

Cato Institute Policy Analysis No. 259: The Political Revolution that Wasn't: Why Term Limits Are Needed Now More Than Ever

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Executive Summary

Term limits are back, despite virulent opposition from the political establishment. Come November, voters in 15 states will be deciding on initiatives designed to overturn last year's Supreme Court decision voiding voters' restrictions on the number of terms served by their representatives.

Some political analysts argued that November 1994 obviated the need for term limits. But the Republican majority in Congress is running scared, and November 1994 is looking a lot like the revolution that wasn't. The problem is not that no genuine citizen-legislators were elected. They were. But Congress remains dominated by multiterm careerists of both parties.

Term limits would make a difference. The argument for term limits can be summed up simply: for years there was greater turnover on the Soviet Communist Party Central Committee and in Britain's House of Lords than in Congress. That did not change in 1994, when the overall House reelection rate still ran roughly 90 percent.

Unfortunately, last year's Supreme Court decision can be overturned only by a constitutional amendment. Since Congress is unlikely to voluntarily approve one, advocates of term limits need to convince 34 states to call for a convention to draft an appropriate amendment.

State calls for a convention would encourage Congress to propose an amendment, as happened with the Seventeenth Amendment that provides for the direct election of senators. If such pressure proved unavailing, a convention could be held. There would be no danger of a "runaway convention," since 38 states would have to ratify any proposed amendment.

Introduction

November 1994 was supposed to have been the death knell for term limits. Explained Rep. Richard Armey (R-Tex.), one of the most dedicated defenders of individual liberty in the House, who went on to become Majority Leader after the election, "If we Republicans can straighten out the House . . . then I think maybe the nation's desire for term limits will be diminished."^{[1](#)}

His sentiments were understandable. The people had arisen and swept aside partisan congressional majorities going back 40 years. Incumbency had seemingly been overturned by a dramatic popular ideological shift to the right. The Republican revolution was going to sweep Washington and uproot the manifold government bureaucracies and

programs imposed on an unwilling populace by a permanent establishment.

At least, that was how it was supposed to be. Some 18 months after taking power, the GOP congressional majority is splitting at the seams. The federal budget continues to grow, albeit at a somewhat slower rate. No department or major agency or program has disappeared; rather, the Republicans have contented themselves with eliminating the 18-person Administrative Conference and a handful of other minor bureaucracies. Regulatory reform has been pushed to the back burner. Congress's efforts to limit state mandates have been more symbolic than real. Republicans led efforts to increase regulation of the health insurance markets and raise the minimum wage. True, more might have been achieved had President Clinton been less obstructive, but virtually every federal program has at least one major GOP defender. In short, November 1994 is looking a lot like the revolution that wasn't.

The problem, of course, is not that no genuine citizen-legislators, committed to real change, were elected in 1994. They were. But Congress remains dominated by multiterm careerists in both parties who have at least as much loyalty to the system as to their constituents. And until that changes, Washington is not going to change appreciably, irrespective of the partisan complexion of Congress.

Judicial Obstacles

What would change Congress--dramatically--is term limits. Average citizens certainly understand the potential of term limits. By the middle of last year nearly half of the states had restricted, almost all of them by popular vote, the number of terms that their members of Congress could serve. But then the Supreme Court intervened. In *U.S. Term Limits, Inc., et al. v. Thornton et al.*, a narrow five-to-four majority voided such restrictions, opining that "allowing individual States to craft their own qualifications for Congress would thus erode the structure envisioned by the Framers, a structure that was designed, in the words of the Preamble to our Constitution, to form a 'more perfect Union.'"²

The ruling is dubious enough on constitutional grounds, since states have long had extensive discretion over elections within their own jurisdictions.³ But it looks even worse in the context of a political system in which the participants seem to believe that their highest duty is to preserve the status quo. Congress, naturally, refuses to approve a constitutional amendment on term limits. Most state legislatures, naturally, refuse to approve term-limit measures. And now the Supreme Court refuses to allow the people to approve term limits. That pervasive resistance illustrates the importance of developing new strategies for subjecting members of the U.S. Congress to term limits.

The Case for Term Limits

The argument for term limits can be summed up in one set of statistics: for years there was greater turnover on the Soviet Communist Party Central Committee and in Britain's House of Lords than in Congress. Nothing really changed in 1994, despite the dramatic partisan upheaval. Three dozen Democratic incumbents fell, but the overall House reelection rate still ran roughly 90 percent (314 of 348), and the Senate reelection rate ran 92 percent (24 of 26). That looks good only in comparison with the 98 percent reelection rate of 1990, before a modest slump in 1992 due to the House Bank scandal, when fewer than 5 percent of House races were genuinely competitive. And no Republican incumbents, no matter how flawed, lost in 1994. If 1996 proves to be a bad year for the GOP, the freshmen are more likely to suffer than are the time servers.

