

## Cato Institute Policy Analysis No. 141: Term Limitation: An Idea Whose Time Has Come

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### Executive Summary

Not since Proposition 13 created a nationwide tidal wave of tax protest has a political idea caught on with such speed. Polls show that over 70 percent of Americans back a limit on terms for elected officials, and by next month voters in states where one of every seven Americans live may have voted some form of term limits into law.

Elected officials from city council members to President Bush are scrambling to get to the front of the term-limit parade. As Mike Kelley of Colorado's Independence Institute writes, "Term limitation could become in the 1990s what tax limitation was in the 1970s--a popular movement politicians abhor, but one to which they must respond." (1)

The gulf between legislators and the American people has never been greater than on the issue of term limits. A Gallup survey found that 66 percent of U.S. House members oppose limiting the number of congressional terms, while opinion polls show two-to-one support among all demographic groups. (2) (See Table 1.) The idea is overwhelmingly popular with Americans regardless of party, ideology, or income. Blacks favor it even more than whites, women more than men. Martin Plissner, political director for CBS News, says he has "never seen an issue on which there was so little demographic variation." (3)

Term limits were a part of the nation's first governing document, the Articles of Confederation, and were left out of the Constitution largely because they were thought of as "entering too much into detail" for a short document. Nonetheless, self-imposed limits on officeholders were long a part of America's public-service ethic; members of Congress returned to private life after a couple of terms. With the rise of the modern superstate, term limitation, once the accepted American tradition, has been replaced by congressional careerism. That is why the voluntary service limitations of the past must now be made part of the nation's laws.

<b>Table 1</b>		
<b>Responses to "Do You Think There Should Be a Limit to the Number of Times a Member of the House of Representatives Can Be Elected to a Two-Year Term?" (percentage)</b>		
	Yes	No
Total sample	61	21
By party		
Republican	64	28
Democrat	60	30

Independent	58	33
By philosophy/ideology		
Liberal	58	34
Moderate	64	30
Conservative	63	29
By presidential preference		
Favored Bush	61	32
Opposed Bush	60	23
By race		
White	61	31
Black	61	27
By gender		
Men	57	35
Women	63	27

Source: New York Times/CBS survey of 1,515 adults, conducted March 30 - April 2, 1990, with a 3 percent margin of error.

### Where Does the Term-Limit Idea Come From?

Term limitation is not a new idea, just one that the realities of modern politics have made necessary. Something must be done to help repair the damage caused by the "permanent government" of career politicians that now dominates the U.S. Congress and most state legislatures.

Over the years, term limits for Congress have been endorsed by the likes of Thomas Jefferson, Abraham Lincoln, Harry Truman, Dwight Eisenhower, and John F. Kennedy. Many political scientists have supported the idea since the 1951 constitutional amendment limiting presidents to two terms began creating an imbalance of power in favor of the legislative branch.

The promotion of turnover in the legislative branch predates the Constitution. The Pennsylvania constitution of 1776, the most radical constitution of the revolutionary era, had a strict limit of four years on legislative service. In 1777 the Continental Congress, the direct predecessor of today's Congress, allowed delegates to serve a maximum of three years.(4) The primary motivation was to ensure that legislators reflected the make-up and outlook of the citizenry they claimed to represent.

However, the first attempt to enforce the term limits met with understandable resistance from the incumbent delegates. In 1784 an attempt to deny certain delegates their seats led to a near-rebellion on the floor of the Continental Congress. James Monroe commented, "I never saw more indecent conduct in any assembly before."(5)

When the Constitution was debated in 1787, the sour experience with term limits in the Continental Congress led delegates to hesitate to propose them for the nation's new charter. But there is no doubt that encouraging turnover of legislators was popular at the Constitutional Convention. A proposal by James Madison for three-year elections to the House of Representatives was attacked by Massachusetts delegate Elbridge Gerry as a form of "limited monarchy." Eventually, a proposal for two-year terms was adopted unanimously.(6)

Roger Sherman of Rhode Island summed up the feeling of many delegates when he commented that Congress should be made up of "citizen-legislators" who through the principle of rotation in office would "return home and mix with the people. By remaining at the seat of government, they would acquire the habits of the place, which might differ from those of their constituents."(7)

While mandatory term limits were not included in the final draft of the Constitution, many delegates assumed that voluntary term limits would be the norm. It was never thought that serving in Congress would become a career. And indeed, in the first House election after George Washington was elected president, 40 percent of incumbents were defeated, allaying fears of an entrenched "government of strangers."<sup>(8)</sup>

The practice through the first half of the 19th century was for members to serve only four years in the House and six in the Senate; in every election 40 to 50 percent of Congress left office.<sup>(9)</sup> Abraham Lincoln, for example, had an informal rotation agreement with his political rivals. He served a single term in the House in the 1840s and then moved back to Illinois, not to return to Washington until he was elected president. Lincoln was a firm supporter of rotation in office. He once wrote, "If our American society and United States Government are overthrown, it will come from the voracious desire for office, this wriggle to live without toil, work and labor-- from which I am not free myself."<sup>(10)</sup>

As political scientist Charles Kesler notes, such rotation agreements were not uncommon; they were signs of a vigorous intraparty political life as well as keen competition between the parties. He noted that "the parties and the country enjoyed the best of both worlds, . . . a circulation of capable and experienced men through public office, with the possibility of keeping truly exceptional ones in office if circumstances demanded it."<sup>(11)</sup>

The conduct of the House's business also discouraged extended tenure in office. The House leadership was not driven by seniority, and party control frequently shifted. Members who wanted a career in politics were compelled to run for the Senate, seek a position in the executive branch, or return home and run for governor. Of the seven Speakers of the House elected between 1870 and 1894, for example, one was elected in his third term of service, two in their fourth, two in their fifth, one in his sixth, and one in his seventh.<sup>(12)</sup> In 1811, Henry Clay was elected Speaker of the House at the beginning of his first term. Contrast that with Jim Wright, elected Speaker in 1987 in his 17th term, or Thomas Foley, elected in 1989 in his 13th term!

