

5. *Term Limits and the Need for a Citizen Legislature*

Congress should

- pass a constitutional amendment limiting the terms of representatives to three and of senators to two, providing states the option of increasing the limits on representatives to six terms; and
- absent such a constitutional amendment, voluntarily limit their own terms to three if a representative and to two if a senator, consistent with the overwhelming desire of the American people

Introduction

The term-limits movement is alive and well in the United States. Opponents of term limits, the most vociferous of whom live inside the Beltway, had assumed the issue would go away following the Supreme Court's narrow five-to-four decision in *U.S. Term Limits v. Thornton* (1995) that said the states do not have the authority to limit the terms of their respective congressional delegations. As Justice Clarence Thomas pointed out in a brilliant dissent, the majority in *U.S. Term Limits* simply ignored the clear meaning of the Tenth Amendment. There being no explicit denial of such power to the states in the Constitution, the right to do so "is reserved to the states respectively, or to the people."

Indeed, the people had spoken loudly and clearly on term limits in virtually all of the initiative states that provided them with an opportunity to do so. Twenty-two states representing nearly half of Congress had passed term limits on their delegations by 1994. The great majority of them had opted to limit their representatives to three terms, and all of them had limited their senators to two terms. Only 2 of the 22 states chose

six terms for the House. That initiative process accurately reflected the views of the American people who support three-term limits for the House over six-term limits by a margin of five to one, according to a recent Luntz poll.

So intense is public support for a "citizen Congress" brought about through term limits—national polls have consistently put the number at 75 to 80 percent—that rather than give up after the Supreme Court's *U.S. Term Limits* decision, the movement instead intensified its efforts and adopted a new strategy. In November 1996 voters in nine states approved initiatives that instruct their congressional delegation to vote for term limits (defined as three terms in the House and two terms in the Senate) or face having placed next to their name on the ballot the words, "Disregarded voters' instructions on term limits."

The precedent for that ballot-language approach comes from the early 20th-century movement to end indirect election of senators by state legislatures. It worked, and in 1912 Congress complied with the will of the people by passing a constitutional amendment that called for the direct election of senators by the people. The parallels between the two movements are striking in that both were overwhelmingly popular throughout the nation, yet Congress had a clear conflict in terms of its own interests.

Given that precedent and the Supreme Court's reversal of the Arkansas Supreme Court's 1996 decision to remove a ballot-language initiative from its state ballot (the initiative, put back on the ballot by the Supreme Court, passed with 61 percent of the vote), it is very likely that ballot-language initiatives will be upheld as constitutional. And they will have an impact on candidates who do not support real term limits. In 1998 a dozen more states, including California and Florida, will have ballot-language term-limit initiatives to consider.

It is definitely in the interest of the 105th Congress to vote out a constitutional amendment on its own, before ballot-language term-limit initiatives start restructuring Congress in a major way.

Why Three Terms for the House?

It is important for Congress to address not just the issue of term limits but the nature of those limits. While those in Congress who purport to support term limits overwhelmingly favor six terms in the House, as noted above, the American people have stricter limits in mind. As Michael Kramer wrote in the January 23, 1995, issue of *Time*, "The dissonance between the people and their leaders on term limits is deafening." One

possible compromise on this division, suggested by David Keating of the National Taxpayers Union, would be for Congress to vote out an amendment calling for a three-term limit for the House, but providing states with the option of increasing the House limit to six terms. U.S. Term Limits, the leading national term-limits organization, has indicated that such a compromise would be acceptable, thus potentially ending the long-standing split between the grassroots term-limits movement and term-limit supporters in Congress.

It is worth reviewing the reasons why the term-limits movement has been so adamant in supporting short, three-term limits for the House of Representatives, because the debate over three terms versus six terms is not mere quibbling over a technical issue. It is significant and substantive. It is a question of the people's term limits versus the politicians' disingenuous limits.