Indeed, even though the GOP gained control of Congress in 1994, scholar Stephen Erickson argues that "the power of incumbency masked the true scale of the popular sentiment in favor of Republicans."⁴ Absent incumbency, he figures that the Republican Party would have picked up an additional 32 to 41 seats.⁵

In short, what political scientist Mark Petracca calls the "poison" of professional politics remains.⁶ Most incumbents still win, and careerists still largely dominate policy. Only term limits are likely to reduce the electoral bias toward congenital politicians and the ensuing policy bias toward expansive government.

A system that turns supposed "public service" into a career attracts a particular type of person. Observes Edward H. Crane, president of the Cato Institute, "Those who run for Congress these days are generally those who find the

prospect of spending a significant portion of their lives as a politician to be an attractive option." That means they are less likely to have a real life before entering politics--many political pros start out as state legislators in their early 20s and never stop.

Unfortunately, it just gets worse over time. Sen. Warren Rudman (R-N.H.) explains that he retired because "the longer you stay in public office, the more distant the outside world becomes."⁸ But he is one of the few to voluntarily step aside. One Democratic senator told Rudman after the latter announced his retirement, "I wish I had the guts to do what you've done, but I'm afraid to leave. I don't know what I'd do with my life."⁹ One legislator who tried business after his forced retirement at the hands of the voters was former Democratic senator George McGovern of South Dakota. His plaintive plea after his motel folded was particularly telling: "I wish I had had a better sense of what it took to [meet a payroll] when I was in Washington."¹⁰ But he was no different from most of his colleagues.

Electoral Advantages

Lack of experience in meeting a payroll does provide an important electoral advantage, however. Spending one's life trolling for money, publicity, and votes makes one a more effective politician with increased chances of winning. We see a "new breed" of professional legislator "who wants to stay in public office for the long haul," observes political analyst Alan Rosenthal of Rutgers University.¹¹ Against such candidates would-be citizen-legislators--accomplished or distinguished members of the community who want to give some time, but not their entire careers, to politics--have a tough time. As Alan Ehrenhalt, editor of *Governing* magazine, puts it, "Full-time jobs in Congress and in legislatures attract people who want to devote most of their waking hours to politics. There is no reason to suppose that this is the same set of people who would want to do politics in their spare time."¹²

Not only are the people different, but their ideologies are different. In general, political professionals like government. As Crane puts it, "These are generally the kind of individuals we should not have passing laws governing the rest of us."¹³ The point is not merely rhetorical. Observes Ehrenhalt,

Politics is, then, more than in the past, a job for people who prefer it to any other line of work. About these people one more important point should be made: They tend not only to enjoy politics but to believe in government as an institution. The more somebody is required to sacrifice time and money and private life to run for the city council, for the state legislature, or for Congress, the more important it is for that person to believe that government is a respectable enterprise with crucial work to do.¹⁴

The professionalization of legislatures turned into a self-reinforcing process. The new, government-is-good majorities approved higher salaries and created larger staffs; the prestige of legislative service rose in turn. Those factors tended to increase the attractiveness of legislative service to the people most enamored of statist policy prescriptions.¹⁵

At the same time, those sorts of changes tended to further enhance the electoral advantages of careerists. During the 1960s incumbents began to expand their reelection arsenal, mostly at taxpayers' expense. Former Democratic representative Tony Coelho of California, who once headed the Democratic Congressional Campaign Committee, opines, "You have tremendous, tremendous tools you can use that a challenger cannot use."¹⁶ Of course, the GOP Congress has supposedly reformed the process, but the weapons of incumbency remain huge despite the majority's modest reduction in committee staff. That step does not go nearly far enough. Observes Erickson, "Not only have most meaningful reforms failed to gather any significant degree of political momentum, but most only address a single aspect of incumbent power."¹⁷

Every enhancement of the power of incumbency exacerbates careerism. Rosenthal describes the changes in the Minnesota state legislature that accompanied the influx of professional politicians: "Lawyers, independent business owners, and farmers have left. Their places have been taken by young people, many of whom see the legislature as an entry level position for a career in politics."¹⁸ The process becomes an endless circle: those people most interested in making government a career run, win, and adjust the rules to favor those who want to make government a career. Over time, that process changes who runs for office, what they vote for, and ultimately what government does.

Rotten Careerists

The problem is not just that different people are elected when legislative service becomes a career. That service itself transforms those who are elected. As Thomas Jefferson put it, "Whenever a man has cast a longing eye on [offices], a rottenness begins in his conduct."¹⁹ Over time, career legislators are more likely to promote the interest of the establishment of which they are part than that of the larger public. And perhaps that is not surprising. If the bulk of one's time is spent meeting with lobbyists, constituents, bureaucrats, and other supplicants--all of them touting the virtues of expanded government power in one form or another--one may actually come to believe in that power.