House seniority began to rise after the turmoil of the Civil War and the establishment of standing committees made seniority important. Between 1860 and 1920, the average length of service doubled from four to eight years. According to Rep. Bill McCollum (R-Fla.), in 1901 when the 57th Congress convened, for the first time less than 30 percent of members were freshmen.<sup>(13)</sup> In 1981, when the 97th Congress convened, 17 percent of the members were newly elected. In 1989, when the 101st Congress convened, fewer than 8 percent were newly elected. (See Table 2.)

Period	Percentage of Incumbents Seeking Reelection	Percentage of Incumbents Defeated	Percentage of Incumbents Retained
1832-40	56.0	18.3	45.8
1842-50	44.5	19.4	35.9
1852-60	55.4	24.5	41.8
1862-70	54.7	16.4	45.7
1872-80	58.5	20.1	46.7
1882-90	63.3	18.5	51.6
1892-1900	69.3	15.8	58.4
1902-			

10	78.6	9.8	70.9
1912-20	78.7	12.9	68.5
1922-30	85.9	10.0	77.3
1932-40	82.7	14.2	71.0
1942-50	85.3	12.5	74.6
1952-60	88.9	6.3	82.3
1962-70	88.8	6.4	83.1
1972-80	86.7	5.6	81.8
1982-88	90.9	3.5	87.7
1984-88	91.3	2.4	89.1
1988	93.8	1.5	92.4

Source: Walter Dean Burnham, letter to author.

Another major change in Congress since the 19th century has been in the amount of time it meets. Even 60 years ago, Congress would meet for two months a year, and meeting for three months was considered unusual. A congressman was more or less compelled to be a citizen-legislator who would go home after a session and spend most of his time running a business or practicing law or whatever. Today the sheer size and scope of the federal government have made service in Congress a fulltime job, and most who are elected have to give up their careers. With each passing year of congressional service, members are more reluctant to go back home and reenter the job market. In 1989 ethics legislation actually banned members of the U.S. House from practicing many professions and severely curtailed their power to earn any outside income.

The first popular movement for term limitation came in the 1940s, after President Franklin Roosevelt broke the two-term tradition started by George Washington. The Twenty-Second Amendment was introduced in 1947 by the new majority of Republicans in Congress. But despite its partisan origins, many members felt that since the two-term limit had been violated, it was necessary to put it into the Constitution. The amendment was ratified in 1951 with widespread support. The Washington Post editorialized that "power-grasping officials are common enough in both history and current world experience to warrant this safeguard."<sup>(14)</sup> However, members of Congress were horrified at any thought that the principle of term limits should extend to the legislative branch. During the 1947 debate on the Twenty-Second Amendment, Sen. W. Lee O'Daniel (D- Tex.) offered an amendment to limit the terms of all federal officials. His proposal was rejected 82 to 1, with O'Daniel's the only vote in favor.<sup>(15)</sup> In 1950 President Harry S Truman proposed a 12-year limit on service in each chamber of Congress, but his proposal got nowhere.

Executive-branch term limits are also common at the state level. The governors of 25 states are limited to two terms, and in Virginia, New Mexico, and Kentucky all statewide officials are limited to a single term.<sup>(16)</sup>

Attempts to revive the tradition of rotation in office for members of Congress surfaced in the late 1970s. Sens. William L. Armstrong (R-Colo.) and Gordon J. Humphrey (R-N.H.) both indicated that they would retire after two terms in the Senate and, to everyone's surprise, did precisely that. For others the addiction of higher office proved to be too much. As first-time candidates Sens. Dennis DeConcini (D-Ariz.), Malcolm Wallop (R-Wyo.), John C. Danforth (R-Mo.),

and Nancy Landon Kassebaum (R-Kans.) all pledged to serve only 12 years in office. All are now in their third term or running for it. In 1988 DeConcini was running for a third term on the claim that he could better fight for a 12-year limitation if he was in the Senate for 18 years. Kassebaum announced her candidacy for a third term in 1989 by saying that she was convinced her seniority "could be put to good and worthwhile purposes."(17)

### **Is the Term-Limit Movement Bipartisan, or Is It Just Republicans Frustrated at Their Lack of Power in Congress?**

Of the 35 former members of Congress on the advisory board of Americans to Limit Congressional Terms, eight are Democrats.(18) In California, Democratic attorney general John Van de Kamp has sponsored a ballot initiative that imposes a 12-year limit on state legislative service. He explains the need for the initiative: "Electoral competition has declined so dramatically that state officials, once elected, hold virtually a life-time lock on state office, with the result that citizen interest and participation in the political process have dropped to record lows."(19)

