# 10. Term Limits and the Need for a Citizen Legislature

***Each member of Congress should***

- commit to be a citizen legislator by limiting his or her time in office to no more than three additional terms in the House of Representatives and no more than two additional terms in the Senate and
- keep that commitment.

## *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 after 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 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.

Despite the overwhelming support of the American people for term limits, the incumbent establishment has made it extremely difficult for the will of the people to be translated into law. Advocates of term limits passed initiatives in 22 states limiting the terms of their congressional representatives. Then the Supreme Court declared that states could not limit the terms of their representatives. So advocates of term limits petitioned the new Republican Congress—which had put term limits in its Contract with America—to pass a constitutional amendment with nationwide term limits. Incumbent members of Congress had an obvious conflict of interest on the issue, and they did not pass an amendment.

Americans believe term limits will make Congress a citizen legislature. But it has become clear that a Congress controlled by career politicians will never pass a term-limits amendment. So the term-limits movement, the most successful grassroots movement in decades, has set out to change Congress from a bastion of careerism into a citizen legislature, the best way available—district by district.

### *Self-Imposed Term Limits*

George Washington set the standard. Perhaps the most popular and powerful American of all time, Washington nevertheless stepped down after two terms as president. He handed back to the people the immense power and trust they had given to him—dramatically making the case that no one should monopolize a seat of power.

The tradition of a two-term limit for the president lasted uninterrupted for almost a century and a half. When it was broken by Franklin D. Roosevelt, Congress moved to codify the term limit by proposing the Twenty-Second Amendment to the Constitution, which the states ratified in just 12 short months. The presidential term limit remains tremendously popular.

We can establish such a tradition in Congress. In recent years, candidates serious about changing the culture of Washington have pledged to limit themselves to three terms in the House or two terms in the Senate. Those pledges have resonated with the voters who understand that a lawmaker's career interests do not always coincide with the interests of the people back home.

Rep. Matt Salmon of Arizona, in reaffirming the pledge he made in 1994 to serve only three terms in the House, said, ''The independence

that comes from limiting my terms has enabled me to vote against the bloated budget deal of 1997, and to challenge my own Party's leadership when I feel it would be best for the people of Arizona. Instead of looking ahead to my own career in the House, I am able to put my Arizona constituents first.''

Not surprisingly, self-limiters have spearheaded opposition to pork-barrel spending and committee budget increases. They have demanded honest accounting and sought real solutions to the crisis of Social Security and Medicare and other seemingly intractable problems—so often used by professional politicians as political footballs.

While many elected officials pay lip service to term limits, the true citizen legislators are leading by example. Their actions, not their words, are the proof. Rep. Mark Sanford of South Carolina points out what is obvious to the public: ''Talk is the cheapest commodity in Washington.'' Americans are sick of hypocrisy in Washington. As Paul Jacob, executive director of U.S. Term Limits, told the *New York Times*, ''We think term limits entail leaving.''

### *The Power of the Issue*

Voters see term limits in personal terms. They reward self-limited candidates. A poll by Fabrizio-McLaughlin shows that voters favor candidates who limit their time in the House to three terms by an incredible seven-to-one margin. In fact, a Rasmussen Research poll shows that those who support a term-limits amendment to the Constitution favor self-limiters by 10 to 1. Even a plurality of those opposing a term-limits amendment prefers a candidate who self-limits to three terms.

Many candidates have demonstrated the power of the personal term-limits pledge. Rep. Bob Inglis of South Carolina defeated an incumbent in 1992 in a campaign built on his self-imposed three-term limit. In 1994 Rep. Mark Sanford broke out of a crowded GOP primary field in which every candidate favored a term-limits amendment—but only Sanford pledged to limit himself to three terms.

### *Term Limits and 1998 Voters*

The term-limits movement launched a new campaign in 1998. U.S. Term Limits sent every congressional candidate in the nation a Term Limits Declaration. As Eric O'Keefe, president of Americans for Limited Terms, explained to the *Hill*, ''We knew that even most members voting

for term limits last year hated them. So we realized that we had to change the composition of Congress.'' Americans for Limited Terms spent more than $8 million urging voters to lobby candidates to sign the pledge. Many did, and those who did not often paid a heavy price at the polls. Paul Jacob put it plainly: ''Public knowledge is our only weapon.'' It has turned out to be a potent one.

