

CONGRESSIONAL TERM LIMITS AMENDMENT

FEBRUARY 6, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. CANADY of Florida, 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 without recommendation.

CONTENTS

	Page
Purpose and Summary	2
Background and Need for Legislation	2
Hearings	4
Committee Consideration	4
Vote of the Committee	4
Committee Oversight Findings	8
Committee on Government Reform and Oversight Findings	8
New Budget Authority and Tax Expenditures	9
Congressional Budget Office Estimate	9
Constitutional Authority Statement	9
Section-by-Section Analysis	10
Additional Views of Hon. Henry J. Hyde	11
Additional Views of Hon. Asa Hutchinson	14
Additional Views of Hon. Martin Meehan	17
Dissenting Views	19

PURPOSE AND SUMMARY

H.J. Res. 2 proposes to amend the Constitution of the United States to limit the number of terms of office of members of the Senate and the House of Representatives. Under the proposed amendment, Senators would be limited to no more than two full terms (12 years) and House members limited to service for no more than six terms (12 years).

BACKGROUND AND NEED FOR THE AMENDMENT

Beginning in 1990, advocates of term limits sought to impose limits on the number of terms that a member of the U.S. House or Senate could serve by changing state laws, amending state constitutions and passing state ballot initiatives. By 1995, 23 states had passed laws or ballot initiatives limiting the terms of Members of Congress.

In 1994, Republicans in the U.S. House of Representatives, as part of their “Contract with America” promised to hold the first ever House vote on term limits.¹ On March 29, 1995, the House voted on a number of proposals to limit the terms of Members of Congress, but no measure received the necessary two-thirds approval. The proposal to limit House members to six terms (12 years) and Senators to two terms (12 years) received the most votes (227–204). In October of 1995, the Senate failed to approve a non-binding “Sense of the Senate” resolution amendment to limit terms.

U.S. Term Limits v. Thornton

When the House last voted on this issue there was some question as to whether states had the authority to impose term limits or whether a constitutional amendment was necessary. That question was answered on May 22, 1995, when the U.S. Supreme Court in *U.S. Term Limits v. Thornton*, 115 S. Ct. 1842 (1995) invalidated an Arkansas law and the laws of the twenty-two other states that had sought to place limits on the number of terms that could be served by Members of the House and Senate. Citing *Powell v. McCormack*, 395 U.S. 486 (1969), the Court ruled that because the qualifications for membership in the House and Senate set forth in Article I of the United States Constitution are “fixed,” neither Congress or the States could impose additional requirements.² Supporters of the Arkansas law argued that it was valid exercise of state power because it was not an absolute bar to seeking election to the House or Senate—Members who had served for more than the prescribed number of terms could still appear on the ballot as write-in candidates. The Court rejected this argument finding that the Arkansas law was an “indirect attempt to accomplish what the Constitution prohibits Arkansas from accomplishing directly.” *U.S. Term Limits v. Thornton*, 115 S. Ct. 1867 (1995). The Court made

¹ Republicans also proposed, and the House adopted, changes to the rules of the House which limit service of the Speaker to four consecutive congresses (Rule I, clause 7(b)), and Committee and Subcommittee Chairs to three consecutive congresses (House Rule X, clause 6(c)).

² Article I, Section 2, Clause 2 provides, “No Person shall be a Representative who shall not have attained to the Age of twenty-five years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.” Likewise, Clause 3 of Section 3 sets forth the requirements for membership in the United States Senate.

clear that the only way to secure limits on the terms of Congressional service was to amend the United States Constitution pursuant to the procedures set forth in Article V.

State efforts after Thornton

Subsequent to the Supreme Court's ruling in *Thornton*, some advocates of term limits have sought to pressure Members of Congress and state legislators to utilize the procedures of Article V of the U.S. Constitution to amend that document to impose a six year limit on service in the House and a twelve year limit on service in the Senate.³ On November 5, 1996, voters in 14 states were asked to decide on ballot initiatives instructing federal legislators to support an amendment limiting House Members to three terms and Senators to two terms.⁴ If the federal legislators failed to support such an amendment or voted in favor of an amendment allowing for longer terms of service, they would have printed next to their names at the next election, "disregarded voter instruction on term limits."⁵ In most of the states, the initiative also included language instructing state legislators to vote for application to Congress to call a convention for proposing amendments to the Constitution.⁶

Prior to adoption of the ballot initiative in the state of Arkansas, a lawsuit was brought challenging the initiative, known as Amendment 9.⁷ On October 21, 1996, in *Donovan v. Priest*, 326 Ark. 353, 931 S.W. 2d 119 (1996), *stay granted*, 117 S. Ct. 380 (1996), *petition for cert. filed sub nom. Arkansas Term Limits v. Donovan*, 65 U.S.L.W. 3473 (U.S. Jan. 7, 1997) (No. 96-919), the Arkansas Supreme Court struck down Amendment 9, holding that it violated Article V of the United States Constitution because it was an indirect means to propose an amendment to the United States Constitution. Supporters of placing the initiative on the ballot argued that it merely served to notify legislators of the desire of the people of their state to enact a constitutional amendment to limit the terms of members. The Court rejected the argument that the initiative was a "mere advisory referendum." The Court further stated:

[The proposed Amendment 9] is an indirect attempt to propose an amendment to the United States Constitution, and as such violates the narrow, specific grants of authority provided in Article V. The proposed Amendment 9 would virtually tie the hands of the individual members of the General Assembly such that they would no longer be part of a deliberative body acting independently in exercising

³Similar efforts were undertaken on the state level to secure the passage of the Seventeenth Amendment to the United States Constitution which provided for the direct election of Senators by the people of each state. See, "Term Limits for Members of Congress: State Activity," a CRS Report for Congress by Sula P. Richardson, November 22, 1996, No. 96-152 GOV.