John Lindsay, a former Republican mayor of New York City, member of the House, and later contender for the Democratic presidential nomination, says the 98 percent reelection rate for House incumbents has convinced him that "you no longer have effective competition." A term limit would mean there was at least "some way to sweep out the old wood."(20)

His views were echoed by another New York Democrat, the late Ned Pattison, who died last August. A member of the 1974 "Watergate baby" class in Congress, Pattison became convinced after he left Congress that term limits were necessary. A major reason was to counteract the tendency of Congress to vote for bigger government merely for its ability to help legislators to bring pork-barrel projects home and to get credit for helping their constituents through the maze of federal regulations. "Some members actually enjoy creating bureaucracy," he said. "They then become more indispensable to their constituents, and thus more likely to be re-elected. The job becomes administrative rather than political."(21)

Cleta Mitchell, a self-described liberal Democrat who served for three years as chairman of the Oklahoma State House Appropriations Committee, says term limits will actually help her party. "Democrats have to show they offer the American people more than the simple powers of incumbency," she says. "We need to elect more idealistic newcomers and fewer cynical veterans." Her own experience is revealing. "When I first was elected in 1976, I wanted to rock the boat. I often told my colleagues that they should try something new. They would respond by rolling their eyes and saying, 'It's always been done this way.' Then one day I found myself saying the same things that they had. I knew it was time for me to go."(22)

Even savvy Democrats are surprised by the unrepresentative nature of Congress when they come into direct contact with it. Richard Phelan was an active Democrat and national convention delegate when he was named special counsel to the House Ethics Committee in the Jim Wright case. He returned to Chicago in 1989 with a new appreciation of what is wrong with Washington. His recent comments before the Federal Bar Association are worth quoting.

In 1988, all but one of the incumbents who chose to run and [were] defeated had ethical problems. Now what that says to me is that with the franking privilege, with the PACs, all of the other people had been scared off or weren't able to raise enough money. What we now have is a House of Lords instead of a popularly elected Congress. . . . It's difficult, if not impossible, for Members not to be reelected to it. I think that carries with it a great deal of problems. Lots and lots of people have suggested to me that one of the things Congress ought to do is to just limit their own terms.(23)

### **Objections to Term Limitation**

Opponents of term limits raise several objections, both philosophical and practical, to the idea. Here are the most frequently cited, together with responses.

### **Won't Term Limits Restrict the Voters' Choices at the Ballot Box?**

That implies that voters now have a choice at the ballot box. Common Cause reports that, as of September 30, of the

405 House incumbents seeking reelection this fall, 78 lack major-party opponents. Another 218 have opponents who have raised less than \$25,000, and 86 have opponents who have raised more than \$25,000 but less than half the amounts the incumbents have raised. Only 23 races are remotely competitive. (See Figure 1.) People don't vote for someone they've never heard of, and skewed campaign laws mean that almost all the contributions to House races flow to incumbents.

Voters are deciding that the only way they can ensure a real choice at the ballot box is to democratically guarantee that no one has a lifetime hold on an office. If term limits pass in, say, California, voters there will be freely choosing to open the political process to outsiders, women, and minorities who are often excluded by the presence of lifetime incumbents.

### **Won't Term Limits Disrupt the Way Congress Works?**

Yes, and that is one of the best arguments for term limits. Congress has become an ossified structure that accomplishes little of value, wastes much, and impedes progress made by other sectors of society.

Figure 1  
Incumbent House Members, 1990  
Source: Common Cause  
(Graph Omitted)

Limiting terms would limit abuse of the congressional seniority system by rotating power so it could not remain long enough with any one person for him or her to abuse it. Under the current seniority system, a handful of career-oriented congressmen chair key committees for years (for instance, Jamie Whitten, chairman of the House Appropriations Committee since 1979 and of its Agriculture Subcommittee since 1949; John Dingell, chairman of the Energy and Commerce Committee since 1981; and Dan Rostenkowski, chairman of the Ways and Means Committee since the same year) and control much of the legislative agenda, often preventing members from even voting on matters of national interest. (See Table 3).

Rep. Jamie L. Whitten (D-Miss.), who was elected 33 days before Pearl Harbor, is the powerful chair of the House Appropriations Subcommittee on Agriculture. Eight presidents have left office during Whitten's tenure and with them 17 secretaries of agriculture. Those officials have only transitory control over policy; Whitten is the "permanent secretary of agriculture."(24)

Term limitation would create a climate in which talented men and women from businesses and professions would want to run for Congress, since they would know they would reach a position of significant influence in a few short years instead of having to make a career of politics if they wanted to play a major role in Congress. Citizen-legislators would come to government briefly, then many would return to private life and live with the consequences of the laws they had passed. George McGovern, a senator for 18 years, recently bought a hotel in Connecticut. "I wish that someone had told me about the problems of running a business," he told the Washington Post. "I have to pay taxes, meet a payroll--I wish I had had a better sense of what it took to do that when I was in Washington."(25)

### **Are State Laws Limiting Terms of Federal Officeholders Constitutional?**

Colorado's proposed term-limit measure is unusual in that it extends the restriction to the state's eight-person congressional delegation. GOP state senator Terry Considine says this approach will avoid any fears about a "runaway" constitutional convention that would have to be called if Congress refused to adopt an amendment requested by two-thirds of the states. "If each state imposes limits on its own federal representatives, we can achieve our goal without a constitutional amendment," he says.(26)

Colorado's proposed limit on federal officeholders is controversial and its opponents claim it would be unconstitutional. Such limits are an unsettled area of law and would be challenged in the courts. However, there is some legal precedent for Considine's position.

