of the Russian Federation shall be binding throughout the territory of the Russian Federation.”).

²⁸ The president exercises this power by keeping a law unsigned and unreturned for as long as he or she wishes. *See* Metcalf, *supra* note 18, at 135.

²⁹ KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF][CONSTITUTION] § 1, ch. 5, art. 87, cl. 2 (Russ.) (“In the event of aggression against the Russian Federation or an immediate threat thereof, the President of the Russian Federation shall introduce martial law on the territory of the Russian Federation or in areas thereof with immediate notification thereof of the Federation Council and the State Duma.”).

³⁰ *Id.* § 1, ch. 5, art. 88 (“Under the circumstances and procedures envisaged by the Federal Constitutional Law, the President of the Russian Federation shall impose a state of emergency on the territory of the Russian Federation or in areas thereof with immediate notification of the Federation Council and the State Duma.”).

³¹ *See* Metcalf, *supra* note 18, at 134.

³² *Id.*

³³ *Id.*

³⁴ KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF][CONSTITUTION] § 1, ch. 4, art. 81, cl. 1 (Russ.) (“The President of the Russian Federation shall be elected for a term of four years by the citizens of the Russian Federation on the basis of general, equal and direct vote by secret ballot.”); *Id.* § 1, ch. 4, art. 81, cl. 3 (“No one person shall hold the office of President of the Russian Federation for more than two terms in succession.”).

³⁵ *Id.* § 1, ch. 7.

³⁶ *Id.* § 1, ch. 7, art. 125.

³⁷ *Id.* § 1, ch. 7, art. 126.

³⁸ *Id.* § 1, ch. 7, art. 127.

³⁹ *Id.* § 1, ch. 7, art. 125, cl. 2.

⁴⁰ KONSTITUTSIJA ROSSIJSKOI FEDERATSII [KONST. RF][CONSTITUTION] § 1, ch. 7, art. 127.

⁴¹ *Id.* § 1, ch. 7, art. 126.

While the constitutional provisions described above seem to beg for a dictator, the Constitution also outlines restraints to the president's power. For example the president may be removed if the State Duma concludes that the president has committed treason or another "grave crime," the Supreme Court qualifies the actions as criminal, or the Constitutional Court concludes that the proper procedures have been followed. The Federation Council must adopt an impeachment decision by two-thirds vote within three months of either of the requisite accusations.⁴²

Additionally, the State Duma can request a determination by the Constitutional Court of the constitutionality of a law, including those promulgated through executive decrees and orders. The State Duma must approve any presidential decrees imposing martial law or a state of emergency,⁴³ and must consent to the President's appointment of the Chairman of the Government.⁴⁴ The checks on presidential power have allowed at least the trappings of the structure of government established by the Constitution to remain durable over the past eighteen years. Nevertheless, as discussed in Part III.A, its institutional structure created an environment ripe for a return to autocracy.

C. *Yeltsin's "Anointment" of Putin Ensured Putin's Rise to and Consolidation of Power*

Although he began his presidency as a purported compromiser interested in establishing democracy, Boris Yeltsin undermined his own rhetoric and the democratic principles outlined in his 1993 Constitution by relinquishing his power to Putin in 1999, before the expiration of his term.⁴⁵ In doing so, he undermined free and broad campaigning by leveraging his popularity to name a successor.⁴⁶ This created a shortened campaign period,

⁴² See Metcalf, *supra* note 18, at 134.

⁴³ KONSTITUTSIYA ROSSIYSKOI FEDERATSII [KONST. RF][CONSTITUTION] § 1, ch. 5, art. 102, cl. 1. (Russ.) ("The jurisdiction of the Federation Council shall include: . . . b) approval of the decree of the President of the Russian Federation on the introduction of martial law; c) approval of the decree of the President of the Russian Federation on the introduction of a state of emergency.").

⁴⁴ *Id.* § 1, ch. 6, art. 111, cl. 1. The Chairman of the Government acts as liaison between the executive branch and the other branches of government, overseeing the general workings of the government. See generally, *id.* § 1, ch. 6 (requiring the Chairman of the Government to propose the structure of the federal branches of executive power, determine guidelines of the government's work, and to develop the budget of the government).

⁴⁵ See JOEL M. OSTROW, GEORGIY A. SATAROV, & IRINA M. KHAKAMADA, THE CONSOLIDATION OF DICTATORSHIP IN RUSSIA: AN INSIDE VIEW OF THE DEMISE OF DEMOCRACY 79 (Greenwood Publ'g Grp. 2007).

⁴⁶ *Id.*

forcing his supporters to go along with his decision.⁴⁷ It also caused unprepared parties to surrender their hopes for potential campaigns, frustrating any possibility of true political competition.⁴⁸ Additionally, Yeltsin's conspicuous involvement in the campaign and relentless support for Putin effectively quashed any possibility of a free and fair election.⁴⁹ Worst of all, Yeltsin's anointment of Putin set a precedent for commending successors, a practice on which Putin would later capitalize.

Russians were unfamiliar with Vladimir Putin, the loyal former KGB agent selected to succeed Yeltsin.⁵⁰ Indeed, before winning the presidency, he had never been elected to public office.⁵¹ He had spent his early career as a KGB agent in East Germany, returning to Russia in 1990 to work in politics.⁵² In 1996, he found work in Yeltsin's presidential administration through personal connections, and Yeltsin named him director of the Federal Security Service in 1998.⁵³ Recognizing Putin's steadfast loyalty, Yeltsin nominated and the Duma confirmed Putin as Prime Minister in August of 1999, less than a year before the presidential election.⁵⁴ He was easily elected in 2000.⁵⁵ As discussed below, Putin's reign has been characterized by impermanent political stability achieved through a strong state achieved predominantly via a strong Kremlin.⁵⁶ Gradually, Putin has ensured that Russia's executive controls politics, the economy, and society in general.⁵⁷ He has thus preserved and strengthened Russia's "super-presidential system," but in doing so has created a constitutional crisis.

III. PUTIN'S REIGN HAS CAUSED A CONSTITUTION CRISIS IN RUSSIA

Russia is experiencing a constitutional crisis that has crippled the relevance of the 1993 Constitution, which technically remains in effect today. This crisis is exposed first by a political crisis, evidenced by Putin's continued grasp on power and the resultant failure of democratic functions in

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ MICHAEL MCFAL, NIKOLAI PETROV, & ANDREI RYABOV, BETWEEN DICTATORSHIP AND DEMOCRACY: RUSSIAN POST-COMMUNIST POLITICAL REFORM 295 (Carnegie Endowment for International Peace 2004).

⁵¹ See Michael L. Bressler, *Politics*, in UNDERSTANDING CONTEMPORARY RUSSIA 105 (Michael L. Bressler ed., Lynne Rienner Publishers 2009).

⁵² *Id.*

⁵³ *Id.* at 106.

⁵⁴ *Id.*

⁵⁵ *Id.* at 109.

⁵⁶ *Id.* at 110-11.

⁵⁷ Bressler, *supra* note 51 at 110-11.

