

TERM LIMITS FOR MEMBERS OF CONGRESS

MARCH 6, 1995.—Referred to the House Calendar and ordered to be printed

Mr. CANADY, from the Committee on the Judiciary,
submitted the following

REPORT

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.J. Res. 2]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the joint resolution (H.J. Res. 2) proposing an amendment to the Constitution of the United States with respect to the number of terms of office of Members of the Senate and the House of Representatives, having considered the same, report an amendment, but without recommendation on the joint resolution as amended.

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The amendment is as follows:

Strike out all after the resolving clause and insert in lieu thereof the following:

That the following article is proposed as an amendment to the Constitution of the United States:

“ARTICLE —

“SECTION 1. No person who has been elected for a full term to the Senate two consecutive times shall be eligible for election or appointment to the Senate for a third consecutive term. No person who has been elected for a full term to the House of Representatives six consecutive times shall be eligible for election to the House of Representatives for a seventh consecutive term.

“SECTION 2. Service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered an election for the purposes of section 1.

“SECTION 3. This article shall be inoperative unless it shall have been ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

“SECTION 4. No election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article.

“SECTION 5. No provision of any State statute or constitution shall diminish or enhance, directly or indirectly, the limits set by this article.”.

PURPOSE AND SUMMARY

The Republican “Contract with America” promises a floor vote on proposed constitutional amendments to limit the terms of Members of the United States Senate and House of Representatives within the first one hundred days of the 104th Congress. Pursuant to this commitment, the Committee on the Judiciary met on February 28, 1995 and moved to report the resolution, H.J. Res. 2 without recommendation. H.J. Res. 2, if approved by two-thirds of the members of both the House and Senate, and if ratified by three-fourths of the States, will limit United States Senators to two full, consecutive terms (12 years) and Members of the House of Representatives to six full, consecutive terms (12 years).

BACKGROUND AND NEED FOR THE AMENDMENT

In recent years, proposals to limit the terms of State and Federal officeholders have proved increasingly popular. Since 1990, 21 of the 24 States that have the initiative process have passed ballot measures limiting congressional terms. There are now 22 States with congressional terms. There are now 22 States with congressional terms limits.¹ Some States specify a maximum number of terms or years that Members are allowed to serve, either consecutively or within a specified period. Other States prohibit a candidate’s name from appearing on the ballot if he or she has served beyond a specified period or has been elected more than a specified number of times.

This past election congressional term limits were on the ballot in eight States: Alaska, Idaho, Massachusetts, Maine, Nebraska, Nevada, Colorado and Utah. Colorado was the first State to pass term limits in 1990 of two terms for Senators and six for House Members. The November 8, 1994 vote further restricted those terms to three years for House Members. On November 8, 1994, voters in

¹The Utah State legislature enacted legislation to limit U.S. Senators and Representatives to 12 year terms in May of 1994.

Utah rejected a ballot initiative to further restrict the terms of House Members to 6 years.

Some supporters of term limits argue that States currently have the authority to limit the number of terms that can be served by virtue of Article I, Section 4, Clause 1 of the Constitution, which allows States to prescribe the "times, places, and manner of holding elections for Senators and Representatives." Others argue, however, that such actions by the States represent an attempt to expand upon the qualifications of Federal legislators which are established and defined in the Constitution and cannot be changed by State laws. *See, Powell v. McCormack*, 395 U.S. 486 (1969).

The issue of the authority of the States to limit the terms of Members of Congress is being addressed by the United States Supreme Court in *U.S. Term Limits v. Hill*, No. 93-1456. In *U.S. Term Limits*, the Supreme Court is being asked to decide whether Article I of the Constitution forbids States from declining to print the names of multi-term incumbents in the U.S. House of Representatives and Senate on their election ballots. At issue is an amendment to the Constitution of the State of Arkansas which provides that a person who has served three or more terms in the House or two or more terms in the Senate representing Arkansas "shall not be eligible to appear on the ballot for election" to the House or Senate. If the Court rules in favor of the restriction imposed by the State of Arkansas, a constitutional amendment to impose term limits should not be necessary. If supporters wish to have uniform limits for all fifty States, however, such an amendment will still be desirable. If the court rules against the power of the States to impose such restrictions on ballot access, then the Constitution must be amended in order to impose such limits.