Article 1, Section 4, Clause 1 of the Constitution gives the states the authority to set "the time, places and manner of

holding elections for Senators and Representatives," although Congress may "at any time by law make or alter such regulations."

Stephen Glazier, a Washington attorney, cites several Supreme Court and lower court rulings that have used that clause to uphold state election laws restricting who can run for Congress.(27) Such state laws have withstood constitutional challenges under both the First and Fourteenth amendments.

<b>Table 3</b>	
<b>Senior Members of the House of Representatives</b>	
Member	Number of Consecutive Two-Year Terms
Jamie L. Whitten (D-Miss.)	25
Charles E. Bennett (D-Fla.)	21
Jack Brooks (D-Tex.)	19
William H. Natcher (D-Ky.)	19
John D. Dingell (D-Mich.)	18
Dante B. Fascell (D-Fla.)	18
William S. Broomfield (R-Mich.)	17
Robert H. Michel (R-Ill.)	17
Silvio O. Conte (R-Mass.)	16
Robert W. Kastenmeier (D-Wis.)	16
Dan Rostenkowski (D-Ill.)	16
Neal Smith (D-Iowa)	16
Henry B. Gonzalez (D-Tex.)	15
Morris K. Udall (D-Ariz.)	15
Don Edwards (D-Calif.)	14
Sam M. Gibbons (D-Fla.)	14
Augustus F. Hawkins (D-Calif.)	14
Frank Horton (R-N.Y.)	14
Joseph M. McDade (R-Pa.)	14
J. J. Pickle (D-Tex.)	14
James H. Quillen (R-Tenn.)	14
Edward R. Roybal (D-Calif.)	14

Source: Congressional Research Service.

In 1974 in *Storer v. Brown* the Supreme Court upheld a California law barring independent candidates in congressional races who had changed to independent status within 11 months of the election. The court said that "there must be a substantial regulation of elections if they are to be fair and honest" and that the states' regulation under the Constitution of "the times, places and manner" of their congressional elections may include "the qualifications of candidates." The court stated that the electoral process must have competition of ideas, parties, and candidates. Glazier contends that in the current incumbent-protected political environment, where members of Congress are insulated from accountability, there is no such competition of ideas, parties, or candidates.

Later in 1974 a Pennsylvania federal court used the *Storer* decision to uphold a state law blocking the independent candidacy of an incumbent GOP congressman who had lost in his party's primary. The court found that states can restrict access of congressional incumbents to the ballot by requiring a one-year waiting period before such a person

can run for reelection.

In a 1982 case, *Clements v. Fashing*, the federal courts upheld a Texas resign-to-run law, which requires an official to quit a current office to run for another. The same reasoning has since been extended to uphold similar laws that prevented a New York judge and an Arizona county supervisor from running for Congress without first quitting their positions.

Glazier concluded from the case law that "the thrust of these cases is that the actions of a democratically elected state government will not be frustrated by the 'no additional qualifications' clauses, if the state limits candidates for its congressional races in a way that does not offend freedom of speech or equal protection." (28)

Critics of Glazier's approach argue that in the 1969 case of *Powell v. McCormack*, the Supreme Court held that Congress was powerless to exclude a member-elect who met the age, citizenship, and residency requirements of the Constitution. The point of the court's ruling was that Congress was unable to exclude a member-elect who met those requirements. It was silent on the issue of state regulation. Its argument against congressional exclusion was based on the principle that in a democracy the people should be able to elect whom they please.

But surely the near-impossibility of defeating an incumbent today should allow voters to democratically decide that the only way they can easily remove incumbents is to limit their terms. By a two-to-one margin, polls show that voters of all ages and income groups favor such drastic action to break up the automatic incumbent-reelection system.

In addition, the notion that the courts will allow states to protect the competitive nature of the political process is an old one. Lawrence Tribe, the noted Harvard constitutional law expert, says that "few prospects are so antithetical to the notion of rule by the people as that of a temporary majority entrenching itself by cleverly manipulating the system through which the voters, in theory, can register their dissatisfaction by choosing new leadership." Tribe goes on to note that "courts have reviewed rather summarily laws that specify eligibility requirements for particular candidates . . . after all, there will ordinarily be some eligible candidate to represent any given political persuasion." (29)

Senator Considine goes further and argues that since the Ninth and Tenth amendments to the Constitution grant the federal government only those powers explicitly delegated to it, the states have the right to act on any matter on which the Constitution is silent.

Considine cites precedents. The first is the practice of instruction, which was widespread in this country until the 1850s and never subjected to constitutional challenge. State legislatures required their U.S. senators to vote according to the state legislatures' majority views; the legislatures believed that since the Constitution gave them the power to elect senators to Congress, they also had the power to instruct. New Jersey and Ohio instructed their senators to support Andrew Jackson's presidential initiatives, and Vermont instructed its senators "to present anti-slavery resolutions to Congress." Some senators ignored instructions successfully. Others, however, were forced to resign when they disobeyed their legislatures. (30)

The second precedent involves the process by which direct election of U.S. senators was achieved. The Constitution originally provided that senators were to be elected by the state legislatures, not the people. Leaders in the Progressive movement of the late 19th century wanted to make Congress more directly accountable by requiring senators to be chosen by direct popular election, just as House members were.

