

# A CONTRARIAN TAKE ON CONGRESSIONAL TERM LIMITS

ENG W270: SECOND PLACE

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## **Abstract**

The prospect of imposing term limits on members of Congress seems to unite all parts of the American political organism. From left to right and top to bottom, an overwhelming majority of people want to see the enactment of congressional term limits of some kind. While there are some exceptions, it is at least certain that no one can be found speaking as vociferously against congressional term limits as in their favor. The following paper seeks to shift that balance, however slightly, by attempting to disabuse proponents of congressional term limits of the prospect's supposed simplicity and utility.

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In January of this year, just as the 118th Congress of the United States was getting underway, Senator Ted Cruz (R-TX) and Representative Ralph Norman (R-SC) introduced a joint resolution to amend the U.S. Constitution. The measure, which was cosponsored by eleven other senators—Indiana's Todd Young and Mike Braun among them—proposed “a constitutional amendment limiting Representatives to three terms and Senators to two terms” (S.J. Res. 3, 2023). Cable news viewers would not have been mistaken if they had thought the fanfare surrounding the announcement sounded somewhat familiar: The selfsame term limits amendment had been proposed by Cruz in 2019 as well as in 2017, when the senator was still in his first term. While the issue of congressional term limits has long

been a hobbyhorse of sorts for the American Right, it is undeniable that, at least at the level of the electorate, it has been more than just conservatives who have expressed curiosity about the prospect of making a mandatory periodic change of personnel a constitutional feature of the federal legislative branch, just as the 22nd Amendment made term limits a feature of the executive. After all, would it not stand to reason that the salutary effect of institutionalized change is universal? Why would the U.S. Congress, with all its susceptibility to deeply entrenched corruption and venality, be an exception to this rule? As with most simple solutions, the demagoguery is to be found in the details. The theory of congressional term limits would turn out to be the enemy of its very own practice; quality of democracy in the United States would in no way be improved from their implementation, and the teasing of their prospective enactment by congressional officials is, in truth, little more than campaign theater.

### **History of the Movement**

It is arguable that the origin of the consideration of term limits coincided with the origin of democracy itself. Promotion of the idea can be found in foundational political science texts, such as in Aristotle's *Politics* (ca 350 BCE/1958 CE), wherein he writes "that a man should not hold the same office twice ... that the tenure of all offices, or of as many as possible, should be brief" (Book V1, Section II). Similarly, a written proscription against continuous legislative service was part of the Articles of Confederation. When these original articles were scrapped at the Constitutional Convention of 1787, the idea of imposing legislative term limits was scrapped along with them, although many Framers did advocate at the time for their inclusion.

It was not until the early 1990s that the issue of congressional term limits began again to percolate in earnest in the American political psyche; by the middle of the decade, nearly half of the country's state assemblies had passed laws limiting the terms of their federal

representatives, although the actual implementation of those limits was statutorily delayed (López, 2003). However, in 1995, in *U.S. Term Limits, Inc. v. Thornton*, the Supreme Court ruled that such state-imposed term limits on federal offices were unconstitutional (Oyez, 2023). Since that time term limits activists have largely shifted their focus to an avenue of remedy that might be found through Article V of the Constitution, either through state-held constitutional amendment conventions or through amendment proposal motions introduced by members of Congress themselves, as was the case with the aforementioned Cruz resolution.

While it is true that many political scientists have argued that a thoroughly unattainable level of consensus would be needed to clear even the first hurdle of a constitutional amendment process, recent changes in the ideological makeup of the Supreme Court have seemed to suggest to term limits advocates that the Thornton decision might have occasion to be revisited (Blumel, 2020). Indeed, recent decisions made by the court overturning years of precedent would seem to confirm this. Thus, at least from the perspective of grassroots term-limits advocacy organizations, the enactment of congressional term limits may still be within reach.

### **Contemporary Views**

As with any political point of contention that seems to hinge on limiting the power of government, the issue of congressional term limits has great populist buy-in. In an informal survey I created on the Qualtrics platform and distributed over Facebook personal pages and Facebook groups that asked eligible voters about their political beliefs and participation levels while collecting basic demographic information, a total of 75% of participants answered “Yes, I support term limits for both the House and the Senate” when asked whether they would support legislation or a constitutional amendment enacting them. Favorable views on term limits were found to be consistent across all

income and education levels. Members of both major political parties and independents all favored congressional term limits nearly equally, with the only exception being among a small subset of Democrats who showed exceptionally high levels of political participation according to their answers to survey questions relating to campaign event attendance and poll working; this group did not support congressional term limits.

Similarly, a January 2023 poll of 1000 general election voters commissioned by U.S. Term Limits Inc., showed that 82% of eligible voters support term limits. The approval numbers were similar over all demographics with only the age demographic showing slight variability. Thus, both the results of both the informal Facebook survey and a scientific poll make clear that even in 2023, American voters across the political spectrum support congressional term limits.