Russia. Second, political crises such as the collapse of the separation of powers and federalism and the rise of single-party politics expose the Constitution's ineffective means for dealing with such crises.

This section discusses each of these factors in turn. Part A discusses the political crisis (i.e., the demise of democracy), and Part B discusses the Constitution's failures (i.e., the collapse of separation of powers and federalism and political party underdevelopment). Together, these factors signify a constitutional crisis that can be remedied only through substantive changes to the Constitution and Russia's elections laws, and an attitudinal change by the Russian people.

A. Putin's Actions Throughout his First Presidency Compromised Democracy in Russia and Led to a Political Crisis

Putin's continued control, particularly his renewed candidacy and likely reelection, has shattered the democratic political structures required by the 1993 Constitution. Indeed, he has executed a disconcertingly rapid movement toward autocracy in Russia. He accomplished this transition in three ways. First, he tightly restricted and largely crippled Russia's free media. Second, he has undermined the democracy of regional elections. Third, facilitated in part by his predecessor, he ensured that presidential elections are neither free nor fair. Together, these factors indicate that despite the 1993 Constitution's democratic mandate, Russia is now undeniably autocratic, with one party, indeed one person, controlling essentially every level and aspect of government.

1. Putin Stifled the Free Media During his First Presidency

Freedom of the press and media is crucial to the development and maintenance of civil society.⁵⁸ Unfortunately, despite his claims of commitment to democracy, in one of his first moves as President, Putin forcefully reigned in Russia's media, which he publicly criticized for its supposedly "unpatriotic" tendencies.⁵⁹ He did this first by creating the Information Security Doctrine, an executive order severely restricting freedom of information.⁶⁰ Second, using members of the judiciary whom he largely controlled,⁶¹ Putin used the courts to attack critical and independent

⁵⁸ Louis Skynes, *Public Power and Private Interests: the Media, the Law and Democracy in Russia*, 4 PERSP. ON EUR. POL. & SOC'Y, 265, 271 (2003).

⁵⁹ See MCFaul, PETROV, & RYABOV, *supra* note 50, at 295.

⁶⁰ *Id.* at 189.

⁶¹ *Id.*

media empires.⁶² For example, he threatened and eventually quashed state critic Vladimir Gusinsky, the majority shareholder of Russia's NTV, one of the few remaining independent media companies, with frivolous criminal charges.⁶³ Third, Putin capitalized on conflicts between another prominent independent media company's shareholders, closing it under a façade of financial failure.⁶⁴ The effect of these moves has been the downfall of independent Russian media and the silencing of would-be Putin critics.⁶⁵

2. *Putin Undermined the Democracy of Regional Elections in his First Presidency*

Since Putin's election in 2000, the democratic integrity of regional elections in Russia has been severely compromised.⁶⁶ In particular, the Kremlin has interfered extensively with local elections, ensuring that the outcomes of local electoral systems are dictated predominantly by the state.⁶⁷ Furthermore, in 2004, Putin used his political power to push through amendments to the electoral system that "dealt a serious blow to the development of democracy."⁶⁸ These amendments constrain burgeoning opposition parties' ability to participate in elections, and increased United Russia's success in local elections.⁶⁹ For example, to be a legally registered party, a political group must now have at least 50,000 members and regional members in over half of the population.⁷⁰ The effect of this law is to make certain that minority political factions are unable to gain the strength or leg required to challenge the already-entrenched parties.⁷¹ This effect is shown by the fact that the vast majority of local elections only include the four parties that currently hold seats in the State Duma.⁷²

Further weakening the democratic nature of regional elections is the fact that only the party that wins the most seats in a regional legislature has

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See generally, Cameron Ross, *Regional Elections and Electoral Authoritarianism in Russia*, 63 EUR.-ASIA STUD. 641 (2011) (finding that "[e]lections in Russia's regions are more often instruments of authoritarian rule than instruments of democracy and the electoral rules of the game have been designed to favour United Russia").

⁶⁷ *Id.* at 642. Specifically, local electoral systems are "first past the post single mandate" elections. This means that whoever gets the most votes, regardless of whether he or she has a majority of the votes, wins. Consequently, larger parties (presumably with greater resources) gain a disproportionately large number of seats.

⁶⁸ *Id.* at 643.

⁶⁹ *Id.*

⁷⁰ Federal'nyi Zakon Federal Law, No. 168, Dec. 20, 2004.

⁷¹ See Ross, *supra* note 66, at 644.

⁷² *Id.*

the right to nominate candidates for the post of governor, and also the fact that the President now must approve the candidate nominated.⁷³ This ensures governors' affiliation with the Kremlin, as United Russia has a majority in eighty-one of Russia's eighty-three local legislatures.⁷⁴ Additionally, via the "Law on Combating Extremist Activity," an increased number of state officials are now permitted to serve on electoral commissions, and the government can now ban parties from elections if any of its members have been charged with "extremist activities."⁷⁵ This law may be and likely is used to frustrate challenges by potential renegade candidates.⁷⁶

Changes to electoral law under Putin have predominantly abolished the "votes against all" category from ballots, whereby a citizen can demonstrate his or her disapproval of the electoral system.⁷⁷ This has silenced one of the few remaining opportunities for a citizen to voice his or her disapproval of the Kremlin's candidates and to the process in general. Furthermore, minimum turnout thresholds have been abolished.⁷⁸ This means that parties' candidates can win without anybody showing up to exercise his or her franchise.⁷⁹

Finally, in a comprehensive empirical analysis of Russia's regional elections, political scientist Cameron Ross⁸⁰ found that, overall, regional elections do not provide voters with a genuine choice of competing candidates and parties, registration and voting procedures are exclusive, inaccessible, and are fraught with government and party control, intimidation, and abuse.⁸¹ In addition, Ross found that citizens are not free to cast their votes in secret or without pressure and coercion from the state, elections are not conducted fairly, ballots are not fairly counted and the results of elections do not reflect the true will of the electorate.⁸² Together, these data points demonstrate that, despite the 1993 Constitution's democratic mandate, Russian regional elections are now disturbingly undemocratic.

⁷³ *Id.* at 645.

⁷⁴ *Id.*

⁷⁵ Federal Law, No. 107, July 12, 2006.

⁷⁶ *See* Ross, *supra* note 66, at 647.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Cameron Ross is a political scientist and professor in Russian Politics at the University of Dundee. *See* Ross, *supra* note 66, at 641.

⁸¹ *Id.* at 659-60.

⁸² *Id.*

B. The Democracy of Presidential Elections Has Been Severely Weakened by Presidential Anointments Since Russia Adopted the 1993 Constitution

Executive control has undermined the liberty of Russia's elections since the adoption of the 1993 Constitution, particularly since Putin's election. In most democracies, free elections function to legitimize rulers, articulate the voters' will, provide insight into public opinion, and establish a stable government.⁸³ In new democracies, free elections also serve to bolster and ease the transition from autocracy to democracy.⁸⁴ In 1999 and early 2000, however, first Yeltsin moved immediately away from the Constitution's democratic mandate for elections by setting a precedent for undemocratic Presidential elections. Specifically, his over-involvement in the campaign and relentless support for Putin debilitated Putin's challengers.⁸⁵ More importantly, however, his anointment of Putin set a precedent for commending successors, a practice which Putin himself capitalized on.⁸⁶ Indeed, one study found that 90% of voters who voted for Medvedev considered Putin's endorsement of Medvedev either important or very important to their voting decision.