The statistics certainly are damning. According to the Competitive Enterprise Institute, senior representatives are more likely than junior legislators to vote for pork and special-interest economic intervention.²⁰ Similarly, National Taxpayers Union figures demonstrate that, on average, spending rises with terms served.²¹

In short, the habit of governance changes those who govern. If one's career is in business, or health care, or education, and therefore is on the receiving end of federal rulemaking, one probably has a different perspective than if one is in Congress supervising those who make the rules. There is, in fact, a basic cultural difference. Analyst James Payne calls the culture of Capitol Hill a "culture of spending."²² While the victims of federal intervention are largely absent from the halls of Capitol Hill, Congress, explains Payne, "is overwhelmed by the advocates of government programs: the administrators whose status, morale, and sense of accomplishment depend on the appropriations they urge; state and local officials who appeal for federal spending with the same motives; lobbyists who press the demands of the beneficiaries of federal programs; spokesmen for business firms that benefit from federal largesse."²³

Equally important, perhaps, is the corrupting influence of power. With seniority comes influence, and with influence often comes acclaim. But praise is usually reserved for those who "grow" away from views hostile to the way Washington works. Consider former Republican senator James McClure of Indiana. Early in his career he advocated repeal of the Sixteenth Amendment, which authorized the federal income tax. By the time he was a committee chairman in the U.S. Senate, he was defending a taxpayer bailout of the Kennedy Center, which serves the glitterati of Washington.²⁴

Reelection at All Costs

Moreover, even the most ideologically committed representative may slip into putting his career before his ideology. Incumbency has become an invaluable aid to reelection because of the benefits of power, which usually mean using government to direct taxpayer resources to one's own district and various interest groups. Incumbents also raise funds and win votes by posing as defenders of individuals, organizations, and regions threatened by taxes and regulations advanced by other legislators--usually to win votes in their districts or states. Thus, as they focus on reelection, even otherwise principled legislators are likely to find themselves defending individual programs and projects as they denounce overall government spending and regulation. "Congressmen decry bureaucratic excesses and red tape while riding a grateful electorate to ever more impressive electoral showings," observes political scientist Morris Fiorina.²⁵

Republicans certainly are not immune to such temptations. Even before the 1994 election, it was evident that GOP legislators, too, "grow" in office. Senior Republicans are more likely to vote for statist legislation than they were at the start of their careers and more likely to do so than are newcomers. Explains Payne, "When congressmen first enter Congress, they are less in favor of spending than their colleagues, but they grow more in favor of spending as their service in Congress lengthens."²⁶ He figures their propensity to spend jumps two-thirds by their eighth term.²⁷

The ongoing experience of the Republican majority bears out Payne's analysis. House Speaker Newt Gingrich passed over top-ranked Rep. Joseph McDade (R-Pa.) for the Appropriations Committee chairmanship because of McDade's looseness with the public purse as well as his indictment. Rep. Jan Meyers (R-Kans.) opposed dismantlement of the Small Business Administration, long known as a petty cash drawer for politicians and their business buddies. Moreover, longer term members were the most consistent barriers to proposals by freshmen members for serious change. (Forty-one, or 56 percent, of the 73 new Republican House members were nonprofessionals; 3 of the 11 GOP

Senate freshmen were also electoral novices. Only 1 of 13 Democratic House freshmen had a nonpolitical background.)

Although Budget Committee chairman John Kasich took his responsibilities seriously, proposing a spending package that would have eliminated some 300 programs, the Appropriations Committee, which makes the final decision on disbursements, chose instead to merely trim most of those programs. Virtually every federal agency and initiative had at least one senior GOP champion. Indeed, that is why the congressional majority was unable to respond to President Clinton's veto of its budget resolution by simply eliminating funding for disfavored programs--the Republicans could not agree among themselves on what to cut.^{[28](#)}

Electoral Pressures

As Republicans have come under increasing political pressure, they have begun to adopt the traditional Democratic strategy of being what political analyst James Pinkerton calls "Robocandidates."

If Republicans survive only by perfecting Robo techniques, then they will have effectively become Robos too. That is, if individual GOPers focus on hugging, chameleon-like, to the local political terrain for the sake of their own reelection, then they will lose interest in nationwide Contract-like undertakings that might antagonize critical constituencies. Already Republicans have abandoned the more ambitious aspects of their agenda.^{[29](#)}

Democrats experienced a somewhat similar phenomenon during the previous congressional session. That relatively large freshman class desired serious reform in the way that Congress operated, but to no avail. Multiterm Democrats were pleased with their power and perks and blocked any change. There were partisan splits, of course, but the generational splits within both parties were also surprisingly pronounced.