CONSTITUTIONAL AMENDMENT PROCEDURES

Article V of the United States Constitution provides that the Congress has the authority to propose amendments to the Constitution. Such proposed amendments must be approved by a two-thirds vote of both Houses. Congress must also specify whether the ratification process is to be done through the State legislatures or by State conventions. H.J. Res. 2 proposes ratification through the State legislatures.

HEARINGS

On February 3, 1995, the Subcommittee on the Constitution held one day of hearings on the issue of term limits for Members of the United States Senate and House of Representatives. The Subcommittee heard testimony from the following witnesses: Representative Tillie Fowler, Representative Bill McCollum, Representative Nathan Deal, Representative Douglas "Pete" Peterson, Representative Donald Payne, Representative Ray Thornton, U.S. Senator Fred Thompson, U.S. Senator Mitchell McConnell, former U.S. Senator Dennis DeConcini, Charles Kesler, Director of the Henry Salvatori Center, Claremont McKenna College, John G. Kester, Williams and Connolly, Thomas E. Mann, The Brookings Institution, the Honorable Thomas Fetzer, Mayor of Raleigh, North Carolina, Cleta Deatherage Mitchell, General Counsel, Term Limits Legal Institute, Fred Wertheimer, President, Common Cause,

Becky Cain, League of Women Voters. Additional testimony was received from Representative Frank A. LoBiondo.

During the 103rd Congress, the Subcommittee on Civil and Constitutional Rights held two hearings on term limits on November 18, 1993 and June 29, 1994. (Serial No. 66). The Judiciary Committee has never before considered term limits resolutions nor has the House ever voted on the issue of term limits for Members of the House and Senate.

COMMITTEE CONSIDERATION

On February 28, 1995 the Committee met in open session and ordered reported the resolution H.J. Res. 2, with an amendment, without recommendation, by a recorded vote of 21-14.

VOTE OF THE COMMITTEE

The Committee considered the following with recorded votes:

1. Mr. Frank offered an amendment to take into account elections or service occurring prior to the amendment becoming operative when determining eligibility for elections. Mr. Frank's amendment was defeated by a rollcall vote of 15-20.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. Moorhead
Mr. Frank	Mr. McCollum
Mr. Schumer	Mr. Gekas
Mr. Berman	Mr. Coble
Mr. Boucher	Mr. Smith (TX)
Mr. Bryant (TX)	Mr. Gallegly
Mr. Nadler	Mr. Canady
Mr. Scott	Mr. Inglis
Mr. Watt	Mr. Goodlatte
Mr. Becerra	Mr. Buyer
Mr. Serrano	Mr. Hoke
Ms. Lofgren	Mr. Bono
Mr. Sensenbrenner	Mr. Heineman
Mr. Schiff	Mr. Bryant (TN)
	Mr. Chabot
	Mr. Flanagan
	Mr. Barr
	Mr. Reed
	Ms. Jackson Lee

2. Mr. Gekas offered an amendment, as amended by Mr. Goodlatte, to allow Members who have served 12 consecutive years to again be eligible for election or appointment if they sit out at least one full term. The amendment offered by Mr. Gekas, as amended by Mr. Goodlatte, was adopted by a rollcall vote of 21-13.