The reformers bypassed the legislatures and passed laws in several states using the newly adopted system of state ballot initiatives. Those initiative laws set up direct party primaries for Senate candidates and often bound state legislators to vote for the winners of those primaries.

The system worked. By 1912 senatorial primaries were in use in 29 of the 48 states, and the Senate bowed to the inevitable and approved the Seventeenth Amendment, which provides for the direct election of senators. (31)

Considine thinks a similar grassroots effort using the initiative process could force Congress to pass a constitutional amendment to limit terms or, at the least, initiate other reforms limiting the power of incumbency.

## **Critics of Congress Call It a House of Lords. Isn't That Being Unfair?**

Article 1, Section 8 of our Constitution forbids the granting of any titles of nobility, but given the lifetime tenure of congressmen, "we might as well have dukes and barons in congress," says Pete du Pont, a former House member and governor of Delaware. Indeed, the 7 percent annual turnover in Britain's nonelected House of Lords is just below the 8 percent turnover in the House of Representatives.(32)

"Entrenchment of incumbents has turned senators into sovereigns and representatives into royalty," says Trudy Pearce, senior policy analyst for Citizens for Congressional Reform.(33)

David R. Mayhew, a professor of government at Yale, warns that the House is "becoming too impenetrable to be representative."(34)

"Many Congressmen feel that they've been elected for life. If they can control redistricting, stay alive and out of jail, they know that 99 times out of 100 they can have the job for as long as they want it," says former representative James Coyne of Pennsylvania.(35) It seems that even small ethical scrapes don't affect members; they get reelected anyway.

The modern-day powers of incumbency have become a shield protecting members of Congress from competition. The day that new members arrive on Capitol Hill, they are introduced to the "perk book." Officially called the Congressional Handbook, it contains 400 pages packed with useful information about how to send millions of pieces of propaganda by mail to constituents free of charge, how to spend generous expense and staff allowances, and how to get federal grants.

A limit on terms, say six years in each house, would ensure that there would be at least 178 new members of Congress each session and open opportunities for service to women and minorities whose political ambitions are now often blocked.

## **Isn't There a Lot of Turnover In Congress Now?**

That view is propounded most forcefully by Rep. Mickey Edwards (R-Okla.), who has spent seven terms in office, and Rep. Pat Schroeder (D-Colo.), who has spent nine terms in office. "The image of a House top-heavy with long-term incumbents is false," says Schroeder. "Since 1980, more than half of the House has turned over due to defeat, resignation, retirement or death. The average length of service is 5.8 terms."(36) Many current members, of course, will go on to serve many more terms before choosing to retire.

But turnover in Congress should not come chiefly because members choose to leave on their own timetable. In a democratic society, some turnover should be caused at the polls.

The reelection rate for members of the U.S. House seeking new terms, about 90 percent in the generation after World War II, soared closer to 100 percent in the 1980s. In 1988 only 6 of the 405 members lost their reelection bids, and 5 of those were under some sort of ethical cloud.(37)

What's worse, the entrenched incumbency of Congress is trickling down to the state legislative level. In the 1960s and 1970s typically one-third of the membership of state legislatures changed every two years. In earlier decades turnover rates of 50 percent were common. In the 1980s turnover slowed to a crawl, and in 1988 an all-time low of only 16 percent of state legislators were newly elected.(38)

In California, the state with the professionalized legislature that most resembles Congress, only three incumbents lost in the last three legislative elections. More than 270 won. The turnover rate for assembly members has dropped by more than half since 1980.(39)

In Colorado no incumbent state senator has lost since 1982. In Pennsylvania 98 percent of incumbents in the state legislature won reelection in 198

Critics say the trend is even seeping down to the local level. "Entrenched incumbency is strangling local government, and the quality of life is suffering in many ways," says University of California at Los Angeles professor Laura Lake.(40)

Term limits work for many occupations in America. Why not for Congress? Presidents are limited, executive branch employees are limited, and nearly everyone in the private sector faces a "term limitation" of some kind-- "65 and out" or whatever--no matter how respected, important, or powerful they are.

### **Won't Term Limits Deprive Us of the Services of Valuable and Experienced Legislators?**

"Longevity promotes competence," says Nelson Polsby, a professor of political science at the University of California at Berkeley. "You have to actually advocate incompetent legislators to get the turnover some want."(41)

But, of course, term limits can still allow for long political careers. Senator Armstrong of Colorado has served in public office continuously since his 1962 election to the state legislature, but he has never served in any one office for more than 12 years.(42)

Some critics of term limits argue that even 12 years isn't enough time to become an expert legislator. But there are very few jobs that take that long to learn, and representing the public isn't one of them.

Besides, although term limits may shorten the congressional careers of the best members, those people will not have to withdraw from public life. Former congressmen will be available for service in the executive branch, in industry, in think tanks, and in the academy.

The Founding Fathers envisioned Congress and state legislatures as representative bodies, not the entrenched micro-managing monsters they have become. Their job is to make policy, not implement it. Considerable experience in government isn't necessary for that. Considerable experience in life is.

And what have our experienced lawmakers brought us? Certainly not innovative and bold public policy. Instead, they have brought us endemic compromise, institutional paralysis, and the Beltway mentality--a narrow, self-contained culture with addictive qualities.