⁴The states were: Alaska, Arkansas, Colorado, Idaho, Maine, Missouri, Nebraska, Nevada, South Dakota, Montana, North Dakota, Oregon, Washington, and Wyoming. The initiative was approved in the first nine states and rejected in the last five.

⁵Although the constitutional amendments proposed in the state ballot initiatives all call for a limit of three terms in the House and two terms in the Senate, none of the versions is identical. In addition, the "voter instruction" to Members of Congress differs from state to state.

⁶In Missouri and South Dakota, the initiatives provided instructions only for federal legislators.

⁷A lawsuit challenging the placement of a similar initiative on the ballot was filed in Oklahoma. In *In re: Initiative Petition No. 364*, 1996 Okla. LEXIS 144 (opinion filed December 10, 1996), the Supreme Court of Oklahoma would not allow the initiative to be placed on the ballot for submission to the people because it violated the Constitutions of Oklahoma and the United States.

their individual best judgments on every issue. 326 Ark. 353 at 371.

On November 2, 1996, just three days prior to the election, the U.S. Supreme Court suspended the order of the Arkansas Supreme Court. A petition for certiorari is currently pending before the United States Supreme Court.

HEARINGS

The Committee's Subcommittee on the Constitution held one day of hearings on the issue of "Limiting Terms of Office for Members of the U.S. Senate and U.S. House of Representatives" on January 22, 1997. Testimony was received from eleven witnesses: U.S. Senator Fred Thompson; Representative Bill McCollum; Representative John Dingell; Representative Tillie Fowler; Representative Joe Barton; George Will, Nationally Syndicated Columnist and Television Commentator; John Hibbing, Professor of Political Science, University of Nebraska-Lincoln; Congressman Bill Frenzel, Guest Scholar, The Brookings Institution; Paul Jacob, Executive Director, U.S. Term Limits; Thomas Mann, Director, Governmental Studies Program, The Brookings Institution; Cleta Mitchell, Director and General Counsel, Americans Back In Charge.

COMMITTEE CONSIDERATION

On February 4, 1997, the Committee met in open session and ordered reported the resolution H.J. Res. 2, without recommendation, by a recorded vote of 19 to 12, a quorum being present.

VOTE OF THE COMMITTEE

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. The amendment was defeated by a 13-17 rollcall vote.

Rollcall vote No. 1

AYES	NAYS
Mr. Coble	Mr. Hyde
Mr. Schiff	Mr. McCollum
Mr. Chabot	Mr. Gekas
Mr. Conyers	Mr. Smith (TX)
Mr. Frank	Mr. Canady
Mr. Berman	Mr. Inglis
Mr. Boucher	Mr. Goodlatte
Mr. Scott	Mr. Buyer
Mr. Watt	Mr. Bono
Ms. Lofgren	Mr. Bryant
Ms. Jackson Lee	Mr. Barr
Mr. Delahunt	Mr. Jenkins
Mr. Wexler	Mr. Hutchinson
	Mr. Pease
	Mr. Cannon
	Mr. Nadler
	Mr. Rothman

2. An amendment by Mr. Frank to limit U.S. Senators to no more than one full term in office to Mr. Inglis' amendment to limit U.S. Senators to no more than two full terms in office and U.S. Representatives to no more than three full terms in the House. The amendment was defeated by a 12–16 rollcall vote.

Rollcall vote No. 2

AYES	NAYS
Mr. Coble	Mr. Hyde
Mr. Schiff	Mr. McCollum
Mr. Frank	Mr. Gekas
Mr. Berman	Mr. Smith (TX)
Mr. Nadler	Mr. Canady
Mr. Scott	Mr. Inglis
Mr. Watt	Mr. Goodlatte
Ms. Lofgren	Mr. Buyer
Ms. Jackson Lee	Mr. Bono
Ms. Waters	Mr. Bryant
Mr. Delahunt	Mr. Chabot
Mr. Wexler	Mr. Barr
	Mr. Jenkins
	Mr. Hutchinson
	Mr. Pease
	Mr. Rothman

3. An amendment by Mr. Inglis to limit U.S. Senators to no more than two full terms in office and U.S. Representatives to no more than three full terms in the House. The amendment was defeated by a 4–24 rollcall vote (2 voting present).

Rollcall vote No. 3

AYES	NAYS	PRESENT
Mr. Coble	Mr. McCollum	Mr. Hyde
Mr. Inglis	Mr. Gekas	Mr. Frank
Mr. Bono	Mr. Smith (TX)	
Mr. Chabot	Mr. Schiff	
	Mr. Canady	
	Mr. Goodlatte	
	Mr. Buyer	
	Mr. Bryant	
	Mr. Barr	
	Mr. Jenkins	
	Mr. Hutchinson	
	Mr. Pease	
	Mr. Conyers	
	Mr. Berman	
	Mr. Boucher	
	Mr. Nadler	
	Mr. Scott	
	Mr. Watt	
	Ms. Lofgren	
	Ms. Jackson Lee	
	Ms. Waters	

AYES

NAYS

PRESENT

Mr. Delahunt
 Mr. Wexler
 Mr. Rothman

4. An amendment by Mr. Scott to allow a state to enact a term limit less than that provided in the amendment. The amendment was defeated by a 13–15 rollcall vote.