Term Limits the Only Answer

Political careerism can be combated in various ways. One could attempt to limit incumbents' electoral advantages (fund-raising, postal franking, legislative staff), end their role as ombudsmen for constituents (prevent them or their staffs from intervening in bureaucratic disputes), eliminate campaign finance restrictions (allowing wealthy individuals to jump-start ideological and outsider campaigns), and insulate them from the Washington culture (further restrict lobbying, forbid them to read the Washington Post).^{[30](#)} While all of those measures would be helpful, they are not easily achievable. And even if they were, they probably still would not be enough. The basic problem is political careerism. Today the entire political system is biased toward long-term legislative service. The only way to counteract that systematic bias is term limits. As Erickson puts it, "Term limits is not only the sole reform with popular political clout behind it, but it also provides a comprehensive solution by guaranteeing turnover, ensuring periodic competitive open-seat races, and undermining cravings for perpetual reelections."^{[31](#)}

And the limits should be shorter rather than longer. Three terms for the House would, for instance, have a much more powerful transforming effect than would the six terms favored by many officeholders--but not voters.^{[32](#)} In fact, an astonishing 81.3 percent of voters who support term limits prefer three terms; just 15.8 percent favor six terms.^{[33](#)} Although even longer term limits would eliminate the phenomenon of 30-year incumbents' running critical committees as personal fiefdoms, they would, estimate economists Robert Reed and Eric Schansberg, reduce the median term of service only from nine years to seven.^{[34](#)} A three-term limit, in contrast, would drop the median to three years.^{[35](#)} A three-term limit would also dramatically accelerate turnover, truly transforming Congress. Finally, shorter term limits would better ensure distribution of leadership positions on criteria other than senility, giving bright newcomers the hope of attaining a position of responsibility before returning to private life.

Opposing Arguments

Obviously, term limits have not gone uncriticized, especially by officeholders. None of their arguments holds up, however. It has, for instance, been said that term limits restrict voter choice. Although they prevent a particular

incumbent from running again, they create more competitive elections and encourage more new entrants into the political arena. For example, the total number of California legislative candidates is estimated to have risen by 50 percent after the institution of term limits.³⁶ And the greater variety of people running has borne out the prediction of former Democratic governor Madeleine Kunin of Vermont that "breaking the gridlock of incumbency could throw the doors wide open to new people and new ideas that would make politics rewarding, meaningful, even fun."³⁷

Another criticism is that term limits are undemocratic, yet virtually every group of citizens allowed to vote on the issue has approved term limits. In fact, 25 million people have cast ballots in favor of term limits. In some elections three of every four voters said yes. Support remains high despite the Supreme Court decision: a poll earlier this year found that 72.3 percent of people back term limits and that more than half "strongly favor" them.³⁸ Support crosses ethnic, gender, and racial lines. Moreover, it was opponents of term limits who relied on the courts, the least democratic of America's governing institutions, to thwart the popular will.

Term limits are democratic in another sense--they broaden the opportunity to serve as a legislator. In 1835 the French classical liberal Alexis de Tocqueville complained about "the vulgar demeanor" of the U.S. House, which contained "almost all obscure individuals," including "village lawyers, men in trade, or even persons belonging to the lower classes of society."³⁹ But common people, too, have a right to serve. State legislatures also long represented all ranks of society. The role of the "lower classes" in politics has been steadily shrinking with the growth of professionalism, however. But because of term limits, citizen-legislators seem to be making a comeback. For instance, after term limits took effect in California, reported the Los Angeles Times, the legislature's freshmen members included "a former U.S. Air Force pilot, a former sheriff-coroner, a paralegal, a retired teacher, a video store owner, a businesswoman-homemaker, a children's advocate, an interior designer, a retired sheriff's lieutenant, and a number of businessmen, lawyers and former City Council members."⁴⁰

Lost Experience

Some opponents decry the loss of "experience" under term limits. They act as if politics is like brain surgery, requiring a high degree of technical skill. Unfortunately, the policy jobs performed by supposedly "experienced" legislators have left much to be desired--the savings-and-loan disaster, extravagant deficit spending, and entitlement programs headed toward fiscal oblivion have all come from the stable leadership of recent Congresses. The state experience has been similar. In California, observes columnist Ed Mendel, "it should not be forgotten that the legislature of the 1980s, chock-full of experienced veterans, was famous for gridlock and corruption."⁴¹

The curious admiration of legislative acumen irrespective of honesty, philosophy, or principle even impelled American Enterprise Institute scholar Norman Ornstein to lament the jailing of former Ways and Means Committee chairman Dan Rostenkowski.⁴² However, in the first instance, politics is principle. Without the right principles, creative legislating does more harm than good. Rostenkowski, for instance, has said he would have attempted to ram a health reform bill through his committee and the full House; he cared not one whit about the substance and the disastrous consequences of nationalizing medical care.⁴³ What America really craves is direction, not detail. An intimate working knowledge of regulations that should not exist in the first place has no practical value for the public.

A related argument is that lobbyists and staffers would manipulate inexperienced legislative newcomers. Actually, staff turnover is one of the few constants on Capitol Hill. Increased turnover of members, caused by term limits, would accelerate that process. For instance, California lobbyist Michael Corbett has complained about the departure of key staffers after passage of term limits.⁴⁴ Similarly, explains former state legislative aide Timothy Hodson, "Most state legislatures simply do not have personnel arrangements conducive to career staffs in post-term limit conditions."⁴⁵

Moreover, lobbyists and staffers tend to run the current system; term limits would disrupt existing power relationships. Unfortunately, lobbyists uniformly oppose term limits and have donated generously to block them in initiative states. And who can blame them? Corbett writes, "The tried-and-true practice of establishing long-term, close personal relationships with legislators is no longer viable in the era of term limits."⁴⁶ Unfortunately, those relationships do not come cheap for average citizens. As a representative of the California Trial Lawyers Association admitted, "Obviously,

it's a great advantage to have someone who is a champion of your cause as Speaker of the Assembly.⁴⁷ Obviously, which is why average citizens are now demanding a champion or two as well.