### **The Conventional Case for Congressional Term Limits**

With the popular demand for term limits established and the possible avenues of term limits implementation outlined, what remains to be examined are the standard arguments made in their favor.

### **Puts New Eyes on the Problems**

The notion that the overarching principle of the legislative branch should be one of rotating power is one that hearkens back to the foundations of democracy (Petracca, 1993). Because the problems facing a given state—impending war, civil unrest, economic turmoil—are unchanging throughout history, it stands to reason that legislators are likely to become jaded and cynical through the span of their tenure. A system that favors rotation and churn could prevent the entrenchment of an unresponsive, blasé Congress and therefore might generate novel solutions to longstanding problems (Frenzel, 1992).

### **Provides More Time to Focus on Legislating**

The standard cliché about members of Congress, especially members of the House of Representatives, is that they are always campaigning. Every inch of movement one way or the other on any piece of legislation is a cause for a fundraising email, both by members making such movements and by members who are merely responding to it. Term limits would mean that not every member of the House would be focused squarely on the next election. Therefore, the body as a whole would be better positioned to make close study of issues upon which its members' decisions have such long-term impact.

### **Provides Greater Freedom in Making Tough Political Decisions**

Just as term limits would afford legislators more time, it would also give them more ideological space. This would be especially valuable in the area of foreign policy, where the question of whether domestic or foreign concerns are more pressing seems, in the current system of no term limits, to be unduly influenced by the most shortsighted views of constituencies (Burgat, 2018). To this point, party polarization does tend to seem less prominent in the decision-making among members soon to retire, who are therefore not bound to the next election.

### **Puts an End to Legislative Careerism**

It seems self-evident that the implementation of congressional term limits would put an end to a system that incubates out-of-touch Washington elites. If a career class were not permitted to develop on the Hill, the makeup of Congress would more favorably reflect the citizenry of the United States. Serving in Congress might be a little more like jury duty and a little less like a lifelong junket (Frenzel, 1992).

### **A Contrarian Take**

While it is evident that the standard arguments made in favor

of the enactment of congressional term limits are greatly appealing on their face, subjecting those arguments to even a modest amount of scrutiny reveals them to be wholly facile. This is above and beyond the fact that the question of term-limits utility may ultimately be moot. Despite the populist push, there will most likely never be congressional term limits in the United States; the notion that Congress would ever actually undertake to constitutionally amend itself out of a job is, to put it mildly, a bit pollyannish. Moreover, the healthy institutional antagonism that once existed between the state and federal governments that helped to foster the state-led term limits movement has been all but destroyed. It was House Speaker Tip O’Neill who made famous the phrase “All politics is local.” But Tip was toppled by Newt Gingrich, and it was under Gingrich’s leadership that politics at all levels became irrevocably national. The fact that today’s state legislatures in Idaho or Arkansas are debating laws that are wholly drafted by think tanks in Washington D.C. is indeed part of Gingrich’s political legacy (Kornacki, 2018). Why this matters greatly for the overall viability of prospective state-led term-limits legislation is that this kind of top-down partisan unity is likely to prevent a state legislature from ever succeeding in passing laws that would seem to be averse to the career interests of its federal legislators. Furthermore, the once-genuine proclivity of state legislators to try to term-limit federal legislators is no longer politically expedient in the sense that there are far fewer Southern Blue Dog Democrats for Republicans to try to unseat. If the so-called “Permanent Democratic Congress,” which reigned from 1954-1995, was not part of the impetus of the largely GOP-led term limits movement, then it would certainly be an odd coincidence. Simply put, the confluence of lofty ideals and lowly opportunism that gave the first-wave term limits movement its vitality no longer exists (Mann, 1992).

But why, then, does there remain an active “Term Limits Caucus” on the Hill? The term limits movement exists in Congress solely on condition of the firm conviction held by all its adherents

that the effort is assured to be a perpetual failure. The hurdle for enacting a constitutional amendment is exceedingly high: two-thirds of both Houses for proposal and three-fourths of state legislatures for ratification. Senator Ted Cruz, a Harvard Law School graduate, knows this as well as anyone. As is often the case in the depths of congressional cynicism, individual members keep their constituents running on a fundraising treadmill, forever chasing throwaway populist ideals that are always and forever just out of reach. To be sure, if the legwork of citizen activists ever started to gain any real ground in the area of congressional term limits, the philosophy of the prospect's strongest advocates in Congress would quickly undergo a curious evolution.

The absolute futility of the term limits movement is, however, no good reason to despair. A certain amount of solace can be found in the fact that arguments that traditionally cast congressional term limits as some sort of political panacea do not hold up well under rigorous examination.