Rollcall vote No. 4

AYES

NAYS

Mr. Schiff
 Mr. Inglis
 Mr. Bono
 Mr. Chabot
 Mr. Frank
 Mr. Berman
 Mr. Boucher
 Mr. Scott
 Ms. Lofgren
 Ms. Jackson Lee
 Ms. Waters
 Mr. Delahunt
 Mr. Wexler

Mr. Hyde
 Mr. McCollum
 Mr. Gekas
 Mr. Smith (TX)
 Mr. Canady
 Mr. Goodlatte
 Mr. Buyer
 Mr. Bryant
 Mr. Barr
 Mr. Jenkins
 Mr. Hutchinson
 Mr. Pease
 Mr. Nadler
 Mr. Watt
 Mr. Rothman

5. An amendment by Mr. Hutchinson to limit U.S. Representatives to no more than three terms in the House and U.S. Senators to no more than two terms in the Senate. The amendment was defeated by a 3-25 rollcall vote (2 voting present).

Rollcall vote No. 5

AYES

NAYS

PRESENT

Mr. Inglis
 Mr. Chabot
 Mr. Hutchinson

Mr. Hyde
 Mr. McCollum
 Mr. Gekas
 Mr. Coble
 Mr. Smith (TX)
 Mr. Schiff
 Mr. Gallegly
 Mr. Canady
 Mr. Goodlatte
 Mr. Buyer
 Mr. Bono
 Mr. Bryant
 Mr. Barr
 Mr. Jenkins
 Mr. Pease
 Mr. Schumer
 Mr. Boucher
 Mr. Nadler
 Mr. Scott

Mr. Frank
 Ms. Lofgren

AYES

NAYS

PRESENT

Mr. Watt
 Ms. Jackson Lee
 Ms. Waters
 Mr. Delahunt
 Mr. Wexler
 Mr. Rothman

6. An amendment by Mr. Nadler to allow members of the House or Senate who have served twelve consecutive years to again be eligible for election or appointment if they sit out at least one full term. The amendment was defeated by a 11–19 rollcall vote.

Rollcall vote No. 6

AYES

NAYS

Mr. Smith
 Mr. Goodlatte
 Mr. Frank
 Mr. Schumer
 Mr. Boucher
 Mr. Nadler
 Mr. Scott
 Ms. Lofgren
 Ms. Jackson Lee
 Mr. Delahunt
 Mr. Wexler

Mr. Hyde
 Mr. McCollum
 Mr. Gekas
 Mr. Coble
 Mr. Schiff
 Mr. Gallegly
 Mr. Canady
 Mr. Inglis
 Mr. Buyer
 Mr. Bono
 Mr. Bryant
 Mr. Chabot
 Mr. Barr
 Mr. Jenkins
 Mr. Hutchinson
 Mr. Pease
 Mr. Cannon
 Mr. Watt
 Mr. Rothman

7. An amendment by Ms. Jackson Lee to allow states to prescribe the maximum number of terms to which a person may be elected or appointed to the Senate or elected to the House. The amendment was defeated by a 7–22 rollcall vote.

Rollcall vote No. 7

AYES

NAYS

Mr. Frank
 Mr. Schumer
 Mr. Nadler
 Mr. Scott
 Ms. Lofgren
 Ms. Jackson Lee

Mr. Hyde
 Mr. McCollum
 Mr. Gekas
 Mr. Coble
 Mr. Smith (TX)
 Mr. Schiff

Mr. Delahunt

Mr. Gallegly
 Mr. Canady
 Mr. Inglis
 Mr. Goodlatte
 Mr. Buyer
 Mr. Bono
 Mr. Bryant
 Mr. Chabot
 Mr. Barr
 Mr. Jenkins
 Mr. Hutchinson
 Mr. Pease
 Mr. Cannon
 Mr. Watt
 Mr. Wexler
 Mr. Rothman

8. Motion to Report H.J. Res. 2 without recommendation. The motion was agreed to by a 19–12 rollcall vote.

Rollcall vote No. 8

AYES

Mr. Hyde
 Mr. McCollum
 Mr. Gekas
 Mr. Coble
 Mr. Smith (TX)
 Mr. Schiff
 Mr. Gallegly
 Mr. Canady
 Mr. Inglis
 Mr. Goodlatte
 Mr. Buyer
 Mr. Bono
 Mr. Bryant
 Mr. Chabot
 Mr. Barr
 Mr. Jenkins
 Mr. Pease
 Mr. Cannon
 Mr. Wexler

NAYS

Mr. Hutchinson
 Mr. Frank
 Mr. Schumer
 Mr. Berman
 Mr. Boucher
 Mr. Nadler
 Mr. Scott
 Mr. Watt
 Ms. Lofgren
 Ms. Jackson Lee
 Mr. Delahunt
 Mr. Rothman

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 Representatives, are incorporated in the descriptive 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(1)(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(1)(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, February 5, 1997.

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

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.J. Res. 2, a joint resolution proposing a constitutional amendment to limit Congressional terms.

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

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.J. Res. 2—A joint resolution proposing a constitutional amendment to limit congressional terms

H.J. Res. 2 would propose amending the Constitution to limit the service of Members of Congress to no more than twelve years. The amendment would apply only to service occurring after it takes effect. The legislatures of three-fourths of the states would be required to ratify the proposed amendment within seven years for the amendment to become effective.

CBO estimates that enacting this resolution would have no significant impact on the federal budget. H.J. Res. 2 would not affect direct spending or receipts, so there would be no pay-as-you-go scoring under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985. This legislation contains no intergovernmental or private-sector mandates as defined in the Unfunded Reform Act of 1995 (Public Law 104-4) and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Mark Grabowicz. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to Rule XI, clause 2(1)(4) of the Rules of the House of Representatives, the Committee finds the authority for this legisla-

tion in Article V of the Constitution which provides that the Congress has authority to propose amendments to the Constitution.

SECTION-BY-SECTION ANALYSIS

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 terms shall not thereafter be eligible for election or appointment to the Senate. In addition, a person who has been elected for six full terms to the House of Representatives shall not thereafter be eligible for election.