AYES	NAYS
Mr. Conyers	Mr. Hyde
Mrs. Schroeder	Mr. McCollum
Mr. Frank	Mr. Coble
Mr. Schumer	Mr. Schiff

Mr. Berman	Mr. Gallegly
Mr. Boucher	Mr. Inglis
Mr. Bryant (TX)	Mr. Hoke
Mr. Reed	Mr. Bono
Mr. Nadler	Mr. Heineman
Mr. Scott	Mr. Bryant (TN)
Mr. Watt	Mr. Chabot
Mr. Becerra	Mr. Flanagan
Mr. Serrano	Mr. Barr
Ms. Lofgren	
Ms. Jackson Lee	
Mr. Moorhead	
Mr. Sensenbrenner	
Mr. Gekas	
Mr. Smith (TX)	
Mr. Canady	
Mr. Goodlatte	

3. Mr. McCollum offered an amendment in the nature of a substitute to the Scott amendment to pre-empt any applicable, valid State laws limiting the terms of Members. The McCollum amendment was adopted by a rollcall vote of 21–11.

AYES	NAYS
Mr. Hyde	Mr. Sensenbrenner
Mr. Moorhead	Mr. Coble
Mr. McCollum	Mr. Schiff
Mr. Gekas	Mr. Canady
Mr. Smith (TX)	Mr. Inglis
Mr. Gallegly	Mr. Bono
Mr. Goodlatte	Mr. Scott
Mr. Buyer	Mr. Watt
Mr. Hoke	Mr. Becerra
Mr. Heineman	Ms. Lofgren
Mr. Bryant (TN)	Ms. Jackson Lee
Mr. Chabot	
Mr. Flanagan	
Mr. Barr	
Mr. Conyers	
Mrs. Schroeder	
Mr. Frank	
Mr. Schumer	
Mr. Berman	
Mr. Boucher	
Mr. Bryant (TX)	
Mr. Reed	
Mr. Nadler	
Mr. Serrano	

4. Mr. McCollum offered an amendment in the nature of a substitute to limit the number of terms of office of Members of the Senate to 12 years and the House of Representatives to 12 years. The McCollum amendment was adopted by a rollcall vote of 20–14; 1 voting present.

AYES

Mr. Hyde
 Mr. Moorhead
 Mr. Sensenbrenner
 Mr. McCollum
 Mr. Gekas
 Mr. Coble
 Mr. Smith (TX)
 Mr. Schiff
 Mr. Gallegly
 Mr. Canady
 Mr. Inglis
 Mrs. Goodlatte
 Mr. Buyer
 Mr. Hoke
 Mr. Bono
 Mr. Heineman
 Mr. Bryant (TN)
 Mr. Chabot
 Mr. Flanagan
 Mr. Barr

Present: Mr. Frank.

5. Motion to report H.J. Res. 2, as amended, without recommendation to the House. Motion was agreed to by a rollcall vote of 21–14.

AYES

Mr. Hyde
 Mr. Moorhead
 Mr. Sensenbrenner
 Mr. McCollum
 Mr. Gekas
 Mr. Coble
 Mr. Smith (TX)
 Mr. Schiff
 Mr. Gallegly
 Mr. Canady
 Mr. Inglis
 Mr. Goodlatte
 Mr. Buyer
 Mr. Hoke
 Mr. Bono
 Mr. Heineman
 Mr. Bryant (TN)
 Mr. Chabot
 Mr. Flanagan
 Mr. Barr
 Ms. Lofgren

NAYS

Mr. Conyers
 Mrs. Schroeder
 Mr. Schumer
 Mr. Berman
 Mr. Boucher
 Mr. Bryant (TX)
 Mr. Reed
 Mr. Nadler
 Mr. Scott
 Mr. Watt
 Mr. Becerra
 Mr. Serrano
 Ms. Lofgren
 Ms. Jackson Lee

NAYS

Mr. Conyers
 Mrs. Schroeder
 Mr. Frank
 Mr. Schumer
 Mr. Berman
 Mr. Boucher
 Mr. Bryant (TX)
 Mr. Reed
 Mr. Nadler
 Mr. Scott
 Mr. Watt
 Mr. Becerra
 Mr. Serrano
 Ms. Jackson Lee

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

representatives, are incorporated in the description portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(l)(3)(B) of House Rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth, with respect to the resolution H.J. Res. 2, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, March 2, 1995.