Criticism Verboten

Even more incredible, criticism of legislators has been denounced as a bad consequence of term limits. Argues Democratic political consultant Victor Kamber,

By relying on totalistic quick fixes like term limits to discharge what should be our civic responsibilities, we are giving up on democracy. By listening to demagogues who tell us that our votes don't matter, that Congress isn't ours, that Washington isn't part of America, we are turning these scurrilous opinions into truths. By giving in to the counsels of despair, we are repudiating our Founders' original vision--a free and democratic nation of citizens joined together by common rights and responsibilities.

This culture of suspicion--"you can't trust anyone in office after six (or 12) years"--creates a vicious cycle in which negative attitudes get reinforced and our politics get uglier and uglier.⁴⁸

All that because somebody said that incumbents should not be able to hold office forever! Most advocates of term limits probably are unaware of the apocalyptic impact of their proposals. Of course, Kamber is just being silly. Cynicism about government and politics results from objective reality: government creates and exacerbates far more problems than it solves.⁴⁹ Moreover, there is little that individual citizens can do to reduce the distance between them and their rulers or to affect policy that is currently set largely by a nearly permanent legislative elite and a generally unaccountable bureaucracy.

Turnover Sufficient?

The final argument from opponents of term limits, who are horrified by legislative turnover, is that there is already lots of turnover. However, the rate of turnover is historically very low. During America's first century turnover averaged 43 percent. It was 1900 before turnover fell below 30 percent.

Moreover, other than in the exceptional year 1994, turnover primarily occurs when incumbents voluntarily relinquish their offices. Most elections remain essentially foregone conclusions. Yet what keeps a political system vibrant is a large number of competitive elections. During the 1980s an incredible 99.3 percent of congressional and state legislative incumbents (not under indictment) won reelection.⁵⁰ That phenomenon is not healthy for either policy or politics in America.

Renewing the Drive for Term Limits

The Supreme Court decision to void state-imposed limits on congressional terms requires either a judicial reversal or approval of a constitutional amendment. Neither would be easy. Even a change in personnel would not guarantee a change in opinion, and a constitutional amendment necessitates action by either Congress, whose members would be covered by term limits, or two-thirds of the states.

Thus, advocates of term limits should develop a long-term, multifront strategy. First, they should prepare the groundwork for new judicial appointments by continuing to make the case for the constitutionality of term limits. When the time seems propitious, advocates need to develop a test case and urge the high court to reverse its earlier ruling. Even success there, however, would leave voters in more than half the states unable to pass term limits since their states lack an initiative mechanism. And in only two states, New Hampshire and Utah, did legislatures prove willing to approve term limits on their own.

At the same time, advocates of term limits need to apply continuing pressure on Congress to pass a constitutional amendment. Unfortunately, this strategy faces obvious obstacles. Democrats bear the greatest blame for the failure of the House to approve such an amendment last year, but had the vote been closer, some closet GOP opponents of term limits almost certainly would have voted the other way. As Rep. Michael Forbes (R-N.Y.) puts it, "Candidly, this

leadership didn't want them any more than the old leadership did."⁵¹ In fact, the GOP majority's decision to allow votes on four separate term-limit measures was intended to give cover to members who opposed having any measure ever take effect.⁵²

Moreover, avowed congressional supporters of term limits continue to push longer limits, six terms for the House in the case of the amendment considered last year. Such a measure would, as noted earlier, have less salutary effect on the political process. It would also leave invalid the laws of the 19 (of 23) states that imposed shorter limits and ignore the wishes of the vast majority of Americans--84 percent of whom prefer three terms to six terms.

As a second best, Congress should approve a statute allowing states to limit the terms of members of Congress. Such a measure was proposed in 1995, but Speaker Newt Gingrich reportedly refused to allow the legislation, which would have given states discretion in the number of terms allowed, to come to a vote because he feared voters would approve shorter limits.⁵³ The Court's opinion in *U.S. Term Limits* states that even congressional legislation would not withstand judicial scrutiny, but that discussion reflects nonbinding dicta. Moreover, such a vote would place additional pressure on the Court to uphold state measures and might help develop a test case for a future Court.

Constitutional Convention

Still, something more is needed. States need to call for a constitutional convention to draft a term-limits amendment for submission to all the states for approval. Getting backing from the necessary 34 states will be no easy task. Although South Dakota and Utah have already issued such calls, most other states remain reluctant to trim the prerogatives of any legislator. Nevertheless, *U.S. Term Limits*, the leading term-limits advocacy group, has developed a sophisticated strategy to generate the necessary support.