The initial testing ground of the self-limitation approach was the combined primaries and special elections of 1998. Term-limits groups targeted competitive districts with issue advertising campaigns to persuade candidates to sign the Term Limits Declaration. Twenty-seven of 36 races were won by pledge signers—a feat made even greater by the fact that in almost every instance the pledge signer was the underdog. In 17 of the districts, most or all candidates signed the declaration in a kind of domino effect, which speaks volumes about the political punch of the pledge. In the remaining 19 districts, pledge signers won a majority of the races, 10 to 9.

### *Impressive Start for Term-Limits Pledge*

In the first competitive special election of 1998, Democrat Lois Capps defeated Republican Tom Bordonaro in California's 22nd congressional district. Capps signed the Term Limits Declaration; Bordonaro refused. Exit polling by Rasmussen Research confirms the impact of the pledge:

- Twenty-one percent of voters said the term-limits issue played a role in deciding whom they would vote for. Among those voters, Capps won 64 percent of the vote to Bordonaro's 32 percent. Among other voters, Capps garnered 49 percent to Bordonaro's 48 percent.
- Even in his own home county of San Luis Obispo, one of the most conservative and Republican counties in California, Bordonaro received less than 51 percent of the vote.
- Bordonaro's support among Republicans who said term limits was an issue was 18 percentage points lower than support among other Republicans.

Voters saw Bordonaro's refusal to limit himself while professing support for an amendment as hypocritical. Nationally, more than three of four voters believe that ''if a candidate supports term limits,'' the candidate should be ''willing to limit his own terms.'' Talk is cheap.

Although 1998 will go down as a new low in competitive elections for Congress, with few open seats and incumbents of both parties avoiding controversial issues, the term-limits pledge played a major role in competi-

tive races. When the dust settled on the 1998 elections, about 10 percent of the U.S. House of Representatives were under self-imposed term limits mandating that they depart by January 2005. A slightly larger percentage of U.S. senators is under two-term limits.

Those individuals will view their job in Congress very differently than will individuals seeking a career. For starters, they will have a deadline. In the real world, people regularly work under deadlines, which cause them to focus on what is most important. And second, they'll be aware of the fact that, in just a few short years, they will go home to live under the laws they have crafted.

Self-limited members will lead the charge to reform Congress. They will oppose corrupt rules and practices. And they will constitute the main bulwark against backsliding on term limits on committee chairs and other positive reforms already in place.

### *Term Limits on Committee Chairs*

One of the key institutional issues for the new Congress is the term limitation on committee chairs and the speaker. A cabal of powerful chairmen has been agitating behind the scenes to repeal their term limits—thereby overturning the most important procedural reform enacted by the 104th Congress. The average tenure of a committee chairman, 20 years in Washington, is little changed from the past.

The term limits on chairmen assure newer members a larger role in shaping policy. In a recent Cato Institute Policy Analysis, ''Term Limits and the Republican Congress,'' Aaron Steelman examined 31 key tax and spending proposals in the 104th and 105th Congresses. He found that junior Republicans in Congress were ''more than twice as likely to vote for spending or tax cuts as were senior Republicans.'' Steelman pointed out that ''veteran Republican legislators have proven they are comfortable with big government. It is unlikely that fundamental change in Washington will occur while they continue to control legislative debate and action.''

The seniority system allows entrenched politicians in the most stagnant districts to wield power over other members, not on the basis of merit, but because of their longevity. The seniority system has increased the level of pork-barrel spending and blocked much needed change. The committee chair limits are an important dent in a corrupt system.

### *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.

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—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. America is best served by a Congress populated by 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, far removed from government and politics. 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 have gained their authority through seniority. Twelve-year ''limits,'' which 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* said, ''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 people 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 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 that 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 shorter limits 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 will enhance the competitiveness of elections and, as noted above, increase the number and diversity of Americans choosing to run for Congress. 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.

