The Heritage Foundation Backgrounder

No. 1003 | The Heritage Foundation 214 Massachusetts Avenue N.E. Washington, D.C. 20002-4999 (202) 546-4400

A U.S. Congress Assessment Project Study

September 28, 1994

A REPORT CARD ON THE 103RD CONGRESS: FAILING GRADES ON REFORM

INTRODUCTION

As American children begin another year of school, Congress is ending its two-year session, making it time for a final report card. In the critical area of congressional reform—the steps Congress took to fix its internal problems—mostly failing grades are in order.

The tumultuous elections of 1992 led to the largest freshman class of legislators in decades; for most of them, reforming the troubled institution they were about to join was a central campaign issue. Lawmakers, conceding that their institution was plagued by numerous internal problems, created a special committee—the Joint Committee on the Organization of Congress—to reform the institution. Even though that committee's proposals were disappointingly mild, they were fought bitterly by entrenched interests within Congress and ultimately were sabotaged by congressional leaders who stopped most reforms from even coming up for a vote. In retrospect, it appears that the Joint Committee process was designed to fail; and, with a few notable exceptions, Members of Congress expended little time or energy on reforms outside that process. Among the disappointments of the last two years, Congress:

- ✓ **Failed to improve its misleading budget procedures;**
- ✓ **Did not fully apply all relevant federal laws to itself;**
- ✓ **Failed to eliminate congressional perquisites that are used to influence elections;**
- ✓ **Advanced campaign finance reform that would give incumbents even more advantages in elections;**

REPORT CARD
103rd CONGRESS

	House	Senate
Congress's Reform Committee	F	F
Commitment To Reform	F	F
Budget Reform	C	F
Congressional Coverage	B	F
Pay, Perks, And Staff	F	F
Campaign Finance Reform	F	F
Committee Reform	F	F
Nonpartisan House Administration	F	N/A
Truth In Voting	D	N/A
Term Limits	F	F

Note: Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

- ✓ **Failed to rationalize the ineffective committee system;**
- ✓ **Failed to eliminate party politics from internal congressional administration;**
- ✓ **Failed to eliminate deceptive voting practices through truth-in-voting reforms; and**
- ✓ **Failed even to address congressional term limits.**

This general pattern of failure is the result of opposition from an entrenched leadership which dominated a large freshman class that, despite campaign promises, appeared to care little about reform issues. This pattern, however, was interrupted occasionally by a few individual and institutional bright spots. The House passed a bill applying various employment laws to Congress (a bill now being championed in the Senate by Republican Charles E. Grassley of Iowa and Democrat Joseph Lieberman of Connecticut), and a few subcommittees and non-legislative committees were eliminated. Some members of the Joint Committee, such as David Dreier (R-CA) and Jennifer Dunn (R-WA), distinguished themselves on numerous reform fronts; other Members of Congress, such as Robert Andrews (D-NJ), Mike Crapo (R-ID), Jim Inhofe (R-OK), and Bill Zeliff (R-NH) have capitalized on specific reform opportunities. But these legislators unfortunately are not typical. Indeed, if Congress were a school, most of the class would need to be held back in order to take remedial classes on reform.

CONGRESS'S REFORM COMMITTEE

House: F Senate: F

The central focus of congressional reform must be the quality of legislation that Congress produces; that is, are laws the product of sound policy choices made in a genuinely representative fashion? Judged by this standard, the process that Congress set up to reform itself (like its routine lawmaking procedures), was destined to fail. Despite rhetorical support for the reform process from nearly every Member of Congress, obstacles within the process stacked the deck against reform.

The Joint Committee on the Organization of Congress, created to review and recommend changes in the way Congress operates, originally had no freshman members—despite the fact that one-quarter of House Members and 14 of 100 Senators were first-termers. Only after one of its members left Congress to enter the lobbying sector was a freshman Representative appointed to the 24-member committee. The fact that the committee was stacked with senior members (their average tenure was over fourteen years) reflects a central problem of Congress's seniority system: junior members rarely are granted seats on important legislative committees and are given little opportunity to do their central job, helping to write legislation. They therefore must focus on seeking repeated re-election—and frequently on accomplishments unrelated to legislation—in order to acquire committee positions with significant legislative influence. The overwhelming number of senior lawmakers guaranteed that the Joint Committee would reflect the attitudes and interests of career politicians.