Hon. HENRY J. HYDE,
Chairman, Committee on the Judiciary
House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.J. Res. 2, a joint resolution proposing a constitutional amendment to limit congressional terms, as ordered reported by the House Committee on the Judiciary on February 28, 1995. We expect that enactment of this resolution would result in no significant cost or savings to the federal government, and no cost to state and local governments. Because enactment of H.J. Res. 2 would not affect direct spending or receipts, pay-as-you-go procedures would not apply to the bill.

The joint resolution would propose amending the constitution to limit the number of consecutive terms that Senators and Representatives may serve. The proposed amendment would limit Senators to two consecutive terms and Representatives to six consecutive terms. To become effective, two-thirds of the members of both houses would have to vote to approve the resolution, and three-fourths of the states would have to ratify the proposed amendment within seven years.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

JUNE O'NEILL, *Director.*

INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that H.J. Res 2 will have no significant inflationary impact on prices and costs in the national economy.

SECTION-BY-SECTION ANALYSIS AND DISCUSSION

Section 1

Section 1 sets forth the limitations on eligibility for service for Members of the United States Senate and House of Representatives. A person who has been elected to the Senate for two full, consecutive terms shall not be eligible for election or appointment to the Senate for a third consecutive term. In addition, a person who has been elected for six full, consecutive terms to the House of Representatives shall not be eligible for election for a seventh consecutive term.

Section 2

For the purpose of considering elections which count toward the relevant limit, Section 2 provides that service as a Senator or Representative for more than half of a term to which someone else was originally elected shall be considered as an election. This section will ensure that no Member will be permitted to serve beyond the 12-year limit in the House or the Senate because the Member is serving the remainder of a term (either through election in the House or election or appointment in the Senate).

Section 3

This section sets a seven-year limit on ratification of the amendment from the time it is submitted to the States by the Congress. Pursuant to Article V of the United States Constitution, the amendment must be ratified by three-fourths of the State legislatures.

Section 4

This section makes clear that elections or service occurring prior to ratification by three-fourths of the States shall not be counted when determining eligibility for election. Although the amendment, if ratified by three-fourths of the States, will apply to sitting Members of Congress, elections and service of those Members prior to the date the amendment takes effect will not count in determining future eligibility for election.

Section 5

This section, which was added in Committee, provides that the constitutional amendment will pre-empt State laws attempting to set limits on the terms of Members. This section also guarantees that uniform limits on terms of Members of the House and Senate shall apply to all the States.

ADDITIONAL VIEWS OF HON. HENRY J. HYDE

Although I am opposed to artificial term limits for members of the United States Senate and House of Representatives, I voted to report H.J. Res. 2 without recommendation so that this important issue can be the subject of a full and fair debate on the House floor.

The United States Constitution provides that the members of the House of Representatives shall be “chosen every second Year”¹ and the members of the Senate shall be “elected by the people thereof, for six years. . . .”² As a fundamental matter, every time voters go to the polls, they make the decision of whether to “limit” the term of their elected representatives.

Nonetheless, proponents continue to press for government-imposed restrictions on the terms of members of Congress. Some supporters of term limits believe we need to resurrect the principle of “rotation in office.” Some support term limits because they believe that the idea of a “professional” or “career” politician is incompatible with the concept of the “citizen” legislator. Certain supporters of term limits argue that they are needed to make representatives more responsive to the needs of the electorate. Some, like noted columnist and author George Will, argue the opposite: that term limits are needed to create a constitutional “distance” which will allow representatives to engage in deliberative decisionmaking in pursuit of the best interests of the nation, not their own re-elections.