Section 2

For the purpose of considering elections which count toward the relevant limit, Section 2 provides that a person who has served as a Senator for more than three years of a term to which some other person was elected shall be eligible for election to the Senate more than once and that no person who has served as a Representative for more than one year shall be eligible for election to the House more than five times. 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.

ADDITIONAL VIEWS OF HON. HENRY J. HYDE

For the second time in two years, I have voted to report the House Joint Resolution on term limits from committee without recommendation. I believe the issue of term limitations for members of the United States Congress should be the subject of vigorous debate on the House floor because of its far-reaching implications. However, I again repeat my opposition to an idea which was rejected by some of the wisest men in our nation's history—the framers of the United States Constitution.

The U.S. Constitution provides that Members of the House of Representatives shall be “chosen every second year”¹ and that Members of the Senate shall be “elected by the people thereof, for six years. * * *”² As a practical matter, each time voters go to the polls, they decide whether they should limit the term of their elected representatives. We already have term limits—they are called elections. The nation found this to be truer than ever before in the 1994 general election when, without arbitrary limits built into the Constitution, membership turnover was vastly accelerated and 40 years of one-party rule came to an end in the House of Representatives.

The average length of service for House Members in the 105th Congress is only 8 years, and the median length of service for House Members is 4 years. Just as striking are the figures for the Senate in the 105th Congress. The average length of service for Senators is 10 years, and the median length of service in the Senate is 8 years. I submit that these figures weaken the argument for term limits. The 8 and 10 year averages for the House and Senate fall below the artificial term limits that proponents advocate—12 years for the House and 12 years for the Senate. Additionally, since half of the House Members have served for 4 or fewer years, and half of the Senators have served 8 or fewer years, can anyone really say that Members of Congress have been around too long?

As Professor Charles Kesler has noted, term limits act as a diversion to the real problems currently facing Members of Congress, which include the need to continue reconsidering the scope and power of the federal government, and opposing the extension of centralized administration over more and more of American life.³

In my view, term limits is a device for restraining the electorate rather than restraining the Congress. This sentiment was best 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”:

¹ U.S. Const. art. I, § 2, cl. 1.

² U.S. Const. amend. XVII.

³ Charles Kesler, “Bad Housekeeping: The Case Against Congressional Term Limitations”, Policy Review (Summer, 1990).

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 acquisitions 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 necessary to good government. Shall we, then, drive experience into obscurity? I repeat that this is an absolute abridgement of the people's rights.⁴

Indeed, 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.⁵

In what other life occupations does the American public demand amateurs? When the drill in the dentist's hand begins whirring, I want someone who has years of experience. Why should the American people have imposed upon them a system of government that demands amateurs? Such a system would only force good people, serving their country, out of the Congress, depriving the nation of experience and talent, and of critical individual and institutional memory in negotiating issues such as war and peace. I believe that the complexity of today's modern world calls for "professionalism" and expertise in the realm of government no less than in other spheres of our society. Do we really want to disqualify all those who can bring sound judgment born of years of experience to the increasingly demanding tasks of elected office?

While it is still too early to draw definitive conclusions from the experience of the 20 states whose state legislators are now term limited, several trends have emerged. It seems that term limits may increase turnover, strengthen executives, shift power from lower to upper chambers (which tend to have longer terms), heighten partisan conflict, and increase the power and influence of lobbyists, unelected staff members, and the permanent bureaucracy.

Members who are term limited in their final term or next to last final term may not always be responsive to their constituents needs or exercise their best judgment on their constituents' behalf. After 6 or 12 years in Congress, members may not have employment to which they can return. No longer do we live in an age where citizen legislators can return home as gentlemen farmers after a brief stint in the Congress. The search for post-employment may not serve the best interests of the voters. Indeed, in reference to term limits, Hamilton maintained that:

no government, founded on this feeble principle, can operate well, for when a man knows he must quit his station,

⁴ 2 Debates in the Several State Conventions on the Adoption of the Federal Constitution 292–293 (J.Elliott ed., 1988) (speech of R. Livingston).

⁵ Art. 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.

let his merit be what it may, he will turn his attentions chiefly to his own emolument: nay, he will feel temptations, which few other situations furnish, to perpetuate his power by unconstitutional usurpations.⁶

A term limits amendment cannot repeal human nature.

Let us continue to have an open, honest, and vigorous debate on a term limits amendment to the Constitution. But make no mistake. Term limits would, in my view, serve to further weaken the first branch of our federal government by making government not more accountable as the proponents of term limits envision, but producing a government which is much less accountable.

I pose one simple question to the supporters of arbitrary term limits. What is the difference between telling a person for whom he must vote as opposed to telling a person for whom he cannot vote? In each of these situations, the “system” distrusts the voter to make an independent decision to elect the right person to represent his district and govern the country. To that end, term limits represent a cynical and radical distrust of democracy. I vehemently disagree with this distrust of the American people. For the sake of our representative democracy, term limits should be rejected. My advice to those who support term limits is simple: trust the people.

HENRY HYDE.

⁶2 Debates in the Several State Conventions on the Adoption of the Federal Constitution 320 (J. Elliot ed., 1988) (Speech of A. Hamilton).

ADDITIONAL VIEWS OF REPRESENTATIVE ASA HUTCHINSON

I voted against H.J. Res. 2, not because I am opposed to term limits, but because this particular resolution does not comply with the term limit instructions approved by a vote of the people of Arkansas.