If the outcome of the reform process had matched the rhetoric of the Members who testified before the Joint Committee, it would have been a success. Over the first six months of 1993, the Joint Committee held 36 hearings and heard testimony from 243 witnesses—including 170 federal legislators—about what was wrong with Congress. Most witnesses encouraged the committee to produce a bold package of reforms and pledged their strong support; Speaker of the House Tom Foley, for instance, said: "I have come to believe that this is a proc-

ess that not only can work but must work. I pledge to you my willingness to support you in any way that I can, and I wish you well."[1]

Despite this rhetorical support, however, the Joint Committee's recommendations would have to go through the very legislative process that the committee had been set up to reform—a process which created countless opportunities for other committees to bottle up, ignore, or fatally modify reform legislation with no guarantee that it would ever reach the floor of the House and Senate. Awareness that any reform plans would have to be acceptable to other committees encouraged a timid atmosphere that produced tepid half-measures coupled with schemes to evade pressing issues.

For instance, the committee never seriously considered the reforms that are most prominent in public discourse, such as term limits, a balanced budget amendment, and line-item veto power for the President. Members decided to bypass such difficult questions as ethics reform, application of laws to Congress, and committee restructuring by calling for more study or for others to handle the issue.

Although the extensive hearings held in the first six months of the 103rd Congress were supposed to culminate in a summer legislative mark-up, the House leadership repeatedly refused throughout the latter half of 1993 to permit the committee to meet in order to report out legislation. This delay eventually led to a November meeting where frustrated Senate members of the Joint Committee split off and held their own mark-up, thus further weakening prospects for a strong reform bill that would permit committee members to form a united front in its defense. The House half of the committee, finally scheduled to meet during the last week of the 1993 session (after which its authority would expire), was split by a series of party-line votes that left few genuine reform proposals intact. Instead, House members produced a bill larded with feel-good but nonbinding resolutions and nearly meaningless reforms, such as recodifying House rules and preventing cosmetic changes in Members' statements in the *Congressional Record.*

Republican committee members, who could have killed the package on a party-line vote, were divided on whether the resulting package was worth any additional effort. Based on a commitment from Chairman Lee Hamilton (D-IN) to bring the entire Joint Committee package to the floor with "generous" opportunities for members of both parties to amend it, two Republicans—Vice Chairman David Dreier (R-CA) and Bill Emerson (R-MO)—voted to report out the committee product.

Although the Joint Committee's proposals were disappointing overall, the House and Senate reports did include some useful reforms. Particularly, proposals for a two-year budget process and limits on committee memberships likely would have led to greater deliberation and some reduction in redundancy. Further, the committee's proposals could have served as the basis for debate and votes on more significant reforms in the House and Senate. The bill's forced march through House and Senate committees, however, gave defenders of the status quo opportunities to destroy even these few useful reforms. Entrenched interests in both bodies mobilized to fight the Joint Committee's already weak product.

---

1 *Congressional Record,* August 10, 1994, p. H-7332.

- Committee chairmen opposed provisions that might eliminate committees. Appropriations Committee members were against a biennial budget process.
- The Black Caucus spoke out against committee assignment limitations.
- The House Democratic Study Group demanded abolition of the Senate filibuster before any House reform could take place.
- The Senate Rules Committee stripped the two-year budget process proposal and the committee reforms from their bill, and watered down the provisions on application of laws to Congress while adding new powers for the Majority Leader and the Appropriations Committee.
- In the House, Speaker Foley decided to break the reform package into separate pieces, making it harder to pass each particular reform.
- Faced with such legislative roadblocks, the reform bill's momentum crumbled. As a result, the only proposition Congress has even considered is the House-passed Congressional Accountability Act (see section on "Congressional Coverage," on page 8).

Congressional leaders, all too aware of how to capitalize on anti-reform legislative dynamics, were able to slice away at the package's provisions and prospects. If reformers did not understand this initially, the leadership's opposition to and destruction of their efforts certainly should have taught them. This anatomy of the Joint Committee's procedural failures carries within it a central lesson: any serious reform measure will encroach on so many power bases and entrenched interests that the only hope of success lies in bypassing existing committees and seeking votes on the floor of the House and Senate.

COMMITMENT TO REFORM
House: F Senate: F

Despite low and steadily sinking public regard for Congress (as of August 1994, only 14 percent of the public generally trusts it to do the right thing, down from 24 percent two years earlier[2]) coupled with broad public support for a wide-ranging spectrum of proposed reforms, individual Members—with a few exceptions—have failed to take the initiative to reform Congress.

One problem is that Congressmen apparently are not even discussing reform to any significant degree. Among the 5,400 "Dear Colleague" letters—internal communications among Members of Congress—sent between June 1993 and June 1994, congressional reform was mentioned only 27 times, ranking 37th among 38 topics.[3] For every "Dear Colleague" that dealt with the issue, there were over 26 that dealt with health care and over 16 that dealt with crime. Even when addressing constituents, Congressmen rarely mention reform. A Heritage

2 Associated Press Poll taken August 26-30 by ICR Survey Research.
3 Congressional Connection database service.

Foundation review of twenty Congressmen's mass mailings found crime addressed 44 times, health care 40 times, and senior citizens' and veterans' concerns a total of 26 times, while congressional reform was mentioned in only 4 instances.