The frustration with Washington felt by the citizens who have voted in favor of term limits resolutions in the States is real. They want less spending, lower taxes and less regulation and they sent a clear and unmistakable signal to Washington to that effect on November 8, 1994. Fundamentally, however, term limits are not as much a restriction on the power of the Federal government as they are an abridgement of the rights of citizens to choose who will represent them. This sentiment was expressed by Robert R. Livingston during the New York debates on adoption of the Federal Constitution with respect to the issue of “rotation in office:”

The people are the best judges who ought to represent them. To dictate and control them, to tell them whom they shall not elect, is to abridge their natural rights. This rotation is an absurd species of ostracism—a mode of proscribing eminent merit, and banishing from stations of trust those who have filled them with the greatest faithfulness. Besides, it takes away the strongest stimulus of public virtue—the hope of honors and rewards. The acquisition of abilities is hardly worth the trouble, unless one is to enjoy the satisfaction of employing them for the good of one’s country. We all know that experience is indispensably nec-

¹U.S. Const. art. I, sec. 2, cl. 1.

²U.S. Const. art. I, sec. 3, cl. 1. Amend. XVII, Clause 1.

essary to good government. Shall we, then, drive experience into obscurity? I repeat that this is an absolute abridgment of the people's rights. 2 Debates on the Adoption of the Federal Constitution 292–293 (J.Elliot) (1988) (speech of R. Livingston).

Although the principle of “rotation in office” was a part of the Articles of Confederation, it was subsequently rejected by the members of the Constitutional Convention.³

Some supporters argue that term limits will restrict the ability of the Federal Government to interfere in our daily lives. It seems far more likely, however, that the opposite will be true. If the terms of House and Senate members are limited, so to will be the ability of the Congress to restrain the unelected and virtually unaccountable civil servants who run the executive branch of our Federal government.

Some support term limits as a means of resurrecting the concept of a “citizen” legislator, as opposed to the “professional” or “career” politician. I submit, however, that complexity of today's modern world calls for “professionalism” and expertise in the realm of government no less than in the other spheres of society. As Thomas Mann of the Brookings Institution stated recently in testimony submitted to the Subcommittee on the Constitution:

[C]areful study of Congress and every other sector of society suggests that greater professionalism is a necessary offshoot of the growth and specialization of the modern world. . . . [A]dvocates of term limits are hard pressed to offer any examples of amateurism operating successfully in contemporary society, in the United States or abroad. George Will got it right the first time when he wrote: “The day of the ‘citizen legislator’—the day when a legislator's primary job was something other than government—is gone. A great state cannot be run by ‘citizen legislators’ and amateur administrators.” “The Politics and Law of Term Limits,” Edward H. Crane and Roger Pilon, eds., (Washington, DC: CATO Institute, 1994) p. 87. Citing George F. Will, “Statecraft as Soulcraft” (New York: Simon & Shuster, 1983) p. 16.

This nation's future depends on the caliber of the people leading it. We need individuals with the self-confidence, the experience, the wisdom and the judgment to be able to negotiate issues of war and peace. We get these people from the crucible of politics and experience. Term limits will not only deprive us of the institutional memory of Members of Congress needed to guide us, it will deprive us of the individual memories which bring experience to bear on the important issues of the day. In short, we cannot afford to disqualify those who can bring sound judgment born of years of experience to the increasingly demanding tasks of elected office.

Our current system provides the mix of “institutional memory, experience, knowledge, and wisdom as well as regular infusions of

³Art. of Confed. art. V, cl. 2. The Committee of the Whole of the Constitutional Convention considered the question of term limits for the legislature on June 12, 1787. See, Max Farrand, ed., “The Records of the Federal Convention of 1787” (1911; New Haven, Conn.: Yale University Press, 1966), vol. 1, p. 210.

new members with fresh ideas willing to challenge old ways of doing the people's business."⁴ The election of 1994 showed that the American people already have the power to limit the terms of officeholders who fail to represent them according to their wishes. Term limits will restrict this vital ability which is the cornerstone of representative democracy and should, therefore, be rejected.

HENRY J. HYDE.

⁴Testimony of Thomas Mann before the Subcommittee on the Constitution, February 3, 1995. 104th Congress, first session.

DISSENTING VIEWS

Because we believe that the Judiciary Committee has reported to the full House of Representatives term limits legislation which is anti-democratic, we dissent.