Armstrong, who is retiring this year after two terms in the Senate, says, "We have strayed far from the Founders' idea of landholders, merchants, farmers, and those in the various professions coming to represent their fellow citizens for a time in the national legislature. We have forgotten that, in a civic sense, returning home is as important as coming to Washington in the first place."(43)

Hendrik Hertzberg, editor of the New Republic, agrees that a term limit would deprive Congress of some legislators who would be missed. "This would be a real cost. But it would be a cost worth paying to be rid of the much larger number of timeservers who have learned nothing from longevity in office except cynicism, complacency and a sense of diminished possibility," he writes.(44)

Liberal columnist Ellen Goodman noted that "it may be that the only way to speak freely is with one foot out the door. It may be that the readiness to leave office mutes ambition and amplifies honesty. Risk-taking may come most easily to those who are willing, if necessary, to leave. If that is true, we have to learn once again that ideal public service is, by definition, temporary."(45)

Rep. James Sensenbrenner (R-Wis.) opposes term limits because of the complicated nature of the federal government. "It takes a newly elected representative four to six years to understand what's going on," he says. "Nature abhors a vacuum, and the bureaucracy will rush in to fill the vacuum" created by inexperienced lawmakers. That does not impress James Weber of Americans to Limit Congressional Terms. "It is an indictment of the system that it takes so long for Members to learn the process," he says. "It's time to make it understandable to mere mortals."(46)

### **Wouldn't Term Limits Merely Shift Power to Staffers and Lobbyists?**

The view that term limits would give more power to the "permanent" world of congressional and state capital staff aides, lobbyists, and journalists is expressed by Rep. Henry Hyde (R-Ill.). "A mandatory revolving door for elected officials would only strengthen the grip of the 'permanent bureaucracy' because lack of experience would make the legislators even more dependent on staff," he said.(47)

Of course, any Capitol Hill observer knows that it's the most senior members who are most dependent on staff and lobbyists, not the hot-shot young freshmen. And there is nothing to prevent a reduction in the mushrooming growth of staffers from accompanying term limits. The most popular of two term-limit initiatives in California curbs the "aides epidemic" in the legislature by cutting its budget by at least 20 percent.

Critics also say that term limits might increase influence-peddling by putting pressure on members of Congress to curry favor with the interests that might reward them with future employment. But few members are likely to become lobbyists, because the turnover on Capitol Hill will quickly make their contacts obsolete and their influence limited.

In addition, the executive branch has successfully limited the revolving-door syndrome. Restricting postcongressional work should also be possible. Freed to some extent from the never-ending necessity for political fund-raising by term limits, legislators might actually find the time to lead rather than follow their staffs.

It is also difficult to see how the special interests will readily gain more access and influence than they have now. In recent hearings on a California term-limit initiative, Democratic assemblyman Tom Bane argued with its sponsor, Pete Schabarum, that term limits would "turn this legislature over to big power special interests." Schabarum, a Los Angeles County supervisor and former three-term state assemblyman, shot back: "Special interests already run this legislature. Can I make that any clearer?"(48)

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### **Wouldn't Term Limits on Federal Officeholders Put States That Pass Them at a Disadvantage?**

The damage done to individual states by the incumbent-entrenched Congress by far outweighs any benefits derived from pork-barrel projects dragged home by committee chairmen. Voters in each of the 22 states that have term-limitation initiatives on their ballots can weigh the political risks and benefits, and if they favor term limitation, the momentum will spread the idea quickly to the other states.

### **Wouldn't Legislators Bound by a Term Limit Ignore Voters in Their Last Term?**

A study by economist John Lott in the journal *Public Choice* found that the conventional wisdom that politicians will not vote as their constituents want them to vote if they do not face reelection is not supported by the facts. Lott found that politicians in their last terms continue to vote as they always have, though they may not vote as often. Further, political parties do not influence last-term voting.(49) And a member of Congress who faced the prospect of returning to his community still in the prime of life, and having to live under the laws he passed, would be more likely to be thinking like his constituents even if he didn't have to face the voters again.

### **Aren't There Other Ways to Restore Competition to Politics?**

First of all, any attempt to take away the advantages of incumbents would have to be passed by legislatures made up of the current incumbents. To expect them to take away their hard-earned advantages "is like expecting the chickens to vote for Colonel Sanders," says Considine.(50)

The only effective way to level the political playing field is to limit terms. Spending limits simply enhance the existing advantages of incumbency--name recognition, free mailing privileges, large paid staffs, the ability to steer pork back home. The successful challengers to incumbents in Congress during the last decade have had to spend, on average, two to three times as much as the incumbents in order to win.

Public financing of campaigns is also flawed. It does nothing to offset the advantages of incumbency, and it could lead to a colossal waste of taxpayers' money, as candidates with no realistic chance of winning get money the taxpayers

were unwilling to give them voluntarily. And, as Thomas Jefferson said, "To compel a man to furnish contributions of money for the propagation of opinions which he disbelieves is sinful and tyrannical." Why should voters have to give money to candidates they oppose?

## **The Case for Term Limitation**

There are many practical benefits to be gained from imposing a limitation on terms.