One option is for voters, by initiative, to constitute themselves as the legislature for the purpose of calling a convention. Old Supreme Court language suggests that such a strategy might work, though a more modern Court hostile to term limits might be less cooperative.

Moreover, *U.S. Term Limits* is assisting initiative campaigns in 15 states, ranging from Alaska to Washington, to place on the November ballot measures that would instruct legislators to vote for a convention and alert voters to how their state legislators vote on the call for a congressional term-limits amendment.⁵⁴ Legislators who voted against term limits would find a notation on the ballot in the following election, "Disregarded voters' instruction on term limits." The notation for nonincumbents who refused to promise to vote yes would be "Declined to pledge to support term limits." Similar provisions could be applied to members of Congress. In that way, voters could more easily hold their representatives accountable for their positions on term limits.⁵⁵

Pressuring Congress

The purpose of this effort is twofold. First is to pressure Congress to propose an amendment. This is not the first time in history that advocates of reform have represented broad public sentiments but faced a Congress made recalcitrant by its own institutional self-interest. Consider the Seventeenth Amendment, which was initiated by Congress, including the U.S. Senate, whose members had to face election after its approval. The first amendment for the popular election of senators was proposed in Congress in 1826 and tabled without discussion. Although opponents blocked efforts to pass an amendment for years, by the late 1800s voters were making their candidate preferences known through primaries, which were relied on by many state legislatures. In 1901 Oregon voters, through the initiative process, enacted one of the more sophisticated systems, allowing Senate nominations by petition, placing on the ballot a statement by state legislators on whether they would approve the voters' choice when choosing a senator, and instructing their legislators to vote for the winner of the advisory election. Other states followed suit and began placing on the ballot a statement of legislative candidates' readiness to approve the people's preference. Then states began submitting applications for the calling of a constitutional convention. When a convention became otherwise inevitable, Congress voted out an amendment; a year later the measure was part of the Constitution.

Could that strategy work again? As they did in the matter of the direct election of senators, legislators would certainly take note of people's preferences if they were going to be held accountable for their actions. Some candidates who

refused to take the senatorial pledge earlier this century nevertheless won; however, many more legislators put aside partisan considerations to follow the voters' will. And if an amendment was ever submitted to state legislatures, they might just go along despite their distaste for term limits. Explains Rosenthal, "The attitude in many of these states would be, 'We've got term limits, why shouldn't they?'"⁵⁶

If such pressure proved unavailing, however, then the goal would be to hold a convention to draft a term-limits amendment. Fears of a "runaway convention" have bedeviled attempts to win the support of the necessary 34 states for other amendments, but it is not clear that a convention could validly approve other measures.⁵⁷ Even if it could and did, there would still be no danger to Americans' liberties, since 38 of the states would have to approve any amendment. Only rarely in U.S. history has there been sufficient consensus to amend the Constitution. Term limits have generated such a consensus. A "runaway" amendment would almost certainly not do so.

Conclusion

Term limits may not be a panacea, but they are the single political fix that comes closest to a panacea. As politics has increasingly become a career, we have seen a kind of political Gresham's law in operation: careerist-legislators drive out citizen-legislators. Of course, not all of the former are sinners and not all of the latter are saints. But the incentives of the overall political system have been badly warped. People with real-world experience interested in serving for a time find themselves at a competitive disadvantage. And people who believe that government should not micromanage human affairs find themselves at a disadvantage.

The only plausible answer is term limits, which would forcibly remind legislators that they should have lives outside of politics and make more elections turn on policy rather than incumbency. Which is, of course, why political elites--legislators themselves, jurists, Washington pundits, consultants, journalists, lobbyists, and the like--are so horrified by term limits. And why they are using their supposedly superior knowledge and skills to thwart the will of average people who have voted again and again for term limits, rather than using their abundant abilities to solve the manifold problems that beset our society.

It is imperative that we not allow the political careerists to win. One seemingly revolutionary election every 40 years is not enough. The American people need to stage a political uprising by using their power to amend the Constitution and impose term limits on their legislators.

Notes

1. Quoted in Robert D. Novak, "Term-Limit Hypocrites," Washington Post, December 1, 1994, p. A23.
2. U.S. Term Limits, Inc., et al. v. Thornton et al., 63 U.S. Law Week 4413, 4432 (May 22, 1995).
3. See, for instance, John G. Kester, "State Term-Limits Laws and the Constitution," in *The Law and Politics of Term Limits*, ed. Edward H. Crane and Roger Pilon (Washington: Cato Institute, 1994), pp. 109-24; Ronald Rotunda, "A Commentary on the Constitutionality of Term Limits," in *The Law and Politics of Term Limits*, pp. 141-55; and John Armor, *Why Term Limits? Because They Have It Coming* (Ottawa, Ill.: Jameson Books, 1994), pp. 120-26. Justice Clarence Thomas's dissenting opinion in *U.S. Term Limits, Inc., et al. v. Thornton et al.* is also powerfully argued.
4. Stephen Erickson, "The Entrenching of Incumbency: Reelections in the U.S. House of Representatives, 1790-1994," *Cato Journal* 14, no. 3 (Winter 1995): 397.
5. *Ibid.*, p. 416. Eliot Engel (D-N.Y.) is an example of a member of Congress who has used constituent services, the franking privilege, and free publicity to make himself well-nigh invincible. Christopher Georges, "Rep. Engel Triumphs by Being Dull in D.C. but Active at Home," *Wall Street Journal*, June 11, 1996, pp. A1, A6.
6. Mark P. Petracca, "The Poison of Professional Politics," *Cato Institute Policy Analysis* no. 151, May 10, 1991.
7. Edward H. Crane, "Six and Twelve: The Case for Serious Term Limits," *National Civic Review* (Summer 1991):