Term limits are anti-democratic. They impair without recourse a fundamental right of people to vote for whomever they choose. "If somebody came up to me and said you have to vote for this person, I would be offended. I would say you don't understand democracy. Now, I fail to see the difference between someone coming up and saying you cannot vote for this person. I would say you don't understand democracy, either." Chairman Henry Hyde, House Judiciary Committee, Judiciary Committee's Subcommittee on the Constitution's Term Limits Hearing, February 3, 1995, at pages 7-8. We agree with Chairman Hyde's assessment.

Term limits are completely unnecessary. Congressional turnover is not low. The reelection rate for incumbents who seek reelection has been over time high, (between 1790 and 1988 the incumbency return rate was less than 70% only seven times) but an important indicator rarely mentioned by term limits supporters is that many incumbents have not sought reelection. As a result, slightly more than half (52 percent) of the current Members of the House were initially elected in 1990 and thereafter. In the 103d Congress, 72% of the House and Senate Members were elected in 1980 and after.

The bill reported out of the Judiciary Committee is inconsistent. The Judiciary Committee rejected an amendment which would have made the measure applicable to Members of the House and Senate currently serving. The amendment offered to strike that portion of Mr. McCollum's substitute which provides "[n]o election or service occurring before this article becomes operative shall be taken into account when determining eligibility for election under this article."

With seven years for ratification and twelve years of limit, current Members would not be affected for at least nineteen years. It is our view that if term limits are deemed an appropriate measure, a view we do not hold, then those term limits should apply to current lawmakers. The Committee's rejection of this fundamentally fair notion lays bare their true goals: a complete pandering to that part of the electorate which calls for Congressional reforms, as long as the solution doesn't affect any sitting Member.

The supporters responded to an amendment for retroactive application by claiming that an important interest group, U.S. Term Limits, opposes retroactivity, arguing that none of the states' limits laws are retroactive. The majority is selective in its reliance on U.S. Term Limits. That group also expressly favors six year term limits and no preemption of states' rules, wishes the majority rejected.

Term limits would remove critical leadership and institutional abilities of Members. Important substantive areas of legislation rely on experienced, knowledgeable leaders: communications, natural resources, substantive criminal law, intellectual property, etc., have all been positively influenced by Members with many years of in-depth experience in these areas. Every other area of professionalism in this nation values experience, tenure, and the wisdom which can come with terms of service. Term limits would destroy this opportunity and make Congress an institution where inexperience is more valued than professionalism and experience.

Now, I want a career dentist to work on me, career. I want him to have been there. Therefore, what about a career politician? Isn't that—can't anybody do that job, anybody? Get the first 400 names out of the directory. I just made a little list of the things you had better be expert in, you had better be knowledgeable about if you are a politician serving in this building: agriculture, environment, weapons systems, international relations, banking, finance, urban affairs, tax policy, budget policy, administration of justice, bankruptcy law, tort, medical malpractice, product liability, immigration policy, criminal law, intellectual property, customs, health care, trade policy, education and labor, and on and on and on and on—a lifetime's work, to know about one of these subjects. You better know about a lot of them, because you are voting for your people.

This is not an easy job, and it can't be done overnight. It takes years. When they operate on your brain, when they bring that saw next to your skull, you had better ask for a career neurologist who is going to do that. And you had better, in time of national crisis—not a check writing scandal; I mean, when the nuclear bombs are about to fly, I mean when Iran is going to take over the Persian Gulf—you better have some Everett Dirksens, some Henry Jacksons, some Hubert Humphreys, you had better have a few people who have been there before and have some institutional memory.

You demean the importance of this job by saying anybody can do it.

Chairman Henry Hyde, House Judiciary Committee, Judiciary Committee's Subcommittee on the Constitution's Term Limits Hearing, February 3, 1995, at pages 54–55.

Term limits increase the power of appointed officials, both Congressional staffers and Executive Branch career employees. Agency employees and Congressional staffers would play a relatively more important role, with inexperienced Members susceptible to the manipulation and influence of more experienced staff.