### **Puts New Eyes on the Problems**

When the Framers first debated congressional term limits at the Constitutional Convention of 1787, they could not have anticipated the levels of specialized and compartmentalized professionalism that exist today; they surely could not have guessed what it would mean, for example, to sit on the House Energy and Commerce Committee in 2023. Congress is at the mercy of lobbyists enough as it is: "The expertise on policymaking more and more has moved to the private sector," said political scientist Lee Drutman on NPR's *All Things Considered*, "and it's moved to represent those organizations and companies who can afford to pay for it" (2013) A system of term limits would mean a permanent freshman caucus on one end of the spectrum and a lame-duck caucus on the other. The former would need the guidance of lobbyists and the latter would exploit it. More

control of policy by lobbyists would inevitably mean less control by elected officials. This would result in a decrease in accountability in policymaking, which is tantamount to a decrease in democracy.

### **Provides More Time to Focus on Legislating**

A congressperson who is not burdened with seeking another term because they are hitting up against a term limit would not be coerced into retirement or back into employment in the private sector. It is far more likely that they would simply be incentivized into seeking higher office. In their study of existing term limits in state legislatures, Olson and Rogowski (2020) found that because the avenue for higher office for soon-to-be term-limited legislators would be through their party, partisan considerations tended for them to outweigh the more nuanced considerations of their constituencies in their final term. It can be inferred from this that if term limits were enacted on the federal level, this general principle would ensure that a congressperson's last term would be spent rubber-stamping the wishes of their party. In the case of those who did plan to return to the private sector, using legislative levers to make unsavory deals with future business partners would be a difficult prospect to resist. Once again, this manner of ceding legislative ground to lobbyists, interest groups, and trade associations would be inarguably undemocratic.

### **Provides Greater Freedom in Making Tough Political Decisions**

If democracy is defined as “a system of government in which rulers are held accountable for their actions” (Schmitter and Karl, 1991, p.76), then any institution that attenuates that accountability must be considered less democratic. In the case of congressional term limits, every member in their last term would no longer be tethered to such accountability in the interest of a system of wholly arbitrary rotation. To whatever extent that it might be argued that a legislature may benefit from institutions that relax inclinations to over-impulsive

accountability—such as those sometimes seen when members of the House chase the extremist wishes of their constituents—such benefits seem to be already met through the institution of an incongruent bicameral legislature. Indeed, in the case of the Senate, staggered elections already provide for a bulwark of Burkean stewardship in legislative decision-making. With regard to the phenomenon of non-polarization often observed in legislators on the brink of retirement, which would seem at first to substantiate the connection between term limits and ideological autonomy, it is important to consider the distinction between the governing influence of such self-imposed term-limiting on legislative behavior and mandated term limits: In the case of congressional retirements, this legislative autonomy is likely to come with experience and wisdom and without the potential resentment and cynicism that would be generated by externally imposed term limits.

### **Puts an End to Legislative Careerism**

The irony of term limits legislation, at least as it has played out in state legislatures, is that it often incentivizes legislators to stay in office in instances where they may have otherwise retired or sought another office or employment in the private sector (Butcher, 2020). If members have only one term left to reach their limit, not only are they more likely to seek re-election for that term, but any potential challengers are also less likely to mount their challenge until the seat they wish to run for is “wide open.” In this sense the enactment of term limits would no more create a ceiling to congressional tenure than it would promote a floor. The net effect of congressional term limits would run crosswise with their own intended effect. Indeed, the practice would defeat the theory.

### **Conclusion**

According to *The Texas Tribune* (2023, Feb. 1), in the current bill being proposed by Senator Ted Cruz, which would limit senators to two

six-year terms, terms served before the ratification of the amendment would not count against the term limit. Therefore, if both the House and Senate voted in favor of the amendment today, and three-fourths of the state legislatures ratified the amendment tomorrow, the senator would still not find himself term-limited by his own amendment until the year 2036. Said the senator on CBS's *Face the Nation* when pressed about the apparent contradiction between his sponsorship of a term limits bill and his plans to seek a third term in the Senate, "I've never said I'm going to unilaterally comply" (Brennan, 2023).

In the current political landscape, motivations for supporting congressional term limits may range from the well-intentioned and ingenuous to the malevolent and cynical, but most motivations, of course, lie somewhere in between. In truth, the debate over the democratic utility of term limits, at least as it may be applied to the federal legislature of the United States, is of the type that can be credibly dismissed as "merely academic." Its only merit lies in establishing that the insurmountable bar that would need to be met for their enactment is not worth the undertaking in the first place and that earnest political energy spent in their pursuit would be far better spent elsewhere. True political power is to be found in full political participation. Such power includes the right to term-limit any politician in any election through the simple act of voting for a non-incumbent. ■

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