On November 5, 1996, the voters of Arkansas overwhelmingly approved a ballot initiative setting forth the exact text of a proposed constitutional amendment limiting Members of the United States House of Representatives to three two-year terms (for a total of six years of service) and Members of the Senate to two six-year terms (for a total of twelve years of service). Under this initiative, a Member of Congress is instructed to support the exact provisions spelled out in the initiative and to vote against any other inconsistent proposal. Out of respect for the voters of Arkansas, I voted against H.J. Res. 2.

During the committee mark up I offered the exact text of the Arkansas voter initiative as set forth in subsection (e) of the petition. Unfortunately, the amendment did not pass. However, I think it is important to point out the differences between the Arkansas term limits proposal and the various versions offered during committee consideration—all of which I opposed.

H.J. Res. 2

H.J. Res. 2 sets uniform terms of twelve years for both the House and the Senate. This resolution violates Arkansas law as the Arkansas amendment limits members of the House to six years of service. I voted against the resolution.

Retroactivity

An amendment offered by Congressman Barney Frank would have retroactively applied the term limit set forth in H.J. Res. 2. I voted against the amendment as the Arkansas law is not fully retroactive. Under the law, those serving at the time the amendment is ratified who have already served six years may serve for an additional four years.

Six year tenure for Senators

An amendment offered by Congressman Barney Frank would have reduced the term of service for Members of the Senate from twelve years to six years. I voted against the amendment as Arkansas law calls for a twelve year term of service for U.S. Senators.

Inglis Substitute

An amendment offered by Congressman Bob Inglis would have set limits of three terms for Members of the House and two terms for Members of the Senate. While the general concept of the Inglis

amendment is in accordance with the Arkansas ballot initiative, the wording is very different. For example, the Inglis proposal applies only prospectively. In other words, it is not retroactive. While the Arkansas law is not fully retroactive, it does limit the service of members who have already served three terms. Under the law, those serving at the time the amendment is ratified who have already served six years may serve for only four additional years. Under the Inglis proposal, these members could serve another six years.

Allowing States to set their own limits within certain parameters

An amendment offered by Congressman Bobby Scott would have allowed states to set their own term limits within a twelve year range. In other words, states would be able to set a limit of one, two, three, four, five, six, seven, eight, nine, ten, eleven, or twelve years. I voted against this proposal since the Arkansas law specifically calls for a six year limit in the House and a twelve year limit in the Senate.

Breaks in service

An amendment offered by Congressman Jerrold Nadler would have allowed term-limited members to return to congressional service for an additional twelve years after a break in service. I voted against this amendment since the Arkansas law calls for a six year term in the House and provides that term-limited members who leave Congress and return again may serve only two additional terms.

Allowing States to set their own limits

An amendment offered by Congresswoman Jackson-Lee would have allowed states to set their own term limits. I voted against this amendment since it is in direct violation of Arkansas law, which calls for a six year term for Members of the House and a twelve year limit for Members of the Senate.

I am a long supporter of term limits and have been an active defender of a state's right to enact term limits for its elected officials. In 1993, I argued for the constitutionality of the 1992 Arkansas term limits law at the state court level and in 1995, I was a litigant before the United States Supreme Court.

I had hoped that as a new Member of Congress I would have been able to vote in favor of all term limits proposals. However, I am committed to the version of term limits approved by the voters of Arkansas and consistent with their request, I will continue to oppose any term limit amendment that does not reflect the exact language of the Arkansas law.

For the record, I am including the text of the version of the term limits amendment which I offered at the full committee, which is hereto attached.

Strike all after the resolving clause and insert the following:

That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution

when ratified by the legislatures of three-fourths of the several States:

“CONGRESSIONAL TERM LIMITS AMENDMENT

“SECTION A. No person shall serve in the office of United States Representative for more than three terms, but upon ratification of the Congressional Term Limits Amendment no person who has held the office of United States Representative or who then holds the office shall serve for more than two additional terms.

“SECTION B. No person shall serve in the office of United States Senator for more than two terms, but upon ratification of the Congressional Term Limits Amendment no person who has held the office of United States Senator or who then holds the office shall serve more than one additional term.

“SECTION C. This article shall have no time limit within which it must be ratified by the legislatures of three-fourths of the several states.”.

ASA HUTCHINSON.

ADDITIONAL VIEWS OF HON. MARTIN MEEHAN

I am writing separately to emphasize that although I support term limits, I do not believe that term limits alone will address certain fundamental problems afflicting our political system today.

I support term limits because of my frustration with our current political discourse. For fear of alienating a supposedly immature electorate, many of our most dedicated and intelligent public servants will not dare to discuss issues of pressing national importance, such as how we shall deal with burgeoning Social Security costs due to the impending retirement of the "baby boomers." In turn, the electorate, which is in fact quite willing to grapple with difficult issues, becomes increasingly disgusted with political debate consisting almost entirely of dueling "sound bites" and thus stays home from the polls in record numbers. By setting a fixed end-point to Congressional careers, term limits would encourage members of Congress to reflect early on in their tenure about the legislative legacies they wish to leave, rather than merely about doing what it supposedly takes to get reelected. Hopefully, that sort of reflection would result in a greater willingness to tackle entitlement reform, among other touchy but important issues. Similarly, I support term limits because they would deal a crushing and permanent blow to the seniority system in the House and Senate, which allocates committee leadership positions on the basis of one's length of service in Congress. I believe that the public would be better served were leadership assignments based on merit rather than seniority.

Of course, it is imperative that a constitutional amendment limiting Congressional terms include service in Congress prior to the amendment's adoption in determining a legislator's eligibility for future service. We cannot realistically expect a term limits amendment which "grandfathers" the prior service of current members, many of whom claim to support term limits, to restore the public's faith in Congress. The public would instead view this undeserved exemption as an unparalleled instance of hypocrisy on the part of an institution whose opinion polls are already in the cellar. Indeed, I do not understand how the permanent demise of the seniority system would be furthered by allowing long-serving members to retain their leadership positions for another twelve years beyond the amount of time it would take three-fourths of the states to ratify a term limits amendment.