When he neared the end of his first term as President, Putin mirrored the undemocratic actions of his predecessor by publicly supporting and effectively anointing Dmitri Medvedev as his successor.⁸⁷ Recent Russian President Dmitri Medvedev's 2008 election was fraught with involvement by the Kremlin, and was not free, fair, or democratic.⁸⁸ Indeed, it has been called the "most highly managed political event in Russia's post-communist history."⁸⁹ Medvedev was nominated in December 2007, shortly after United Russia gained an overwhelming victory in parliamentary elections.⁹⁰ When accepting his nomination, he said that he would run for president only if Putin would serve as prime minister if elected.⁹¹ Russian citizens understood Medvedev as Putin's mentee, and the Kremlin relentlessly tied his candidacy to his relationship with Putin.⁹² For example, the state-

⁸³ Stanislaw Gebethner, *Free Elections and Political Parties in Transition to Democracy in Central and Southeastern Europe*, 18 INT'L POL. SCI. REV. 381, 381 (1997).

⁸⁴ *Id.* at 381-82.

⁸⁵ See McFAUL, PETROV, & RYABOV, *supra* note 50, at 295.

⁸⁶ Henry E. Hale & Timothy J. Colton, *Russians and the Putin-Medvedev "Tandemocracy": A Survey-Based Portrait of the 2007-2008 Election Season* 57:2 PROBS. OF POST-COMMUNISM, 3, 16 (2010).

⁸⁷ *Id.*

⁸⁸ Kathryn Stoner-Weiss, *It Is Still Putin's Russia*, 107 CURRENT HIST. 315, 316 (2008).

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

controlled media constantly covered Medvedev and Putin's travels together, and huge billboards of the two walking shoulder-to-shoulder hung in city squares across the country, including the square outside the Kremlin.⁹³ More frighteningly, advisors to the Kremlin leaked information that Medvedev was taking classes to learn to speak and walk like Putin.⁹⁴

For voters, electing Medvedev meant continuing Putin's policies. Nevertheless, the Kremlin felt that it needed to go further to secure Medvedev's election. Putin moved also to ensure that Medvedev had other unfair advantages, and he and his supporters largely orchestrated Medvedev's election.⁹⁵ First, media loyal to Putin ensured that coverage of the election was asymmetric, heavily favoring the state's political views.⁹⁶ While there were anti-regime critics and opposition coverage by websites, most Russians obtained information through the state-controlled television.⁹⁷ Furthermore, the government constrained opposition parties' opportunities for garnering votes, almost completely shutting them out of all positions of true influence.⁹⁸ Ultimately the only other major parties to successfully place candidates on the ballot were the Communist Party and the Liberal Democratic Party of Russia ("LDPR"), both of which nominated the same party leaders they had since 1996.⁹⁹ When Russian voters went to the polls in 2008, they had only one viable option.

The 2012 campaign largely mirrored that of Putin in 2000 and Medvedev in 2008. First, Medvedev reciprocated his own anointment by choosing to step aside to allow Putin to regain the presidency, rather than run for a second term.¹⁰⁰ The move was a significant political sacrifice for Medvedev, who is now perceived to have been a weak pawn in a complex political arrangement.¹⁰¹ Moreover, Putin won a landslide victory, and his competition remained symbolic at best.¹⁰² It now appears likely that his reelection will further entrench Russia's government in autocracy.

Since Putin's first election, Russia has transitioned from the democracy the Constitution purported to create in 1993 to an autocracy. This move was achieved and is demonstrated in three ways. First, it was achieved through the restriction of the freedom of the press, which is now

⁹³ See Stoner-Weiss, *supra* note 88, at 316.

⁹⁴ *Id.*

⁹⁵ See Hale & Colton, *supra* note 86, at 3.

⁹⁶ *Id.* at 4.

⁹⁷ *Id.*

⁹⁸ *Id.* at 13.

⁹⁹ *Id.* at 14.

¹⁰⁰ See Barry, *supra* note 1.

¹⁰¹ *Id.*

¹⁰² *Id.*

nearly nonexistent. Instead, as described above in Part III.A.1, it is largely state-controlled. This has ensured that the Russian people receive their information predominantly from the Kremlin. Second, the move away from democracy was achieved by diluting the democracy of regional elections. As described above, changes to the regional electoral system since Putin's election have ensured that the Kremlin's adversaries are unable to truly challenge its allies. Third, and facilitated in part by Yeltsin, presidential elections in Russia are now neither free nor fair. Not only have all Russian presidents "anointed" their successors, but also the state-controlled media and Kremlin election control have guaranteed that Russian voters do not have a true choice when it comes time to cast their ballots. Together, these factors indicate that despite the 1993 Constitution's democratic mandate, Russia is now undeniably autocratic.

IV. THE COLLAPSE OF THE 1993 CONSTITUTION'S STRUCTURAL SAFEGUARDS HAS CRIPPLED ITS ABILITY TO REMEDY RUSSIA'S POLITICAL CRISIS

As it currently stands, Russia's 1993 Constitution can do nothing to remedy the state's rejection of the political system it establishes. Its helplessness in this regard is revealed first by the collapse of separation of powers enshrined in the Constitution, which normally should function as a check against autocratic rule. Second, the Constitution's inability to remedy the crisis is exacerbated by the state's now feeble federalism, which should also check against despotic state rule. Finally, severe party underdevelopment and political apathy in Russia now work to preserve its autocratic state, crippling a last-resort check on autocracy. Together, the breakdown of these constitutional structures demonstrates that Russia is experiencing a constitutional crisis, in that the 1993 Constitution can do nothing to prevent Putin and United Russia's continued grip on power for the foreseeable future.

A. *Putin's Presidency Undermined the Separation of Powers in Russia*

The 1993 Constitution establishes a tripartite government structure comprised of a president and the accompanying executive branch, a bicameral legislature, and the judiciary.¹⁰³ The judiciary is composed of the Supreme Court of the Russian Federation, the Supreme Arbitration Court of the Russian Federation, and the Constitutional Court of the Russian

¹⁰³ See KONSTITUTSIIA ROSSIYSKOI FEDERATSII [KONST. RF][CONSTITUTION] § 1, ch. 4, 5, and 7 (Russ.).

Federation.¹⁰⁴ While the Constitution establishes a “presidentialist” form of government which centralizes power in a strong executive, it nevertheless separates the legislative, executive, and judicial powers.¹⁰⁵ In constitutional systems, separating the powers of government operates as a structural “back-up system,” designed to prevent political actors from evading the democratic system the Constitution creates.¹⁰⁶ Unfortunately, the 1993 Constitution contained the keys to the demise of Russia’s separation of powers, and the legislative and judicial branches of the government now largely serve at the pleasure of the President.