The political energy behind the term-limit movement is predicated on the need for a citizen legislature. Americans believe that career legislators and professional politicians have created a gaping chasm between themselves and their government. For democracy to work, it must be *representative democracy*—a government of, by, and for the people. That means a citizen legislature.

To achieve a citizen legislature it is imperative that our representatives in Congress—particularly in the House, which the Framers clearly intended to be the arm of government closest to the people—be not far removed from the private sector, which, after all, they are elected to represent. As Rhode Island's Roger Sherman wrote at the time of our nation's founding, "Representatives ought to 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." In the era of year-round legislative sessions, the only way to achieve that objective is through term limits.

Three terms for the House is preferable to six terms for a variety of reasons. The most important one, however, deals with the question of who seeks to become a member of Congress in the first place. The fact is that America is best served by a Congress populated with members who are there out of a sense of civic duty, but who would rather live their lives in the private sector, holding productive jobs in civil society, outside the governmental world of political society. Such individuals might be willing to spend two, four, or even six years in Washington, but not if the legislative agenda is being set by others, who've gained their authority

through seniority. Twelve-year "limits," which these days amount to a mini-career, do little to remove this major obstacle to a more diverse and representative group of Americans seeking office.

We already have hard evidence that short, three-term limits will enhance the democratic process: Proposition 140 in California, which was passed by the voters there in 1990 and limited the state Assembly to three two-year terms. The 1992 Assembly elections witnessed a sharp increase in the number of citizens seeking office, with a remarkable 27 freshmen elected in the 80-member lower house of the California legislature. In an article on that freshman class, the *Los Angeles Times* wrote, "Among the things making the group unusual is that most of them are true outsiders. For the first time in years, the freshman class does not include an abundance of former legislative aides who moved up the ladder to become members. . . . Among the 27 are a former U.S. Air Force fighter 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."

A 1996 scholarly study of the California legislature by Mark Petracca of the University of California at Irvine found that the strict term limits Californians passed in 1990 had had the following consequences:

- Turnover in both legislative chambers had increased markedly.
- The number of incumbents seeking reelection had dropped sharply.
- The percentage of elections in which incumbents won reelection had dropped significantly.
- The number of women in both houses had increased.
- The number of uncontested races had declined.
- The number of candidates seeking office in both chambers had increased.
- The winning margin of incumbents had declined.

All of those developments, while perhaps not attractive to those seeking to be career politicians, are consistent with the goals of the great majority of Americans who favor a return to a citizen legislature.

Similarly, a three-term limit for the U.S. House of Representatives will return control of the **House—not** just through voting, but through **participation—to** the people. We must make the possibility of serving in Congress a more attractive option for **millions** more Americans.

A second major reason for the need for a three-term limit is that it ensures that the majority of those serving in the House will not be far

removed from their experiences in the private sector. They will bring to the policy issues of the day the common sense and practical experience of living in the real world that will lead to decisions that are truly in the public interest.

Many people reason that it has been the experienced legislators who have brought us the huge deficit and such undesirable episodes as the \$300 billion savings-and-loan bailout. The latter incident is a good example of why the common sense of Americans rooted in the private sector is needed in Congress. It's likely a Congress picked by lottery would have refused to expand federal deposit insurance as part of the necessary move to deregulate the thrift industry. "Inexperienced" legislators would have said, in effect, yes, do deregulate, but for goodness sake don't ask the American taxpayer to pay for any bad investments the thrift institutions make—that's a license to speculate. But our experienced legislators apparently thought they could repeal the laws of economics, raising the level of federal deposit insurance and extending it to the deposit rather than the depositor, thus allowing the wealthiest people in the nation to spread their deposits around with utter indifference to the financial soundness of the institutions in which they invested. We are still paying the price for such legislative hubris.

A third reason for the shorter limits is related to the second. And that is that the longer one is in Congress, the more one is exposed to and influenced by the "culture of ruling" that permeates life inside the Beltway. Groups like the National Taxpayers Union have documented the fact that the longer people serve in Congress, the bigger spenders and regulators they become. That is just as true of conservatives as it is of liberals. It is also understandable. Members of Congress are surrounded at work and socially by people whose jobs are to spend other people's money and regulate their lives. It is the unusual individual—although such people do exist—who is not subtly but surely affected by that culture.