Furthermore, I do not believe that term limits alone will suffice to make every election cycle more competitive. For the ten years during which they would be eligible to run for reelection under H.J. Res. 2, incumbents would still be magnets for lobbyist dollars, because only they could cast meaningful votes on the future of programs dear to organized constituencies. Incumbents would also continue to dominate media coverage, not only because they are

usually able to raise more money than challengers to pay for campaign commercials, but also because their actions as legislators will inevitably be the subject of nightly news programs and daily newspaper stories throughout their tenures. And term limits would do nothing to eliminate the franking privilege available to members of Congress, which enables them to communicate their opinions to constituents in an unchallenged format. Only comprehensive campaign reform can address the problem of incumbent advantage, the phenomenon which is most responsible for the public's poor opinion of our current political system. Thus, proponents of term limits should not consider their work done upon voting for a term limits constitutional amendment. They should instead join with many term limits opponents in working diligently towards comprehensive bipartisan campaign reform, which alone can restore the good name of American democracy.

MARTIN MEEHAN.

DISSENTING VIEWS

It is with great disappointment that we start the 105th Congress with this ill-conceived constitutional amendment to limit congressional terms. It does nothing to create more jobs, nothing to increase our citizens' standards of living, and nothing to reduce our trade deficit.

We do not believe that voters should be denied the right to elect the people they believe best represent their interests and values. Instead, we continue to have faith in the fundamental good judgment of American voters, who already have the power to impose term limits—Members of the House must face reelection every two years, and Senators must seek reelection every six years. For these and other reasons set forth below, we dissent from H.J. Res. 2.

TERM LIMITS ARE ANTIDEMOCRATIC

Most fundamentally, by denying voters the opportunity to vote for the person they believe is most qualified to serve as their Congressman or Senator, term limits undercut the very foundation of our democracy—majority rule. There is little difference between forcing citizens to vote for a particular candidate for office and denying them the ability to vote for that same person.

As an historical matter we believe this issue was properly decided in the earliest days of this Republic. The Articles of Confederation required that legislative representatives rotate out of office after serving three one-year terms within any six year period.¹ Since rotation was part of the Articles of Confederation, the Founders debated it at the Constitutional Convention as a corollary to term length.

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 encourage a greater number of people to hold public office. The Federalists countered that reelection—for both the president and the legislature—was an incentive to be responsive to the needs of the constituents, and their views favoring purer democracy and acknowledging the benefits of experience ultimately prevailed. New York Delegate Robert Livingston stated during the constitutional debates “[w]e all know that experience is indispensably necessary to good government. Shall we, then, drive experience into obscurity? I repeat that this [mandatory office rotation] is an absolute abridgment of the people's rights.”² And Alexander Hamilton wrote that term limits “would be a diminution of the inducements to good behavior * * * [and deprive] the community of the advantages of the experience

¹ Art. of Confed. art. V, cl. 2.

² The Debates in the Several State Conventions on the Adoption of the Federal Constitution as Recommended by the General Convention at Philadelphia in 1787 at 293 (speech of R. Livingston) (J. Elliot ed., William Hein & Co., 1996) (1891).

* * * gained in office.”³ Now is not the time to second guess these wise and far-sighted judgments.

Term limits are unnecessary

Term limits are completely unnecessary in the current political environment. Recent congressional turnover has been staggeringly high. The 102d Congress (1990) saw 44 new Congressional Representatives elected, or a 10% turnover rate; the 103d Congress (1992) saw 110 new Congressional Representatives elected, or a 25% turnover rate; the 104th Congress (1994) saw 86 new Congressional Representatives elected, or a 20% turnover rate; and the 105th Congress (1996) saw 74 new Congressional Representatives elected, or a 17% turnover rate.⁴ Overall, of the 435 House Members serving in the 105th Congress, 315 will have served 10 years or less, and of the 100 Senators, 63 will have served less than two full terms.⁵ Congress has been almost completely remade within the span of a decade; Members elected only four years ago now rank among the top half of the House by seniority.

In his testimony before the Constitution Subcommittee, Congressional Scholar Thomas Mann of the Brookings Institution reiterated this point:

Incumbent reelection rates and margins of victory in 1992, 1994, and 1996 were low enough to encourage future challengers and put fear in the hearts of members of the Senate and House who seek reelection. The two major parties are now more competitive at the presidential and congressional levels than at any other time in recent decades. No longer do we speak of one-party dominance of either branch of government.⁶

If term limits are to be adopted, they should apply immediately—to sitting Members

The Judiciary Committee rejected along party lines an amendment offered by Mr. Frank which would have made H.J. Res. 2 applicable to Members of the House and Senate immediately upon ratification by the states. With the defeat of the Frank amendment, current Members might not be affected for nineteen years—up to seven years for ratification and another twelve years before the limits apply. We believe that if term limits are deemed an appropriate measure, they should apply to current lawmakers immediately upon ratification—there is no credible excuse for delay. As Chairman Hyde so eloquently pointed out during last Congress’ floor debate:

³Alexander Hamilton, James Madison & John Jay, *The Federalist* 464–65 (Benjamin Fletcher Wright ed., 1966).

⁴See Letter from Pat Richardson, Analyst in American National Government, Government Division, to the House Comm. on the Judiciary, entitled “Incumbency and Turnover in the U.S. House of Representatives,” Jan. 31, 1997.

⁵Erika Niedowski, *Defeats and retirements do work of term limits*, *The Hill*, Dec. 4, 1996, at 1.