The divisions of power between the executive branch and the State Duma has been obscured, and indeed, eliminated since Putin’s 2000 election.¹⁰⁷ This has been achieved by United Russia, Putin’s political affiliate, gaining and maintaining a huge majority in the State Duma.¹⁰⁸ Indeed, in the Fourth Duma (2003-2007), United Russia held a two-thirds majority.¹⁰⁹ In the December 2007 election, preceding Medvedev’s March 2008 election, United Russia gained even more seats.¹¹⁰ The last decade has thus solidified United Russia as Russia’s party, in both the executive and legislative branches. This has allowed Putin to push through his legislative agenda¹¹¹ without much effort, and often before potential opponents have an opportunity to thwart it.¹¹²

Putin and United Russia have ensured that the dominant party’s members in parliament vote according to the executive’s will primarily through political patronage.¹¹³ This is evidenced by the fact that the last decade in the State Duma has seen remarkable cohesiveness in voting among United Russia’s representatives.¹¹⁴ Specifically, United Russia has experienced staggeringly high levels of voting discipline in the last decade (voting in line with party preferences), which has increased since 1994.¹¹⁵

¹⁰⁴ *Id.* § 1, ch. 7, arts. 125, 126, and 127.

¹⁰⁵ *Id.* § 1, ch. 1, art. 11. (“The state power in the Russian Federation shall be exercised by the President of the Russian Federation, the Federal Assembly . . . the government of the Russian Federation and courts of the Russian Federation.”).

¹⁰⁶ James A. Gardner, *Democracy Without a Net? Separation of Powers and the Idea of Self-Sustaining Constitutional Constraints on Undemocratic Behavior*, 79 ST. JOHN’S L. REV. 293, 294 (2005).

¹⁰⁷ Thomas Remington, *Patronage and the Party Power: President – Parliament Relations Under Vladimir Putin*, 60 EUR.-ASIA STUD. 959, 959 (2008).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ Including the electoral reforms outlined in Part III.A.2.

¹¹² See Gardner, *supra* note 106.

¹¹³ *Id.*

¹¹⁴ See Remington, *supra* note 107.

¹¹⁵ Paul Chastity, *Party Cohesion and Policy-Making in Russia*, 11 PARTY POLITICS 299, 303 (2005).

Furthermore, United Russia has accumulated immense power since Putin's election—forming unofficial “deputy groups” within its own party rather than establishing separate parties for voters to choose between.¹¹⁶

Further solidifying the interconnectedness of the executive and legislative branches in Russia is the fact that polarization between the two branches has declined sharply since the 1990s.¹¹⁷ In 2001, the Unity party and the Fatherland–All Russia (“OVR”) party combined to form what is now known as United Russia. Furthermore, United Russia allied with the People's Deputy and Russia's Regions parties to form the “coalition of four.”¹¹⁸ The untied parties voted together, and Putin used their majority to enact his agenda.¹¹⁹ Putin also capitalized on the precarious economic condition in Russia, arguing that a failure to enact his legislative agenda would sentence Russia to permanent economic recession.¹²⁰

During the Fourth Duma, United Russia established nearly unmatched control over the Duma. Putin used his affiliation with United Russia to centralize political power, ending the independence of regional governors, controlling the mass media as described above, neutralizing opposition parties (described below), and reducing the parliament's accountability.¹²¹ As with most autocracies in which opposition may slow legislation, the State Duma became remarkably productive in the Fourth Duma, passing 1,000 laws.¹²² This reflects the consolidation of power under United Russia and its remarkable control over the legislative agenda. Further emphasizing this point is the fact that Putin signed nearly everything the Duma passed.¹²³ Additionally, the Duma readily enacted Putin's initiatives which centralized power and undermined democracy. For example, one initiative it passed restricted the conditions under which citizens can hold demonstrations and another makes it more difficult for citizens' initiative groups to organize nationwide referendums.¹²⁴

Putin further expunged the line between presidential policy and legislation in his second term, capitalizing in large part on 2004 terrorist attacks on the Moscow subway.¹²⁵ For example, the legislature passed the bill, described above, providing for presidential appointment of governors in

¹¹⁶ See Remington, *supra* note 107, at 965.

¹¹⁷ *Id.* at 968.

¹¹⁸ *Id.* at 972.

¹¹⁹ *Id.*

¹²⁰ *Id.* at 973.

¹²¹ *Id.* at 974.

¹²² Remington, *supra* note 107, at 974.

¹²³ *Id.*

¹²⁴ *Id.* at 977-78.

¹²⁵ *Id.* at 978.

the wake of the 2004 terrorist attacks.¹²⁶ Moreover, in a move highlighting Putin's now undeniable control over the Duma, Putin met with the legislature in 2005, assigning it fifteen tasks for passing the policy initiatives he had presented in his April message to parliament.¹²⁷ This move demonstrated Putin's control over Russian legislative policy and the collapse of the Constitution's division of powers between the President and parliament.

Like the parliament, the judiciary has failed to exert a check on the President and reinforce the separation of powers and federalist structures established in the Constitution. This failure has largely been due to the judiciary's lack of compliance with the Constitutional Court's rulings, as well as the public's perception of the judiciary's weakness.¹²⁸ Consequently, and predominantly due to the weakness of the Russian Constitutional Court, the judiciary arguably embodies a tool for legitimization of the President's agenda. Russia's Constitutional Court reviews the constitutionality of laws in Russia, ensuring compliance with the Constitution and governmental structures.¹²⁹ Nevertheless, the Russian Constitutional Court has been unable to protect the individual rights laid out in the country's Constitution, and, more importantly, unable to combat the incremental legislation centralizing power in the President.¹³⁰ This inability has been caused primarily by noncompliance with its decisions. Indeed, the Constitutional Court has constantly combated failure to comply with its directives, and the Kremlin under both Yeltsin and Putin failed to implement numerous decisions on basic rights.¹³¹

Widespread ignorance by the Russian populace of the Court's actions has weakened its power.¹³² These factors have likely led to a cycle that works to further weaken the Constitutional Court, and causing further noncompliance due to its perceived weakness.¹³³ Thus, while the supposed guardian of the Constitution's structures, the Constitutional Court remains largely peripheral in the Russian government, and may have only the influence it is granted by the Kremlin.

¹²⁶ See Ross, *supra* note 66, at 645.

¹²⁷ See Remington, *supra* note 107, at 978.

¹²⁸ ALEXEI TROCHEV, *JUDGING RUSSIA: CONSTITUTIONAL COURT IN RUSSIAN POLITICS 1990-2006* 228 (Alexei Trochev ed., Cambridge University Press 2008).

¹²⁹ KONSTITUTSIYA ROSSIISKOI FEDERATSII [KONST. RF][CONSTITUTION] § 1, ch. 7, art. 125 (Russ.) ("The Constitutional Court of the Russian Federation . . . shall resolve cases about compliance with the Constitution of the Russian Federation . . .").