A fourth reason to support three terms over six terms is that the shorter limits are an antidote to the growing "professionalization" of the legislative process. As Mark Petracca has written, "Whereas representative government aspires to maintain a proximity of sympathy and interests between representative and represented, professionalism creates authority, autonomy, and hierarchy, distancing the expert from the client. Though this distance may be necessary and functional for lawyers, nurses, physicians, accountants, and social scientists, the qualities and characteristics associated with being a 'professional' legislator run counter to the supposed

goals of a representative democracy. Professionalism encourages an independence of ambition, judgment, and behavior that is squarely at odds with the inherently dependent nature of representative government.”

Finally, the shorter limits for the House are guaranteed to enhance the competitiveness of elections and, as noted above, increase the number and diversity of Americans choosing to run for Congress. As Paul Jacob of U.S. Term Limits has pointed out, the most competitive races (and the ones that bring out the largest number of primary candidates) are for open seats. At least a third of all House seats will be open each election under three-term limits, and it is probable that as many as half will not feature an incumbent seeking reelection. We also know from past experience that women and minorities have greater electoral success in races for open seats.

The incentives for a citizen legislature are significantly stronger under the shorter limits. Six-term limits are long enough to induce incumbents to stick around for the entire 12 years. Three-term limits are short enough to prompt incumbents to return to the private sector before spending six years in the House. Under a three-term limit we will witness a return to the 19th-century norm of half the House being freshmen—a true citizen legislature.

In addition, the next most competitive races are incumbents' first attempts at reelection and the races just before retirement. Thus, under a three-term limit virtually all races for the House of Representatives will be more competitive than is the case today or would be the case under six-term limits.

In order for the concept of a citizen legislature to have meaning, it is imperative that those serving in the legislature literally view their time in office as a leave of absence from their real jobs or careers. That is the key to a successful citizen legislature. The incentives facing a member of Congress should never include concern about what other legislators might do in retaliation, or what special interests might do to the member's *political* career.

In the introductory essay in *The Politics and Law of Term Limits*, coauthors Ed Crane and Roger Pilon wrote, "Stepping back from these policy arguments, however, one sees a deeper issue in the term-limits debate, an issue that takes us to our very foundations as a nation. No one can doubt that America was dedicated to the proposition that each of us is and ought to be free—free to plan, and live his own life, as a private individual, under a government instituted to secure that freedom. Thus, implicit in our founding vision is the idea that most human affairs take

place in what today we call the private sector. That sector—and this is the crucial point—is primary: government comes from it, not the other way around. When we send men and women to Congress to ‘represent’ us, therefore, we want them to understand that they represent us, the overwhelming number of Americans who live our daily lives in that private sector. Moreover, we want them to remember that it is to that private world that they must return, to live under the laws they have made as our representatives. That, in essence, is the message implicit in the growing call for term limits. It is not simply or even primarily a message about ‘good government.’ Rather, it is a message about the very place of government in the larger scheme of things. Government is meant to be our servant, to assist us by securing our liberty as we live our essentially private lives. It is not meant to be our master in some grand public adventure."

The term-limits movement is not motivated by disdain for the institution of Congress. It is motivated by a sincere desire on the part of the American people to regain control of the most representative part of the federal government. The people want term limits and for good reasons. Resistance to this movement on the part of elected federal legislators only underscores the image of an Imperial Congress. The 105th Congress should secure an honorable place in American history by passing a "three and two" term-limits constitutional amendment and thereby return the American government to the American people.

Suggested Readings

- Crane, Edward H., and Roger Pilon, eds. *The Politics and Law of Term Limits*. Washington: Cato Institute, 1994.
- Bandow, Doug. "The Political Revolution That Wasn't: Why Term Limits Are Needed Now More Than Ever." Cato Institute Policy Analysis no. 259, September 5, 1996.

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