A 1989 study showed that 70 percent of career executives in the Executive Branch have been with their agencies for 10 years, and 50 percent for 15 years.¹ A 1993 study showed that the "typical Federal civilian employee" had a length of service of 14.9 years av-

¹ Leadership for America, Rebuilding the Public Service, Task Force Reports to The National Commission on the Public Service, Paul A. Volcker, Chairman, 1989, at page 163.

erage, for full time permanent employees.² For the majority who rail against the power of Federal Agencies and use “bureaucrats” as a pejorative, term limits for Members of Congress make no sense.

Term limits supporters claim mutually exclusive goals: limits will make legislators closer to the people and limits will make legislators more distant. Supporters of term limits argue that what would cure Congress’ ills would be to replace it with Members who are “citizen legislators” who would undertake the job as a civic duty for a short time rather than as a career. The current professional legislator means that you “no longer work, shop, commute or send your children to school among your constituents. The attitudes and outlook inside the beltway among what has become a professional political class is indeed different from that in the rest of the nation, and Members of Congress spend far more time here than they did twenty or thirty years ago . . .”³

Then, in complete contradiction to that premise, term limit supporters take a completely opposite tack, arguing that term limits are “not to make Congress closer to the people, but to establish a constitutional distance for a more deliberative process, all of which would restore to Congress its proper stature. A deliberative Congress would cut the presidency down to size from its current swollen nature.”⁴

Taken together, the two viewpoints underscore the intellectual inconsistency of the term limits movement. On the one hand the current Congress is criticized as too close to the people, too responsive to their wishes, and thus in need of being replaced. With what? With those who are truly citizens. People who understand every day people. And, the logic goes, these citizen legislators would be more responsive than current Members, because they would understand ordinary people better. So, the argument is, replace entrenched Members who are too close to the people and can’t make hard decisions which are unpopular with ordinary citizens with Members who are close to the people precisely because they are “ordinary.”

The founders explicitly disapproved of limitations on terms of service

As an historical matter this issue was decided properly in the earlier days of this Republic. The Articles of Confederation provided that Members of Congress rotate out after serving three one year terms within any six year period. Art. of Confed. art. V, cl. 2. Since rotation was part of the Articles of Confederation, the Founders debated it at the Constitutional Convention as a corollary to term length.⁵

²Federal Civilian Workforce Statistics, Employment and Trends as of November 1993, OPM, at page 78 (1993).

³David Mason, Heritage Foundation, Judiciary’s Constitution Subcommittee Hearing at 41 (1993).

⁴Will, George, Speech to Cato Institute, 12/1/93, reprinted in Constitution Subcommittee Hearing Transcript, at page 215 (1993).

⁵At the Constitutional Conventions terms of office of one, two and three years were proposed, with most support centering around either one or three year terms. Two year terms received little support at first, but was settled upon as a compromise. Madison had supported the two years as a compromise in the “Federalist” Nos. 52 and 53.

Rotation, argued the Anti-Federalists, would provide members with a more intimate knowledge of their country and constituency, as well as prevent the abuses of corruption and would encourage a greater number of people to hold public office. The Federalists argued that reelection is an incentive to be responsive to the needs of the constituents.

When a man knows he must quit his station, let his merit be what it may, he will turn his attention chiefly to his own emolument.

Two, debates on the Adoption of the Federal Constitution 288 (J. Elliot) (1888) (speech of A. Hamilton) at 320.

The Virginia Plan, a compromise, was introduced by Edmund Randolph at the Convention. The plan would have rendered members of the House ineligible for reelection for an unspecified period after their term's end. The Convention expunged the limitation less than a month after it had been proposed, without ever specifying the proposed period. The Convention also debated a limit for the Executive, and decided against it.

JOSÉ E. SERRANO.
RICK BOUCHER.
ROBERT C. SCOTT.
BARNEY FRANK.
JOHN CONYERS.
JOHN BRYANT.
SHEILA JACKSON LEE.
HOWARD L. BERMAN.
PAT SCHROEDER.
MELVIN L. WATT.