¹³⁰ See TROCHEV, *supra* note 128, at 255.

¹³¹ *Id.* at 247.

¹³² *Id.*

¹³³ See TROCHEV, *supra* note 128, at 249.

B. Putin's Presidential Policies Led to the Collapse of Federalism in Russia

Federalism is another back-up system designed to protect democratic political structure from domination by the state and its favored party in constitutional democracies.¹³⁴ Constitutional democracies that set up federations presume that powers will be divided between a central government and subnational governments.¹³⁵ As described above, Article 1 of the 1993 Constitution establishes Russia as a “federation,” a “democratic federative rule-of-law state with a republican form of government.”¹³⁶ Russia’s federal system is divided into eighty-three “subjects” that are in turn divided into twenty-one republics, forty-six provinces, nine territories, four autonomous “areas,” one autonomist oblast, and two federal cities.¹³⁷ At the second level of government there are seven federal “super districts” (Okrgs) which were created by Putin to check the power of regional governors.¹³⁸ Despite this structure and the Constitution’s federalist mandate, Putin’s presidency has marked the centralization of power in Russia and a move toward a quasi-unitary, rather than federal, state.¹³⁹ Additionally, while some hoped that President Medvedev might move away from Putin’s centralist policies, he did not do so during his presidency.¹⁴⁰

In his first move away from federalism, Putin oversaw the passage of legislation that reigned in regional governors, ensuring that they now serve at the pleasure of the President. First, he pushed through legislation that requires Presidential approval of candidates nominated for governor, and gave the President the power to appoint governors.¹⁴¹ Furthermore, through United Russia, he shepherded the reigning in of regional governors, gradually enticing them through patronage, coercion, fraud, oppression, and elite cohesion, to join his ranks.¹⁴² These changes have jeopardized, and

¹³⁴ See Gardner, *supra* note 106, at 294.

¹³⁵ Edward Gibson, *Federalism and Democracy: Theoretical Connections and Cautionary Insights*, in *FEDERALISM AND DEMOCRACY IN LATIN AMERICA* 7 (Edward Gibson ed., The Johns Hopkins Univ. Press 2004).

¹³⁶ See KONSTITUTSIYA ROSSIYSKOI FEDERATSII [KONST. RF][CONSTITUTION] § 1, ch. 1, art. 1. (Russ.).

¹³⁷ Cameron Ross, *Federalism and Inter-governmental Relations in Russia*, 26:2 J. OF COMMUNIST STUD. AND TRANSITION POL. 165, 167 (2010).

¹³⁸ *Id.*

¹³⁹ *Id.* at 165.

¹⁴⁰ *Id.* at 166.

¹⁴¹ See Ross, *supra* note 66, at 644.

¹⁴² See Ora John Reuter, *The Politics of Dominant Party Formation: United Russia and Russia's Governors*, 62 EUR.-ASIA STUD. 293, 322 (2010).

largely undermined the independence of regional governments and provided for the consolidation of the Russian government under the Kremlin.¹⁴³

Second, the upper chamber of Russia's legislature, the Russian Federation Council, no longer serves to accommodate regional interests, and instead is controlled by the Kremlin.¹⁴⁴ Putin accomplished this through changes to the composition of the Council of the Federation, particularly by requiring that the president appoint formerly elected gubernatorial representatives, rather than allowing the people to elect their representative.¹⁴⁵ Technically, this requirement did not violate the Constitution. While it does require that two representatives from each component of the federation are elected to the Council, it does not prescribe a method for choosing the representatives.¹⁴⁶ These changes ensured a new composition of the Council of Federation, which has been reflected in the compliance and passivity of the upper chamber of the Council.¹⁴⁷

Further entrenching the power of the federal government, and in order to exert control over the people, Putin also created the office of the *polnomochennyi predstavitel' prezidenta* ("polpredy"), a "plenipotentiary representative of the president," for each of the seven super-districts in Russia.¹⁴⁸ The *polpredy* oversee the seven Russian districts, and are considered watchdogs of the president, supervising implementation of federal laws and providing information to the president.¹⁴⁹ Five of the first seven *polpredy* had experience in the military or security forces.¹⁵⁰

The above changes, although each technically constitutional, have altered the governmental structures in Russia, crippling the federalist system the Constitution creates. To this end, changes made under Putin ultimately allowed him to consolidate power to the executive. This, in turn, has severely undermined the Constitution's effectiveness in remedying the political crisis using its federalist check.

¹⁴³ *Id.* at 322.

¹⁴⁴ See Bressler, *supra* note 51, at 119.

¹⁴⁵ *Id.* at 112.

¹⁴⁶ See Ross, *supra* note 137, at 172.

¹⁴⁷ *Id.* at 174. For example, while in 1996-99 the Federation Council rejected about 23% of the legislation sent to it by the State Duma, today it quickly considers and approves all bills it is sent. *Id.*

¹⁴⁸ Hans Oversloot, *Reordering the State (without Changing the Constitution): Russia Under Putin's Rule, 2000-2009*, 32 REV. OF CENT. AND E. EUR. L. 32, 50 (2007).

¹⁴⁹ *Id.* at 50-51.

¹⁵⁰ *Id.*

C. *Chronic Party Underdevelopment Has Undermined the Constitution's Ability to Remedy Russia's Political Crisis*

Another widely recognized pillar of democracy is the existence of political parties.¹⁵¹ Nevertheless, and despite the 1993 Constitution's preservation of a "multi-party system,"¹⁵² parties have failed to significantly influence Russian politics under Putin's regime.¹⁵³ United Russia operates predominantly to serve the President's wishes.¹⁵⁴ Indeed, other parties in Russia have exerted little influence over Russia's presidents, prime ministers, and the Federation Council, and only moderate to little influence over the State Duma.¹⁵⁵

Despite ostensible party affiliation by Putin and other presidential candidates, parties have not played a significant role in presidential politics since the adoption of the 1993 Constitution.¹⁵⁶ Neither Medvedev nor Putin ever affiliated with a party.¹⁵⁷ Additionally, President Yeltsin distanced himself from parties, including those that supported him.¹⁵⁸ Furthermore, parties have rarely played a role even for candidates who were not elected.¹⁵⁹ Indeed, in 1991, only the third-place candidate had a real party affiliation.¹⁶⁰ In 1996, three of five serious candidates were affiliated with a party.¹⁶¹

Parties have also played little role in the legislature.¹⁶² They have failed almost completely to infiltrate the Federation Council, the legislature's upper house.¹⁶³ However, they have played a real role in the State Duma.¹⁶⁴ Indeed, four different parties competed in every State Duma election in the 1990s.¹⁶⁵ Nevertheless, the State Duma is the lowest chamber of the legislature and less powerful than the Federation Council.¹⁶⁶ That no new party has managed to challenge these four established parties

¹⁵¹ See McFAUL, PETROV, & RYABOV, *supra* note 50, at 105.

¹⁵² KONSTITUTSIYA ROSSIYSKOI FEDERATSII [KONST. RF] [CONSTITUTION] § 1, ch. 1, art. 13, cl. 3 (Russ.) ("Political plurality and the multi-party system shall be recognized in the Russian Federation.").