### **Elections Would Be More Competitive**

This year 78 House candidates--one-fifth of all members-- will face no major-party opposition. Another 304 House incumbents hold prohibitive fund-raising leads over their opponents. In 1988, 56 of the 435 seats were uncontested; 20 winners got more than 90 percent of the vote; 70 percent (356) won 65 percent. Only 38 of 435 members won with less than 55 percent of the vote--the normal definition of a landslide.(51) The average incumbent won with 73.5 percent of the vote that year.(52)

Matters are not much better in the U.S. Senate. This year, for the first time since 1956, four senators have no major-party opponents. Another 12 face merely token opposition.(53)

Elections increasingly resemble sullen ratifications of the status quo, rather than competitive contests, and voter turnout is suffering as public interest in politics declines. Voter turnout in 1988 was 50 percent, down 3.4 percent from 1984. Only in Colorado, Nebraska, Nevada, and Utah was turnout up. In the last off-year election, voter turnout was only 37 percent, and it was only 27 percent in states without a contest for governor or U.S. senator.(54) Voter turnout to select new occupants for open seats for governor, U.S. senator, or U.S. representative is often much higher than it is for races in which an entrenched incumbent is running.

### **Term Limits Would Make Ability More Important Than Seniority**

Term limits will encourage different people to run for office and pave the way for passage of other reforms--including rules to make legislative districts more competitive and reduce incumbent advantages in campaign financing.

"I believe that if we knew on Day One that we couldn't parlay this into a career, no matter how many carloads of pork we shipped home, there would be a fundamental change in attitudes," says retiring Senator Humphrey. "The whole idea of careerism would dissipate--and no single reform would do more good than that."(55)

Cleta Mitchell, a former Democratic legislator from Oklahoma, says that term limits would allow assignments such as committee chairmanships to be awarded more on the basis of talent and leadership qualities than on someone's staying power in office.(56)

"Professionalism and careerism [are] the bane of democratic governance," writes Mark Petracca, an assistant professor of politics at the University of California at Irvine. "Experience in government tends to produce legislators who are more interested in defending government than they are in solving serious public problems."(57)

### **Term Limits Would Improve the Quality of Candidates**

One often-overlooked problem with unlimited legislative terms is that they create a situation in which a legislator must remain in office for 15 or 20 years in order to have significant influence. Such a situation attracts those, such as California assemblyman Mike Roos, whose lifelong ambition was to be a politician. Roos, who is in his 13th year as the sole assemblyman for 300,000 citizens, studied public administration in college and never has had to earn a living in the private sector.

Many worthy individuals, of the kind who would compose a truly representative citizen-legislature, find the concept of spending that much time in the legislature off-putting. They have their own jobs--as doctors, carpenters, lawyers, engineers, computer specialists, teachers--and have no interest at all in becoming career legislators. Nevertheless, as civic-minded individuals they would find it a worthwhile experience to represent their home districts in the legislature

for two, four, or even six years. Much beyond that, however, would represent too great a break from their real careers back home. Why should we be denied the good sense and good judgment of such people?

### **Term Limits Would Counter the "Culture of Ruling"**

Studies by such respected organizations as the National Taxpayers Union and Citizens for a Sound Economy have found that the longer a legislator is in office, the greater the number of special interests he or she becomes associated with. It is also a common observation that the longer a legislator works in Washington, D.C., or in a state capital, the more self-important that person seems to become. Obviously, that is not always true. But it would defy human nature if it weren't true much of the time. In a capital city one is surrounded by individuals whose daily routine involves setting rules and regulations for the rest of society--a kind of "culture of ruling."

And it is subtly corrupting to have microphones pushed in your face daily and to have reporters asking your opinion about every question under the sun. Eventually, one comes to believe that his or her opinion is more important than perhaps it really is. Worse, the legislator then has a tendency to want to codify those opinions on everything under the sun. A citizen-legislature would be likely to pass fewer laws, and those that were passed would reflect more level-headed judgment.

### **Prospects for Term Limitation**

There are also some practical questions about term limitation. Some answers to the most frequently posed ones follow.

#### **What Is the History of Term-Limit Initiatives?**

The recent record of initiatives on term limits is limited, but some lessons can be drawn. In 1988 a proposal in San Francisco to limit county supervisors to two consecutive terms lost 55 to 45 percent after a vigorous campaign. However, observers report that it lost because it would have ousted several incumbent supervisors by applying the limits retroactively. Voters became convinced the measure was really a meanspirited recall campaign waged by a former conservative supervisor. Even so, a 45 percent vote for term limits in liberal San Francisco is significant.(58)

In Oklahoma voters approved a 12-year limit on service for state legislators on September 18. Term limits were approved by a vote of 436,347 (67 percent) to 212,318 (33 percent) and carried in all 77 counties. The author of the initiative was businessman Lloyd Noble III, and it was supported by the incumbent governor, Republican Henry Bellmon; the winner of the Democratic primary for governor; and 30 sitting state legislators.(59) One prominent opponent was former House Speaker Carl Albert, who served 32 years in the House. He told the Tulsa Tribune: "I don't see how people could support it. I don't see how it will accomplish anything."(60)

David Walters, the Democratic candidate for governor, made term limitations a major theme in his upset win in the primary. He went even further by advocating a two-year ban on lobbying by any legislator leaving office. "Take a trip down the hallways at the Capitol and count the former legislators who have become lobbyists. How do we know they weren't serving those same special interests while in the Legislature?" he asked.(61)

In announcing his support for the measure, Bellmon noted that his 12-year service in the U.S. Senate had convinced him that members of Congress and other officeholders should be limited in their service. "There's a tendency for politicians to stay far too long," he said. "The problem is, it's hard for voters to turn them out when they become senior members and become powerful and are in a position to do favors for their own constituents."(62)