251.

8. Quoted in "Conflict in Congress," *Wall Street Journal*, April 22, 1996, p. A22.

9. *Ibid.*

10. Quoted in John Fund, "Making the Case for Term limits," *Chicago Tribune*, December 16, 1990, p. 3.

11. Quoted in Mark P. Petracca, "Restoring 'the University in Rotation': An Essay in Defense of Term Limitation," in *The Politics and Law of Term Limits*, p. 69.

12. Alan Ehrenhalt, *The United States of Ambition: Politicians, Power, and the Pursuit of Office* (New York: Random House, 1991), p. 14.

13. Crane, p. 251.

14. Ehrenhalt, p. 20.

15. Morris Fiorina describes how the "tangible costs and benefits of legislative service" have increased the number of representatives philosophically committed to expanding government. As he explains, "Full-time service imposes higher opportunity costs on Republicans, and generous compensation raises the direct benefits of service for Democrats." Morris Fiorina, "Divided Government in the American States: A Byproduct of Legislative Professionalism?" *American Political Science Review* 88, no. 2 (June 1994): 307-8. In sharp contrast were the rewards for service a century ago, when congressional service often seemed to be more a burden than a benefit. See, for example, Erickson, p. 404.

16. Quoted in Edward H. Crane and Roger Pilon, "An American Debate," in *The Law and Politics of Term Limits*, p. 14.

17. Erickson, p. 417.

18. Alan Rosenthal, *Legislative Life* (New York: Harper & Row, 1981), p. 58.

19. Thomas Jefferson, "Letter to Tench Coxe" (1799), *The Oxford Dictionary of Quotations*, 3d ed. (New York: Oxford University Press, 1979), p. 272.

20. Cited in Stephen Moore and Aaron Steelman, "An Antidote to Federal Red Ink: Term Limits," *Cato Institute Briefing Paper* no. 21, November 3, 1994, p. 21.

21. Cited in James Payne, *The Culture of Spending: Why Congress Lives beyond Our Means* (San Francisco: ICS Press, 1991), pp. 175-80. See also Paul Hewitt, "What Congress Wants to Spend," *National Taxpayers Union*, Washington, *Congressional Budget Tracking System Report* 103-2, January 24, 1994.

22. *Ibid.*, p. 3.

23. *Ibid.*

24. Doug Bandow, "The Spending Problem in Profile," *Wall Street Journal*, April 16, 1985, p. 30.

25. Morris Fiorina, *Congress: Keystone of the Washington Establishment*, 2d ed. (New Haven, Conn.: Yale University Press, 1989), p. 67.

26. Payne, p. 85.

27. *Ibid.*, p. 82. Some other research is more equivocal, finding that different classes of congressmen behave differently. W. Robert Reed et al., "The Relationship between Congressional Spending and Tenure with an Application

to Term Limits," September 1995, pp. 14-15 (unpublished paper in author's files).

28. For a variety of accounts of the GOP's budget retreat, see 1996 Congressional Pig Book Summary (Washington: Citizens against Government Waste, 1996); Stephen Moore and Dean Stansel, "How Corporate Welfare Won: Clinton and Congress Retreat from Cutting Business Subsidies," Cato Institute Policy Analysis no. 254, May 15, 1996; Ronald Utt, "Why H.R. 842 Is Anything but 'Truth in Budgeting,'" Heritage Foundation Issue Bulletin no. 223, April 12, 1996; Scott Hodge and John Barry, "The 10 Percent 'Revolution': House Spending Bills Fall Short of Overhauling Government," Heritage Foundation Backgrounder no. 1053, September 14, 1995; Stephen Moore, "Mr. Corporate Welfare," National Review, January 29, 1996, pp. 22-24; Stephen Moore, "The Nanny State Fights Back," National Review, December 25, 1995, pp. 20-21; Jamie Dettmer, "The Silk Purse Is Full of Pork," Insight, October 9, 1995, pp. 8-13; Stephen Moore, "The Little Engine That Couldn't," National Review, September 25, 1995, pp. 26-28; Christina Del Valle, "Meet Bud Shuster, Prince of Pork," Business Week, May 15, 1995, pp. 86-87; Robert D. Novak, "The Ethanol Outrage," Washington Post, October 5, 1995,

p. A23; Michael Wines, "Where the Budget Ax Turns Dull," New York Times, August 30, 1995, pp. D1, D4; Stephen Moore, "The Republican Retreat," Investor's Business Daily, July 20, 1995, p. A2; and Stephen Moore, "Unfinished Budget-Cutting Business," Washington Times, August 22, 1995, p. A12.

