

Toward Congressional Term Limits

This brief article introduces some basic reasons for Congressional term limits. By a term limit, this article means that a person could not hold office for more than a set time, becoming ineligible to stand for reelection thereafter. Term limits in Congress would complement the U.S. President, who has a two-term limit. This article does not attempt a complete recounting of term-limits history or theory. History about, arguments for, and arguments against term limits appear in various political scenarios and in a wide variety of publications. For the full history and philosophy, the reader has many resources to consider, including those listed on this website. This page simply outlines the purpose in establishing term limits for the U.S. Congress with a brief discussion about incumbency in U.S. politics and about some points supporting term limits.

Incumbency

The concept of a term limit is nothing new. At times, limitation on the number of years or terms a person could hold elected office has governed in ancient Greece, Rome, Venice, and other representative forms of government in history. In America, at the time of the U.S. Revolution, many of the original colonial constitutions and the Articles of Confederation carried term limits. When the U.S. Constitution was drafted in Philadelphia, term limits were considered, and thereafter during debate over the bill of rights, term limits were considered again. As the very first speaker in debate at the constitutional convention, for example, Edmund Randolph proposed that the nation's executive be ineligible for reelection.¹ Despite support among many founders, no term limits were formally established as a part of the initial national government.

Rather than formal limits, at the birth of the U.S. Constitution and Bill of Rights, a firm *culture* of rotation in office controlled. George Washington voluntarily stood down after two terms as our first president, feeling it was his moral duty. In doing so he established a precedent that bound all presidents, voluntarily, for over 150 years. With Congress and the Presidency back then, instead of primary elections that we are accustomed to today, caucuses of political parties chose their candidates before each election. As a part of this selection process, candidates and party leaders mutually understood that candidates would stand for election to certain offices in turn, by *rotation*, without remaining in office indefinitely.

This practice held full sway over American political life for over a century, and is even evident in the political life of Abraham Lincoln, who stood down after a *single term* in the House of Representatives because of his expressed moral duty to his party and office. Until 1889 the

¹ See James Madison, *The Debates in the Federal Convention of 1787*, 25 (Hunt and Scott, editors), Prometheus Books (2007).

average term of service in the House was 2.14 years. Indeed, the turnover rate for both houses of Congress remained close to 50 percent until the 20th century, when turnover first dropped dramatically, then steadily declined to the levels of 10-20 percent in recent decades.²

The big change generally correlated with changes in primary elections, as the culture of rotation collapsed. Since 1890 or so, politicians have, on average over time, remained in office longer and longer. In 2008, President Obama, one of the youngest presidents ever, took the oath of office with the oldest Congress ever. In the 113th Congress of 2012, Representatives entered office with an average of 9.1 years already in position, and Senators with an average of 10.2 years.³

Arguments for and against Term Limits

Many writers and politicians have argued points for and against term limits over the centuries. A full treatment is far beyond the scope of this introductory article, and the reader can easily access many resources, including the *Federalist Papers*, to consider fully the theory on either side of the issue. In summary though, the arguments generally divide between corruption and negligence, on one side, and elections and expertise on the other side.

Those supporting term limits believe that time in office tends toward corruption and negligence. As the argument goes, time in office can have a corrupting influence on Members of Congress because of the repeated exposure to factions organized to seek advantage. These groups, by lobbyists or otherwise, repeatedly request beneficial legislation, repeatedly offer entertainment or other favors to Members of Congress, whether legal or illegal, and repeatedly donate campaign funds to those Members of Congress in a position to advance that specific group's interest.

Besides corruption, tenure in office can lead to negligence. This can occur as a Member of Congress spends more time in Washington, away from his or her constituency, spends more time with other Members of Congress and government officials who are interested in various government programs and their funding, and subsequently becomes insulated from constituents' desires. Because the Members of Congress increasingly derive their wellbeing, financially and socially, from government connections, their connections to their districts become less and less important.

² See H. Abbie Erler, "Confronting Unlimited Government,"

<http://www.heritage.org/research/reports/2009/08/confronting-unlimited-government-lessons-from-the-term-limits-movement> (2009).

³ See <http://www.senate.gov/CRSReports/crs-publish.cfm?pid=%260BL%2BR\C%3F%0A> and http://www.usatoday.com/news/washington/2009-01-05-new-congress_N.htm.

Corruption and negligence lead to related political problems, some being quite subtle. These subtle symptoms can include severe polarization among parties as well as perverse efforts to placate constituents by individual politicians. As for polarization, some academics have set to quantify Congress' divisiveness. They generally report that the Congress is the most polarized ever in history, resulting in destructive gridlock along rigid party lines. The rigid party dynamics discourages compromise and independent voting among the individual members of Congress.⁴ This increasing polarization has correlated clearly with increasing length in office.