### *State Legislative Term Limits Are Working*

Term limits are taking effect all over the country in state legislatures and at the local level—and they are working. The shrill predictions of the political class are becoming a joke as term limits begin to accomplish exactly what supporters argued they would accomplish. Congress should take note.

- The first session of the California Legislature (after term limits fully took effect for the Assembly) was hailed as one of the best ever. Dan Walters, a columnist with the *Sacramento Bee* and no fan of term limits, recently wrote,

  > One would have to go back a long way, perhaps decades, to find a legislative session that produced as much . . . but maybe what happened this year indicates that the advocates of term limits were not as wrong-headed as many thought about freeing the Legislature from boss rule.

- Dan Schnur, a former aide to Gov. Pete Wilson, has this to say:

  > Career politicians warned of the public policy catastrophe that was bound to occur if the governing process was left in the hands of amateurs. In fact, this year's Legislature, which includes a huge majority of members elected under term limits, was responsible for the most productive session in a generation. With the ranks of the career politicians dwindling and the Legislature dominated by members with stronger ties to their constituents in their own communities than to the special interests in the state Capitol . . . the amateur politicians had managed to pass . . . the largest state tax cut in a generation.

- A black candidate from Arkansas told *USA Today* that term limits was the most important legislation for minorities since the Civil Rights Act.
- In Ohio, term limits opened the way for other campaign and ethics reform. The head of Ohio Common Cause, who fought against the term-limits amendment, later admitted to the *Wall Street Journal* that term limitation deserved credit, saying it ''created a kind of public interest momentum.''
- In Michigan, term limits led to a record-breaking number of candidates. Capital reporter Peter Luke wrote recently,

  > In legislative districts across Michigan this summer, there is a quiet but significant change taking place in how the state conducts its politics. Neighborhoods that haven't seen an incumbent politician in decades are being overrun by hungry candidates. Campaigns once fueled almost exclusively with special interest cash are now running on small contributions from hometown supporters. Welcome to Michigan's first post-term-limits elections.

- In Maine and Oregon, term limits have opened the way for the election of each state's first woman speaker of the house. (Not a single committee in either chamber of Congress is headed by a woman.) California term limits led to the first Hispanic speaker as well as a doubling of Hispanic representatives in the legislature.

Term limits are also reducing the power of lobbyists and special interests and opening up the political process to new people from all walks of life. Term limits are working. Congress can't hold out forever.

## *Conclusion*

In the introductory essay in *The Politics and Law of Term Limits*, coeditors 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.

Those who sign the Term Limits Declaration are on the record as citizen legislators. Increasingly, that pledge will make the difference in winning competitive seats in Congress. Already, in just the first year of the campaign, more than 55 members of the House and Senate are under self-imposed limits. Term-limits groups predict that that number will climb to 100 members by 2000 and as high as 150 members by 2002. The seniority system, rotten at its core, cannot survive a Congress of which an increasingly large proportion of members is under term limits. Nor can wrong-headed policies and wasteful spending projects survive a Congress with so many citizen legislators.

Make no mistake; term limits remain an issue to be reckoned with. Public support is even stronger and deeper for candidates' making personal term-limits commitments than for a term-limits amendment. Voters seek to replace career politicians with dedicated citizen legislators as the best solution to what ails us in Washington. Political leaders who understand

the problems created by a permanent ruling elite in Washington—or who simply want to abide by the overwhelming will of their constituents—will pledge to serve no more than three additional terms in the House or two in the Senate.

### *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.

Elhauge, Einer. ''What Term Limits Do That Ordinary Voting Cannot.'' Cato Institute Policy Analysis no. 328, December 14, 1998.

O'Keefe, Eric. *Who Rules America? The People vs. the Political Class.* Spring Green, Wis.: Citizen Government Foundation, 1999.

O'Keefe, Eric, and Aaron Steelman. ''The End of Representation: How Congress Stifles Electoral Competition.'' Cato Institute Policy Analysis no. 279, August 20, 1997.

Steelman, Aaron. ''Term Limits and the Republican Congress.'' Cato Institute Briefing Paper no. 41, October 27, 1998.

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