¹⁵³ See McFAUL, PETROV, & RYABOV, *supra* note 50, at 108.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ See Bressler, *supra* note 51, at 102.

¹⁵⁹ See McFAUL, PETROV, & RYABOV, *supra* note 50, at 108.

¹⁶⁰ *Id.*

¹⁶¹ *Id.*

¹⁶² *Id.* at 109.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ See McFAUL, PETROV, & RYABOV, *supra* note 50, at 110.

¹⁶⁶ Metcalf, *supra* note 18, at 134.

exacerbates this problem.¹⁶⁷ Consequently, even in the State Duma, parties play a small role in comparison to the role played by parties in other democratic countries.¹⁶⁸

Parties have not successfully reached much of Russia's population.¹⁶⁹ For example, a survey conducted in 2004 indicated that only United Russia (the party Putin has the most ties to) has made an impact on the Russian people.¹⁷⁰ Furthermore, only about 10% of people reported having ever spoken with a party.¹⁷¹ Additionally, evidence shows that the people are simply inclined to accept Putin's policy approaches.¹⁷² This perhaps contributes to the disconnection they feel with political parties in general.¹⁷³

Separation of powers, federalism, and the development of political parties, accomplished through incremental, technically constitutional legislation, have failed in Russia and have crippled the 1993 Constitution. Consequently, the Constitution is unable to bring about a return to the democratic political structure it set out to create, and instead ensures that the President remains the center of the government and that the other branches cater to his will. Together, the failure of democracy and the failure of the Constitution to save democracy demonstrate that the Russia is experiencing a constitutional crisis.

V. THE RESTORATION OF DEMOCRACY AND INSTITUTIONAL SAFEGUARDS CAN REMEDY RUSSIA'S CONSTITUTIONAL CRISIS

Despite the dire picture painted in Parts II and III, recent developments indicate that the situation in Russia is not as dire as it might appear. It is potentially remediable.¹⁷⁴ Indeed, there is reason to believe that Russia's Constitution and political system could be revitalized through political and legal reform.¹⁷⁵ The failure of democracy could be resolved first by restoring free media and developing other media outlets in Russia. Second, it could be achieved by restoring free and fair regional elections in Russia. Third, it could be achieved by restoring free and fair presidential election. The inability of the 1993 Constitution to remedy the political crisis should be resolved by reinstating its institutional safeguards, namely the

¹⁶⁷ MCF Faul, Petrov, & Ryabov, *supra* note 50, at 111.

¹⁶⁸ *Id.*

¹⁶⁹ See Bressler, *supra* note 51, at 120.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.* at 121.

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ See Bressler, *supra* note 51, at 120.

separation of powers, federalism, and multi-party development. This section will show how each of these solutions can salvage the 1993 Constitution.

A. A Revival of Free Media and Return to Free Elections Will Help Strengthen and Restore Democracy in Russia

Russia's political crisis exists in part because in silencing his critics Putin undermined free elections. These changes have effectively killed democracy in Russia, resulting in a political crisis. Nevertheless, Russia's political crisis could and should be remedied by restoring the freedom of the press and renewing the democratic nature of regional and presidential election. Specifically, Russian dissidents could overcome Putin's monopoly on traditional media by organizing and voicing their dissatisfaction through online media and social networking sites. Furthermore, Russians should restore the democracy of regional elections and presidential elections by eliminating "first-past-the-post" regional elections, adding a "votes against all" category to ballots, and establishing minimum turnout thresholds. Finally, free and fair presidential elections could be restored by abolishing the practice of anointing successors, press coverage of covering opposition candidates, and minimizing state involvement in campaigns.

1. Russians Should Overcome Putin's Monopoly on Traditional Media by Capitalizing on Online Media and Social Networking Sites

Russian citizens should help remedy Russia's political crisis as can leaders committed to democracy political strength by voicing dissatisfaction with the status quo. Protests in the winter of 2011 and 2012 indicated that this remedy is reasonable, and that Russian citizens may not be as complacent as some Western commentators have assumed them to be, and may no longer tolerate the defecation of their Constitution and the structures it sets out to safeguard.¹⁷⁶ Indeed, in December 2011, "tens of thousands of citizens" protested in Moscow for a huge antigovernment demonstration.¹⁷⁷ The protests were the first of their type since Putin obtained the Presidency in 2000.¹⁷⁸ To ensure that such dissidents are heard, any media that remains free should cover the protests and ensure that their messages are disseminated. Because of the comprehensive state control¹⁷⁹ this may

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ See Remington, *supra* note 107, at 974.

¹⁷⁹ Described in Part III.A.1.

require the use of untraditional media sources such as online dissemination, specifically, informal blogs and coverage by international sources.

Dissidents' voices, stemmed in large part by the December 2011 protests, may be gaining traction, indicating that mobilization of the Russian people may indeed be working slowly to remedy the political crisis.¹⁸⁰ This is demonstrated by recent parliamentary elections, which may represent a move away from autocratic control of United Russia.¹⁸¹ Indeed, in those elections, United Russia barely maintained a 50% majority, with three minority parties now represented in parliament.¹⁸² This may indicate that the people will no longer acquiesce to Putin and United Russia's unbridled power, and that Russia still contains remnants of democracy.¹⁸³

Recent revolutions and protests in Africa and the Middle East indicate that use of social networking sites and nontraditional online media may be a viable option for voicing opposition to the Kremlin and bringing about a return to democracy.¹⁸⁴ For example, social media proved a valuable tool for organizing opposition to Egypt's President Mubarak in the summer of 2011, allowing for mass protests and a relatively peaceful revolution.¹⁸⁵ Thus, while Russians may be unable to use traditional media outlets, social networking sites could be a way to overcome Putin's monopoly on the media.

President Putin and Prime Minister Medvedev continue to pay lip service to democracy.¹⁸⁶ For example, in 2010, Putin defended his commitment to democracy, saying that Americans "first elect the electors and then they vote for the presidential candidates," but that in Russia "the president is elected through the direct vote of the whole population," which, "might be even more democratic."¹⁸⁷ Furthermore, President Medvedev has repeatedly reiterated his own commitment to democracy, going so far as to

¹⁸⁰ *Id.*

¹⁸¹ David M. Herszenhorn & Ellen Barry, *Majority for Putin's Party Narrows in Rebuke from Voters*, N.Y. TIMES, Dec. 5, 2011, http://www.nytimes.com/2011/12/05/world/europe/russians-vote-governing-party-claims-early-victory.html?_r=1&scp=1&sq=Majority%20for%20Putin%E2%80%99s%20Party%20Narrows&st=cse.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *Id.*

¹⁸⁵ See Jennifer Preston, *Movement Began with Outrage and a Facebook Page that Gave it an Outlet*, N.Y. TIMES, Feb. 11, 2011, <http://www.nytimes.com/2011/02/06/world/middleeast/06face.html?page-wanted=1&sq=social%20network%20egypt&st=cse&scp=2>.