⁶Hearing on Limiting Terms of Office for Members of the U.S. Senate and U.S. House of Representatives, Hearings before the Subcomm. on the Constitution of the House Comm. on the Judiciary, 105th Cong., 1st Sess (1995) (statement of Thomas E. Mann, Director of Governmental Studies, The Brookings Institution at 2) [hereinafter, 1997 House Judiciary Hearings].

[I]t is a little amusing to see the stickers that have been worn by so many of my colleagues. It says “term limits, yes.” It does not say “term limits now.” * * * I am [also] remind of the famous prayer of Saint Augustine who said, “Dear God, make me pure, but not now.”⁷

To illustrate the impact of failing to make the amendment immediately applicable, if H.J. Res. 2 was to be approved, Speaker Gingrich would still be permitted to serve an additional 10 terms, allowing him a total of 40 years of service, and Majority Leader Armey would be allowed an aggregate total of 34 years of service—tenures which are hardly consistent with the goals of term limits.

The Committee’s rejection of this fundamentally fair notion of immediate applicability lays bare its true goals: pandering to that part of the electorate which calls for term limits, without allowing that solution to have any likely impact on a single sitting Member. It is indeed ironic that those who claim to strongly support the concept of term limits find it so essential to provide for an “orderly transition period” when their own careers are at stake, even if this deprives the public of the perceived value of “citizen legislatures” for many additional years. As conservative columnist Robert E. Novak recently wrote, “[l]ike their Democratic counterparts, who frankly and honestly oppose limits, the Republicans are professional politicians who enjoy the good life of Washington.”⁸ When 94 year old South Carolina Senator Strom Thurmond—serving his eighth six-year term in the Senate—can claim to be a proponent of term limits,⁹ we know we have a serious credibility gap within the Republican party on this issue.

The lack of consistency of many term limits supporters was further exposed during the amendment process at the Judiciary Committee. Among other things, Republicans were given the opportunity to support substitute amendments supported by U.S. Term Limits providing for (1) a maximum of six years in the House and 12 years in the Senate, (2) 12 years in the House and Senate unless the state in question adopts a shorter limit, and (3) allowing each state to decide the appropriate term limit. Yet in all cases, the amendments were soundly defeated by the Republican Majority.

Term limits remove critical leadership abilities

An in-depth study comparing senior Members to their more junior counterparts over the years shows that rather than being more subject to special interest lobbies, long-time Members are more productive: “None of these comparisons shows the professional legislators are more corrupt, parochial, or influenced by interest groups than their amateur counterparts. Instead careful study of Congress * * * suggests that greater professionalism is a necessary offshoot of the growth and specialization of the modern world.”¹⁰ Every

⁷ 141 Cong. Rec. H3905 (daily ed. March 29, 1995).

⁸ Robert E. Novak, “Term-Limits Hypocrites”, The Washington Post, Jan. 30, 1997, at A19.

⁹ See 141 Cong. Rec. S1529 (daily ed. Oct. 17, 1995) (voting against motion to table sense of the Senate resolution endorsing term limits); 142 Cong. Rec. S3879 (daily ed. April 23, 1996) (voting in favor of motion to cut off debate on term limits constitutional amendment).

¹⁰ Thomas E. Mann, “Congressional Term Limits: A Bad Idea Whose time Should Never Come”, The Politics of Law and Term Limits, Cato Institute, 1994, cited in, Term Limits for Members of the U.S. House and Senate, Hearings Before the Subcomm. on the Constitution of

other profession in this nation values experience, tenure, and the wisdom that can come with terms of service. Term limits would eliminate these desirable characteristics and make Congress an institution where inexperience is more valued than knowledge.

Perhaps even more dangerously, instead of a legislature more sensitive to the needs of the voters, under term limits we could end up with Representatives and Senators who are more interested in finding a job after their term expires than responding to the long-term needs of their constituents. As the League of Women Voters has testified:

Elected representatives with a built-in cut-off date are less likely to be swayed by their constituents' interests and more likely to respond to the special interests who might provide them with a job—or at least a hand in finding one—after their term is over. And for many, congressional service will become merely a stepping stone to another office. From day one, term-limited legislators would make decisions—would be forced to make decisions—not necessarily with their constituents' interest in mind but with an eye to their own interest for the future. Instead of having “career politicians” who are committed to the institutions in which they serve and the constituents they represent, we have career politicians with an overriding commitment to, you guessed it, their careers.¹¹

A term-limited environment is also more likely to discourage ordinary Americans from running for Congress, since most individuals are less likely to jeopardize their careers to run for elective office for only a few terms.¹² As political scientist Morris Fiorina has observed, “[a]mateur political settings advantage the independently wealthy, professionals with private practices, independent business people, and others with similar financial and career flexibility.”¹³ Similarly, Syracuse University Professor Linda Fowler has concluded that patterns of recruitment and forced retirements under term limits will increase the influence of special interests in the legislature.¹⁴

Term limits would result in undesirable transfers of power to unelected bureaucrats and lobbyists

Under term limits, congressional staffers and corporate and foreign lobbyists would play a far more significant role. Inexperienced Members would also be susceptible to the manipulation and influence of the more experienced Executive Branch. As the League of Women Voters has testified:

the Comm. on the Judiciary, 104th Cong., 1st Sess. 119–120 (1995) [hereinafter, 1995 House Judiciary Hearings].

¹¹ Id. at 146 (statement of Becky Cain, President, League of Women Voters of the United States).

¹² Former Constitution Subcommittee Chair Don Edwards has written that term limits “would establish a Congress of lame ducks, rich people who could afford to spend a few years away from their life’s work, corporation executives sent by their employers for business purposes, and men and women with a single passionately held goal.” Letter to New York Times, December 17, 1990.