While gridlocked polarization discourages compromise and independence, it encourages individual Members of Congress to turn to their own devices to placate constituents. The longer a member of Congress is in position, the greater opportunity arises for party control, leadership position, and influence. With more influence, the member can regulate, deregulate, cut projects, or fund projects in a wide variety of ways that appear to benefit his or her constituent district but that damage the entire nation, including the constituents, over the long-term. Because of the short-term pressures however, and because of the gerrymandered districts that further limit political choice, constituents reelect these members to Congress to beat out other districts in the tenure-power grab, perpetuating the cycle of mismanagement. Thus, because of the competing tenure of legislators outside a Congressional district, and because of gerrymandered party control within, voters face little real choice but to reelect the incumbent. With this dismal state of affairs, proponents of term limits present a clean method to cut the tenure-tower down to size, level competition outside the district, and disperse accumulated corrupting power.

On the other side, those opposed to term limits base their opinions on elections and expertise. Elections, they say, are the bulwark against corruption and negligence because incumbents are only an election away from losing their seats. Term limits are *undemocratic*, by this argument, because they deprive voters of a candidate that they may well desire to send to Congress as their chosen authority. Further, having a Member of Congress serve with a term limit *instead* of an election could have a perverting influence because the member will disregard the constituency's desires altogether, acting to benefit some group in order to secure a favorable position with them after the term in Congress expires.

With elections, legislative expertise is another reason opponents decry term limits. In our modern bureaucratic state, the argument goes, legislators that have had time to develop areas of policy expertise are indispensable. Freshman legislators, on the other hand, are confused and unable to see through the flurry of lobbyist and bureaucratic information thrown at them, leaving them to act rashly and foolishly. Term limits might exacerbate this problem as legislators act even more rashly while aware that their term clock is ticking. When referring to these arguments, opponents of term limits often cite term-limited legislators in various state assemblies

⁴ See Keith T. Poole, Howard Rosenthal and Nolan McCarty, *Polarized America: The Dance of Ideology and Unequal Riches*, MIT Press (June 2006).

who claim that at the end of their tenure they were finally arriving at a position where they felt they could really contribute..., if only they could have remained in office.

After considering these arguments for and against, the common sense of term limits triumphs. Term limits can add to, not detract from, the benefits of elections. Certainly there is more than one person in any given jurisdiction that can represent the jurisdiction well. Less time in office means clearer vision, focused by personal experience that is closer temporally and spatially to the voting public. Congressional pay can be structured in a way that Members of Congress do not need to be immediately concerned with employment when their limit arrives, lessening the pressure to provide favors to a potential future employer. And as far as expertise goes, our government programs should be accessible and understandable to all legislators of good capacity and education, not just those who have years of specialized experience. In this way, the freshman legislator can demand from bureaucracy an explanation that the citizenry can understand. We need not fear able legislators fresh from the citizenry, but we should remain skeptical of calloused, aloof politicians who profess special acquired knowledge beyond the understanding of voters.

The Way Forward

A large majority Americans have supported term limits for elected officials for a long time. With few exceptions, Americans have overwhelmingly voted for term limits when given the choice. A 2013 Gallup survey confirmed that 75% of Americans “would vote for” Congressional term limits, with strong consistency across Independents, Democrats and Republicans.⁵ Many state legislatures, governorships, counties, cities, municipal boards and other elected officials have term limits.⁶ In 1951 we formally limited the president to two terms with the 22nd Amendment. Now we need to finish the national work by limiting the terms of Representatives and Senators.

The public’s desire to limit Congressional terms has been stymied by entrenched senators and representatives. The U.S. Congress, not surprisingly, has failed to propose a Constitutional Amendment for the electorate to ratify, and the U.S. Supreme Court has blocked the attempts of states to impose limits on their own Congressional delegations.

At this point, apparently, Americans are left with a single option. Article V of the U.S. Constitution allows citizens to bypass the Congress to amend the Constitution. The purpose of

⁵ <http://www.gallup.com/poll/159881/americans-call-term-limits-end-electoral-college.aspx>.

⁶ Around 1990, some states began enacting term limits on their legislatures, and now some 16 state legislatures are term-limited. The term limits in the last state, Nevada, finally took effect in 2010. See <http://www.termlimits.org/content.asp?pl=18&sl=19&contentid=19>.

this option, in the wisdom of the Constitutional Framers, is to amend government when officials themselves have become intransigent. This option involves three steps: 1) 34 states enact applications for an amendment-proposing convention; 2) the convention proposes a Constitutional Amendment; and 3) 38 states ratify the proposed amendment. The way forward is to establish Congressional term limits by a successful process of amendment-by-convention.