¹⁸⁶ Rebecca Leung, *Putin Defends His 'Democracy'*, CBS NEWS, Feb. 11, 2009, http://www.cbsnews.com/2100-18560_162-693422.html?pageNum=2&tag=contentMain;contentBody.

¹⁸⁷ *Id.*

call for reforms of Russia's political system.¹⁸⁸ This indicates that, despite their actions otherwise, even the most staunchly undemocratic Russian leaders might respond to outcry from the people.

2. *The Freedom of Regional Elections Can be Restored by Eliminating "First-Past-the-Post" Votes, Adding a "Votes Against All" Category to Ballots, and Establishing Minimum Voter Turnout Thresholds*

Several changes to regional elections will help restore the democracy of regional elections. First, the elimination of "first-past-the-post" voting, the addition of a "votes against all" category to ballots, and the use of minimum turnout thresholds will help put democracy back into democratic elections. "First-past-the-post," single mandate voting in regional elections, in which whoever gets the most votes wins, has allowed already-powerful parties to maintain control and thwart minority parties.¹⁸⁹ Consequently, this form of voting should be eliminated and replaced with absolute majority rule voting, in which the winning party must achieve a majority of the votes in order to gain the seat(s) it is running for.¹⁹⁰ While it could be argued that this bolsters the "tyranny of the majority," majority rule voting could force the majority to occasionally acquiesce to minority viewpoints and would require the electorate to clearly legitimize that party.¹⁹¹ As it stands now, first-past-the-post regional elections allow the majority party to ignore minority party positions.¹⁹²

Russia's regions should also reinstate the "votes against all" category on their ballots. This category, while seeming perhaps merely symbolic, would operate as a clear protest of the status quo, and could restore voters' perception that their voices matter.¹⁹³ The drawback of "votes against all" categories is the unlikely chance that they will result in a failure to elect any person to a position.¹⁹⁴ Nevertheless, the use of a "votes against all" category would represent a small step which would allow Russian voters an opportunity to voice their displeasure with candidates or the government in

¹⁸⁸ Ellen Barry & Michael Schwirtz, *At Presidency's 11th Hour, Medvedev Proposes Systemic Change*, N.Y. TIMES, Dec. 11, 2011, <http://www.nytimes.com/2011/12/23/world/europe/dmitri-medvedev-urges-reforms-for-russia-in-address.html?scp=1&sq=Medvedev%20Presidency%20hour&st=cse>.

¹⁸⁹ See Ross, *supra* note 66, at 642.

¹⁹⁰ See Keith L. Dougherty & Julian Edward, *The Properties of Simple vs. Absolute Majority Rule: Cases Where Absences and Abstentions are Important*, 85 J. OF THEORETICAL POLITICS 122, 122 (2010).

¹⁹¹ See Ross, *supra* note 66, at 646.

¹⁹² *Id.*

¹⁹³ *Id.* at 648.

¹⁹⁴ *Id.*

general, and to do so anonymously.¹⁹⁵ Furthermore, publishing these votes to the public could encourage other forms of dissent.

Finally, minimum turnout thresholds should be imposed upon regional elections. Minimum turnout thresholds are designed to ensure that a particular candidate does not win by default, and that candidates are not incentivized to discourage citizens from exercising their franchise in voting. This simple reform would force Russia's regional candidates to achieve a true mandate from voters, and would also simply support participation in the electoral process, and therefore democracy, by Russians.¹⁹⁶

3. Russia Should Restore Democratic Presidential Elections by Engaging in Normative and Electoral Reform

The democracy of presidential elections should be restored by abolishing the practice of anointing successors, increasing coverage of opposition candidates, and minimizing state involvement in campaigns. First and foremost, the practice of effectively "anointing successors," should be abolished. Anointing successors not only discourages voters by signaling that the President has already chosen a successor, but it also gives the anointed candidate an unfair advantage, by catapulting their publicity campaign and putting the force of the Kremlin behind them. Furthermore, in a state in which opposition is seldom tolerated, anointing successors is likely to discourage minority candidates from expending time and capital to overcome the anointed successor's advantage.¹⁹⁷ Consequently, the practice should simply be legally abolished.

To further bolster the democracy of presidential elections, media outlets in Russia should make a point of covering opposition candidates, who are at a major disadvantage when it comes to disseminating their message and reaching voters. While Putin and United Russia's control over conventional press sources likely render this infeasible through traditional outlets, social networking sites, and blogs could help remedy this problem. The existence of Vkontakte, Russia's largest social networking site, evidences the viability of this option. In the future, however, it would also be advisable for the Kremlin to relinquish control of traditional media outlets.¹⁹⁸

Finally, state involvement in campaigns for president should be minimized. Specifically, state resources should not be used to fund or

¹⁹⁵ *Id.*

¹⁹⁶ *Id.* at 647.

¹⁹⁷ See McFAUL, PETROV, & RYABOV, *supra* note 50, at 295.

¹⁹⁸ See Skyner, *supra* note at 58, at 265, 271.

support particular candidates' campaigns. Like abolishing political anointment of successors, minimizing state involvement will help ensure that no candidate receives the unfair advantage of a state mandate. Furthermore, it will remove the fear of voters that choosing a candidate not endorsed by the Kremlin will not meet with retribution by authorities. Together, this reform, along with the abolishment of the practice of anointing successors and coverage of minority candidates, will simply ensure that voters have a real choice when it comes to presidential elections, and that they will not be afraid to exercise their franchise freely.

B. Legislative and Constitutional Changes Can Restore the Separation of Powers, Federalism, and Party Development in Russia

While restoring democracy is the first step away from autocracy and toward restoration of the 1993 Constitution, democracy in Russia should be safeguarded by restoring the separation of powers, federalism, and party development in Russia. The separation of powers in Russia can be restored by weakening the executive branch of government and strengthening the other branches. Federalism can be restored by retracting Putin's regional electoral reforms and by eliminating the office of the *polpredy*. Finally, party development can be improved by breaking-up United Russia, fostering the development of minority parties, and rejecting political patronage.

1. Russians Should Amend their Constitution to Weaken the Executive Branch and Strengthen the Judicial and Legislative Branches, Thereby Restoring the Separation of Powers

To bolster legislative reforms, Russians should consider amending the 1993 Constitution to weaken the executive branch and strengthen other branches. This would take considerable political effort,¹⁹⁹ but would nevertheless help restore the Constitution's safeguards of separation of powers. First, the clause of the Constitution giving the President the power to formally propose legislation should be removed.²⁰⁰ This would require more widespread support before the President's policies are introduced and insulate legislators from presidential control and over-influence.

Furthermore, a recent amendment to the Constitution, which extended presidential terms from four to six years, should be removed.²⁰¹ As described above, the ability of a president to remain in office for twelve

¹⁹⁹ See KONSTITUTSIYA ROSSIYSKOI FEDERATSII [KONST. RF] [CONSTITUTION] § 1, ch. 9, arts. 134-137, cl. 3, (Russ.) (establishing a complex procedure for amending the Constitution).