#### **What Term-Limit Initiatives Are Now on the Ballot?**

California has two term-limit initiatives on the November ballot, Propositions 131 and 140. Both were inspired by a collapse of competitive races in the state after the 1981 gerrymander designed by the late representative Phil Burton. In 1988, 100 percent of incumbent state senators were reelected along with 96 percent of incumbent state assemblymen.(63)

Proposition 140, sponsored by Los Angeles County supervisor Peter Schabarum and the National Tax Limitation

Committee, would forever ban members from running for the Assembly after six years in office and for the Senate after eight. Statewide officials would be limited to two terms in office. Retirement benefits for legislators would be ended, to be replaced by participation in Social Security. Expenditures for legislators would be cut to \$950,000 per member, or 80 percent of the previous year's spending.

Proposition 131, the competing initiative sponsored by Democratic attorney general John Van de Kamp, would limit elected statewide officials to two four-year terms, the same as the Schabarum initiative. State senators and assemblymen would be limited to 12 consecutive years in office, although after an individual had sat out a term, he could serve again.

The term-limit initiative in Colorado is being sponsored by Senator Considine. It would limit state legislators and all statewide officials to 8 years in office and all federal legislators to 12 years.

Considine says he became concerned about competition in politics after a Republican gerrymander in 1981 limited the number of competitive races. In the 24 races for Congress since reapportionment, there have been only two changes of party. In the 333 races for the state legislature, there have been only 28 changes of party. Two of those occurred when incumbents switched their party registration.(64)

"What we're seeing in America is a revival of citizen action," says Considine. "A century ago, reform-minded men and women banded together to sweep out the political machines. They gave us primaries, direct election of senators and votes for women. Term limits are the natural next step."(65)

### **What Do the Polls on Term Limits Show?**

Polls indicate that although term limits have enjoyed strong support for decades,(66) their popularity has grown in recent years. A Gallup Poll released in January 1990 found that 70 percent of those surveyed favored limiting congressional terms. Less than a year earlier, in June 1989, Gallup had found that only 57 percent supported limited terms.(67)

The latest poll taken by Newsweek showed 73 percent support for term limits; only 23 percent of respondents were opposed.(68) Just about the only demographic group that opposes them are elected officials. In a January 1990 survey of 302 state legislators, 158 House members, and 21 U.S. senators, the results showed that 57 percent of the senators supported term limits, but only 41 percent of the state legislators and 34 percent of the House members did so.(69)

Few polls have surveyed the public on the proper limits for terms, but one that did found that the public may think 12 years too generous a legislative tenure. An Oklahoma poll conducted in July 1989 for that state's sponsor of an initiative on term limits found that 50 percent of respondents favored 8 years as the limit; 12 percent, 10 years; and 9 percent, 12 years. Virtually no one (0.6 percent) favored allowing legislators to serve longer than 12 years.(70)

### **What Are the Chances of Applying Term Limits to Congress?**

Until recently, few political observers were willing to predict that a constitutional amendment limiting terms in Congress could ever be approved. Then dozens of politicians began endorsing the concept, and several legal scholars have suggested that the Considine argument that individual states can limit terms of members of Congress may be constitutional.

Senator Armstrong predicts that if term limits pass in California and Colorado, as many as 20 states will have term-limit initiatives on their ballots in 1992. California and Oklahoma term-limit advocates have already promised to place a federal term-limit initiative on their states' ballots in 1992, if the Colorado initiative passes.(71)

Tony Coelho, the Democratic majority whip in the U.S. House until his 1989 resignation, says that while he opposes term limits he recognizes their political drawing power. "Unless something drastic is done, term limits are going to sweep the country," he predicts. "Challengers will pledge to support them, incumbents will have to follow suit, and before you know it we could see it in the Constitution. I predict it will be there by the end of the decade if nothing is done to change public attitudes towards elected officials."(72)

Walter Dean Burnham, a leading congressional scholar at the University of Texas at Austin, says that "there really is a term-limitation train leaving the station under a growing head of steam. There would seem to be a considerable chance (say 50-50 or so) that by the end of the decade, a constitutional amendment will be adopted to impose such limitation at the federal level."(73)

## Conclusion

Franking privileges, huge staffs, liberal travel funds, easy access to the news media, and unfair campaign finance laws have all provided incumbents with a grossly unfair advantage. A fifth of all congressional districts will elect unopposed incumbents this November because would-be challengers were unwilling and unable to spend the time and money required by the virtually impossible task of unseating those in power. The playing field must be made more level than it is now.

A limit on elected congressional and state legislative tenure would reduce the incentive for such abuses of power by eliminating congressional careerism. No longer would those political offices be held by longtime incumbents. They would be held by citizen-legislators, who would be more disposed to represent the will of the people and rein in the out-of-control bureaucracy that now substitutes for a federal government.

The idea of citizen-representatives serving a relatively short time is not new or radical. Although the writers of the Constitution did not see fit to include a term limitation, perhaps that was because the public-service norm of those days did not include careerist senators and representatives.(74) Instead, the attitude of that time can be seen in the decision of George Washington to voluntarily serve only two terms as president.

Term limitation is a traditional and uniquely American concept. Now it must be made mandatory instead of voluntary because the spirit of voluntary service limitation has obviously been lost.

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