29. James Pinkerton, "Robocandidates," Fortune, April 29, 1996, p. 54.

30. Further limiting spending, in contrast, would do more to stultify than to open the political process. See, for example, Bradley A. Smith, "Campaign Finance Regulation: Faulty Assumptions and Undemocratic Consequences," Cato Institute Policy Analysis no. 238, September 13, 1995; and Edward H. Crane, "Campaign Reforms vs. Term Limits," Washington Times, June 26, 1996, p. A15.

31. Erickson, p. 417.

32. See Doug Bandow, "Real Term Limits: Now More Than Ever," Cato Institute Policy Analysis no. 221, April 6, 1995.

33. Fabrizio McLaughlin & Associates, Memorandum to "all interested parties," February 6, 1996, p. 1.

34. W. Robert Reed and D. Eric Schansberg, "The House under Term Limits: What Would It Look Like?" Social Science Quarterly 76, no. 4 (December 1995): 699-716. This is a good general discussion of the issue.

35. That assumes the continuation of past patterns of service. Cato's president Edward H. Crane predicts that a House characterized by much shorter terms would attract people who would run and serve for a single term, thus reducing the median further.

36. Norman Leahy, "Expanding Democracy," U.S. Term Limits Foundation Term Limits Outlook 1, no. 5 (August 1992): 8.

37. Madeleine Kunin, "Term Limits Would Rejuvenate Politics," Los Angeles Times, September 13, 1991, p. B7.

38. Fabrizio McLaughlin & Associates, p. 1.

39. Quoted in Erickson, p. 406.

40. Jerry Gillam, "Term Limits Put Assembly 27 on Bipartisan Path," Los Angeles Times, March 15, 1993, pp. B1, B4.

41. Ed Mendel, "Assembly's 'Revolution' Puts New Spin on Analysis of Term Limits," San Diego Union-Tribune, February 5, 1996, p. A3.

42. Norman Ornstein, "A Pol Who Made Things Happen," Washington Post, May 10, 1996, p. A27.

43. Haynes Johnson and David S. Broder, The System: The American Way of Politics at the Breaking Point (Boston:

Little, Brown, 1996), passim.

44. Michael Corbett, "Lobbying in the Age of Term Limits," *California Bar Journal*, December 1995, p. 8.

45. Timothy Hodson, "Conventional Wisdom or Wishful Thinking? Staff Influence in Post Term Limit Legislatures," *Extension of Remarks*, July 1994, p. 8.

46. Corbett.

47. Quoted in *Armor*, p. 114.

48. Victor Kamber, "Discharging Our Civic Responsibilities," *San Diego Union-Tribune*, December 29, 1996, p. B15.

49. See, for example, Doug Bandow, *The Politics of Envy: Statism as Theology* (New Brunswick, N.J.: Transaction, 1994); James Bovard, *Lost Rights: The Destruction of American Liberty* (New York: St. Martin's, 1994); and Doug Bandow, *The Politics of Plunder: Misgovernment in Washington* (New Brunswick, N.J.: Transaction, 1990).

50. Haeley Mowery and Shari Williams, *The National Term Limits Fact Book* (Denver: Americans Back in Charge, 1992), p. 11.

51. Quoted in Thomas McArdle, "Term Limits: Alive and Kicking," *Investor's Business Daily*, March 15, 1996, p. 2.

52. See, for example, Debra Saunders, "Out, Out, Darn Senator," *San Francisco Chronicle*, April 26, 1996, p. A25; and Thomas Jipping, "Tallying the Term-Limits Vote," *Washington Times*, June 2, 1995, p. A1.

53. Robert Novak, "Term Limit Turnaround," *Washington Post*, March 9, 1995, p. A25. In fact, there is substantial evidence that he opposes term limits. See Paul Jacob, "Whose Government Is It, Anyway?" *U.S. Term Limits*, undated, p. 5.

54. As early as July signatures had been filed in 14 states. Signatures were being collected in North Dakota for the 1996 election and in California for the June 1998 election.

55. The criteria for earning the notation that one disregarded voter instructions are complex--failure to vote yes in a number of specified circumstances, such as bringing the measure before a committee, opposing delay, and approving the measure--but workable.

56. Quoted in "Congressional Term Limits Ruled Unconstitutional," *Governors Bulletin*, June 12, 1995, p. 3.

57. Since one has never been called, many practical questions remain unanswered. For one discussion of these and other issues, see Roger Clegg, ed., *Is It Time for a Second Constitutional Convention?* (Washington: National Legal Center for the Public Interest, 1995).