²⁰⁰ *Id.* § 1, ch. 4, art. 84.

²⁰¹ See Barry, *supra* note 2.

consecutive years may come to mirror some of the terms of the Soviet autocrats, ensuring, therefore, that the president is not challenged politically by minority or alternative viewpoints for an additional two years.²⁰² Shortening the length of presidential terms could enhance political discourse by allowing other voices to enter the political arena more often.

Finally, the Constitution should be amended to impose term limits on the president. As it stands, a Russian president is limited only to two consecutive terms.²⁰³ This means that, as Putin has done, a president can briefly relinquish power without losing his or her political power or control, and that interim presidents assume the presidency only symbolically.²⁰⁴ As a state with a long and arduous history of autocracy, and which has fought constantly against falling into autocracy once more, shorter term limits appear the most immediate avenue for Russia to avoid acquiescing to its autocratic tendencies once more.

Regardless of whether the political remedies suggested above are enacted, long-lasting reform will require fundamental legal reconstructions. First, therefore, Russians should retract Putin's election legislation which has consolidated power in the Kremlin and undermined direct elections.²⁰⁵ Second, Russians should amend the 1993 Constitution to reinstate the structural safeguards of the separation of powers and federalism. Together, these changes could protect Russia from experiencing another constitutional crisis.²⁰⁶

2. *Retracting Putin's Regional Electoral Reforms and Eliminating the Office of the Polpredy Will Restore Federalism in Russia*

A restoration of the Constitution's remedial safeguards should also be achieved by reestablishing federalism in Russia. This can be achieved through the repeal of Putin's regional electoral changes and through the elimination of the regional *polpredy*. The December 2011 parliamentary elections, discussed in Part III.A.2, may have given the legislature the ability to rescind the changes, in particular the legislation which established presidential appointment for regional governors and consolidated power in the political party United Russia.²⁰⁷

²⁰² *Id.*

²⁰³ See KONSTITUTSIIA ROSSIISKOI FEDERATSII [KONST. RF] [CONSTITUTION] § 1, ch. 4, art. 81, cl. 1 (Russ.).

²⁰⁴ *Id.*

²⁰⁵ See Ross, *supra* note 66, at 647.

²⁰⁶ See Gardner, *supra* note 106, at 959.

²⁰⁷ See Herszenhorn & Barry, *supra* note 181.

As discussed above, Putin oversaw the passage of legislation that ensures regional governors now serve the interests of the president. First, he pushed through legislation that requires presidential approval of candidates nominated for governor, and gave the president the power to appoint governors.²⁰⁸ Additionally, he facilitated the passage of a federal law that discharged the governors of their duty to appear at the capitol more than once a month.²⁰⁹ In order for governors to be truly representative of their districts, this legislation should be repealed. Doing so will help ensure that the governors now represent the people's interests, and not the President's.²¹⁰

Furthermore, changes to the composition of the Council of the Federation, brought about particularly by the fact that the governors, and not the people now each appoint a representative to the Kremlin, have diluted direct representation, and caused the upper chamber of Russia's legislature to be controlled by the Kremlin.²¹¹ This has been reflected in the compliance and passivity of the upper chamber of the Council.²¹² Those legislators committed to democracy should restore direct election of governors' representatives in Russia's people. This would bring about a return to government by the people.

As described above, Putin created the office of the *polpredy* for each of the seven super-districts in Russia, during his time as President.²¹³ The *polpredy* oversee the seven Russian districts, acting as watchdogs of the president, supervising implementation of federal laws, and providing information to the president.²¹⁴ The offices of the *polpredy* should be abolished. Doing so will remove a level of oversight by the Kremlin, allowing the seven districts to engage in self-governance free from Kremlin control.²¹⁵

²⁰⁸ See Ross, *supra* note 66, at 644.

²⁰⁹ See Oversloot, *supra* note 148, at 47.

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² See Ross, *supra* note 137, at 174. For example, while in 1996-99 the Federation Council rejected about twenty-three percent of the legislation sent to it by the State Duma, it now quickly considers and approves all bills it is sent. *Id.*

²¹³ See Oversloot, *supra* note 148, at 50.

²¹⁴ *Id.* at 50-51.

²¹⁵ *Id.*

3. *Russia's Multi-Party System Can Be Bolstered by Dissolving United Russia, Supporting the Development of Minority Parties, and Rejecting Excessive Political Patronage*

Primarily through political patronage, Putin and his preferred party, United Russia, have ensured that United Russia's members in parliament vote according to the president's will.²¹⁶ Evidencing this is the fact that the last decade in the State Duma has seen remarkable cohesiveness in voting for United Russia's representatives.²¹⁷ In order to bolster the development of minority political parties, therefore, Russia's leaders should reject the political patronage of the past and recommit to democracy.

While democracy is occasionally susceptible to kickbacks and lobbying,²¹⁸ United Russia's massive consolidation of power and capital has ensured its control of most elective positions in Russia.²¹⁹ This control by United Russia has allowed Putin to win some significant legislative victories, which have in turn compromised constitutional safeguards.²²⁰ In order to ensure that the legislature attains independence from Putin and that they represent the will of the people, the political patronage of the past should be limited by attitudinal changes by the legislator and, if necessary, legislative changes to limit the amount of acceptable patronage.²²¹ This could be done through legislation, and would likely be bolstered by reinstating direct representation, as described below. This would insulate legislators slightly from executive control imposed through United Russia.²²²

Finally, because United Russia is now comprised of several political factions, it should consider breaking into several smaller parties. While this would likely require United Russia itself to make such a change, doing so would bring to an end its monopoly on Russian governance and spread its resources among various ideologies. More importantly, breaking up United Russia will dilute its power and prevent it from continuing to keep Russia in an indefinite autocracy. By diffusing United Russia's solidarity, other parties will be able to counterbalance control and penetrate Russian government with their own candidates.

²¹⁶ See Remington, *supra* note 107, at 960 (arguing that United Russia's depends upon a steady stream of revenue to preserve the loyalty of its "national network" of public officials).

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* at 968.

²²⁰ *Id.* at 974.

²²¹ *Id.*

²²² *Id.*

VI. CONCLUSION

Putin's renewed reach for power and expected reelection demonstrate that Russia is experiencing a constitutional crisis. As it stands today, the Constitution can do nothing to revitalize the democratic structure of government it created. This is demonstrated first, by Russia's current political crisis, evidenced by the demise of democracy in Russia. Second, it is shown by the Constitution's inability to remedy this crisis, which has resulted from a breakdown in the Constitution's structure and requirements, specifically the collapse of the separation of powers, severe party underdevelopment, and the failure of democracy in Russia.

Unfortunately, the Constitution contains the tools which have led to its weakening and allowed for incremental legislation to undermine its democratic safeguards. This is only possible if Russian leaders and citizens experience an attitudinal change, using legislative and constitutional changes to restore the Constitution's safeguards and structure. While the struggle to return to democracy is likely to be arduous and slow, it is undoubtedly possible if Russian leaders and citizens garner the political will and strength to demand a return to the Constitution that they adopted in 1993.