¹³ Morris. P. Fiorina, “Divided Government in the States” in *The Politics of Divided Government*, at 192–93, 1991.

¹⁴ 1995 House Judiciary Hearings, *supra* note 10, at 121.

Term limits would weaken the legislative branch of government—and strengthen an already powerful Presidency, upsetting the constitutional balance of powers. Congress must be able to form its own judgments on national issues, to come to consensus independently of the executive branch’s policies, if necessary. A Congress of amateurs, however, would by its very nature be more pliable and deferential—and the institution would be robbed of its historic role of restraining the power of the Executive, who controls the entire federal bureaucracy. As a result, the branch of government closest to the people would become a less effective advocate for its constituents.¹⁵

The experience in states which have adopted term limits for their own state legislators show that concern about transfer of power to unaccountable bureaucrats and lobbyists is indeed a serious problem. Thomas Mann recently testified: “What we see thus far [in the states] suggests that term limits may increase turnover, strengthen executives, shift power from upper to lower chambers (which tend to have longer terms), heighten partisan conflict, and increase reliance on experts, including staff and lobbyists.”¹⁶ A recent analysis by Peter Schrag concerning the effect of legislative term limits in California concludes, “California’s recent experience may signal what we can expect: gridlock, bitter partisan hostility, and greater reliance on special interests for the expertise required to write complex legislation.”¹⁷

Term limits supporters have contradictory goals

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 contend that we could cure Congress’ ills by filling it with Members who are “citizen legislators” and want to undertake the job as a civic duty for a short time rather than as a career. Supporters complain the current professional legislator means that you “no longer work, shop, commute or send your children to school among your constituents.”¹⁸

Then, in contradiction to that premise, term limit supporters take a completely opposite tack. Prominent term limits supporter George Will argues 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

¹⁵ 1995 House Judiciary Hearings, *supra* note 10, at 146. These concerns are also borne out by studies showing the high degrees of experience held by Executive Branch 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. (Leadership for America, Rebuilding the Public Service, Task Force Reports to The National Commission on the Public Service, Paul A. Volcker, Chairman, 1989, at 163.) A 1993 study showed that the “typical Federal civilian employee” had a length of service of 14.9 years average, for full time permanent employees. (Office of Personnel Mngmt., Federal Civilian Workforce Statistics, Employment and Trends as of November 1993, at 78 (1993)).

¹⁶ 1997 House Judiciary Hearings, *supra* note 6 (statement of Thomas E. Mann at 3).

¹⁷ Peter Schrag, “The Populist Road to Hell, Term Limits in California”, *The American Prospect*, Winter, 1996, at 24.

¹⁸ Term Limits for Members of the U.S. Senate and House of Representatives, Hearings before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary, 103d Cong., 1st & 2d Sess. 41 (1993–94) (statement of David Mason, Director, U.S. Congress Assessment Project, The Heritage Foundation) [hereinafter, 1993–94 House Judiciary Hearings].

proper stature.”¹⁹ Taken together, the two viewpoints underscore the intellectual inconsistency of the term limits movement.

Term limits provide an excuse for failure to act on campaign finance reform

Not only are term limits themselves a dangerous proposal, they offer the opponents of real and meaningful campaign finance reform an easy excuse for inaction. Fred Werthheimer, President of Common Cause, identified this fundamental disconnect:

We recognize that there is widespread popular support for term limits and that it stems in part from the view that Members of Congress have become remote from average citizens, dependent on and obligated to special interests and their political money and locked into office by a campaign finance system that provides extraordinary and unfair financial advantages for incumbents over their challengers. We believe that the way to address these underlying problems, however, is through fundamental political reform that curbs the undue influence of campaign contributions over government decisions, creates the opportunity for challengers to run competitive campaigns against incumbents and makes Members of Congress accountable to their constituents, not to monied interests.²⁰

Of course, the lack of interest in campaign finance reform can hardly be unexpected from a Republican party which by many analyses maintained their narrow control in the House principally by virtue of a massive fundraising advantage.²¹ The truth is, if the Majority was serious about removing entrenched law-makers, it would move campaign finance reform, not term limits, as the first major legislation to be considered in the 105th Congress.

CONCLUSION

H.J. Res. 2 trivializes the Constitution and belittles those who would serve their country by serving in the United States Congress. The voters of Texas and Illinois knew what they were doing when they reelected Democratic Rep. Sam Rayburn and Republican Senator Everett Dirksen term after term; the citizens of Florida were right to repeatedly return Rep. Claude Pepper to office; and the voters of Michigan are fully justified in continuing to elect John Dingell, the current dean of the House. Their wise counsel and well-reasoned judgments have helped steer this country through many dangerous crises.

¹⁹ George F. Will, Speech to Cato Institute, Dec. 1, 1993, reprinted in, 1993–94 House Judiciary Hearings, id., at 215.

²⁰ 1995 House Judiciary Hearings, supra note 10, at 154.

²¹ Last November, the ten highest congressional races won by Republicans turned on a total of 9,700 votes. The average Republican fundraising advantage in those ten races was \$372,000 over their Democratic opponents.

At the same time, when they are so inclined, voters have shown no fear in throwing out less popular Members, be they freshmen or long-time veterans. We don't need to amend the Constitution to limit terms—there can be no better judge of whether a legislator deserves to remain in office than the voters themselves.

JOHN CONYERS, Jr.
BOBBY SCOTT.
STEVEN R. ROTHMAN.
BARNEY FRANK.
JERROLD NADLER.
MELVIN L. WATT.
RICK BOUCHER.
ZOE LOFGREN.
MAXINE WATERS.
HOWARD L. BERMAN.
SHELIA JACKSON LEE.
WILLIAM DELAHUNT.