This inaction is startling, given the much-vaunted reform orientation of the huge freshman class of 1992. Freshman members of both parties released reform proposals early in 1993, but few Members have been active since that time. Freshman Democrats were sidetracked after Speaker Foley forced them to vote on a wide-ranging package of anti-reformist rule changes immediately after being sworn into office in January of 1993. Promising that the reforms the freshmen proposed eventually would receive a vote, Foley was able to secure 53 of 55 freshman Democrats' votes on the rules package. The resulting reform package, however, was derived heavily from leadership-supported proposals on campaign and lobbying reform. The 27 freshman reform proposals were steered into one, then another committee of the House Democratic Caucus, which eventually reported five to the full caucus for further review. As of this writing, not one of these proposals has been voted on by the full House.

Freshman Republicans approved a package that contained hard-hitting reforms like term limits, appropriations reform, franking reductions, supermajority voting requirements for tax increases, and a balanced budget amendment. As a class, however, GOP freshmen have been surprisingly quiet, perhaps because of the oft-delayed promise of action on a Joint Committee reform package. The existence of the Joint Committee provided a convenient justification for inaction by congressional leaders, who argued frequently that since the committee was exploring some particular reform, there was no need for action by the rest of Congress.

There were several notable exceptions to this general lack of commitment, however. Representative Jim Inhofe (R-OK) led the 103rd Congress's most successful crusade for reform: eliminating the secrecy of the names on House discharge petitions. Although Inhofe lacked relevant committee memberships, his willingness to fight within the House as well as outside of it (he spent hours discussing House rules on talk radio shows around the country) eventually forced a lopsided 384-40 vote in favor of full disclosure. This reform empowered rank-and-file Members, who—if they constituted a majority—could now force a vote on legislation despite a committee chairman's wish to block it. By providing a way to bypass committees, discharge reform spurred committee action. When Judiciary Committee Chairman Jack Brooks (D-TX) saw that 185 of the necessary 218 Members had signed the discharge petition for an aircraft liability reform bill (a bill he had blocked for eight years), he allowed the legislation through his committee. The measure received rapid approval and is now law. It had enjoyed broad support for nearly a decade, but the discharge petition had been the missing ingredient.

Representatives Robert Andrews (D-NJ) and Bill Zeliff (R-NH) introduced the "A to Z Spending Cuts Plan" that would trigger a special congressional session devoted to spending cuts. Over 200 Members signed the discharge petition for this measure; although the A to Z plan was not considered, strong support for the petition forced House leaders at least to advance weaker budget reform proposals (see next section).

Other reformers were successful in drawing public attention to abuses of congressional processes. Representatives David Dreier (R-CA) and Jennifer Dunn (R-WA) were particularly persistent in trying to secure House action (and then in publicizing House inaction) on recommendations of the Joint Committee. Representative Mike Crapo (R-ID) introduced "truth-in-voting" reforms that would make individual Members more accountable for the legislative votes they cast (see "Truth in Voting," below). In the Senate, Charles E. Grassley (R-IA) has

repeatedly attempted to force Congress to apply to itself the same laws it passes for the rest of the country. He and Senator Joseph Lieberman (D-CT) currently are fighting for a Senate vote on a measure that would apply numerous laws to Congress, albeit under internal enforcement.

Despite the congressional leadership's furious resistance to reform and its ability to punish recalcitrant reformers, rank-and-file Members might have been more successful in promoting change had more of them been strongly committed to that goal. For the most part, that commitment was not apparent in the 103rd Congress.

NOTE: The failing grade does not apply to a few reform achievers like the Members mentioned above, who deserve special commendation for their efforts.

BUDGET REFORM
House: C Senate: F

Congress's track record on managing the federal budget is not good. For too long, federal legislators have relied on disguised spending increases, votes to cut spending that actually save no money, and legislative gimmicks that circumvent Congress's own spending caps. Although the House of Representatives did pass a few tentative reforms, its efforts barely merit a passing grade, especially since its votes were taken so late that it is nearly certain the Senate will not pass companion measures.

The House took one healthy step, however: it passed legislation that, if approved by the Senate, would stop hidden automatic annual spending increases. These yearly "baseline" increases are calculated by government economists, who estimate how much the federal government will need next year to do everything it did the previous year, adjusting for economic and demographic changes. "Baseline budgeting" permits spending to grow at a remarkable rate; the Medicare baseline, for example, typically increases over 12 percent annually.[4] When legislators announce spending cuts, they use these inflated baseline figures, making it possible for Congressmen to claim credit for cutting spending while simultaneously engineering large spending increases. Eliminating this fraudulent practice has long been a goal of Representative Chris Cox (R-CA), who made replacement of baseline budgeting the centerpiece of his Budget Process Reform Act. This summer, the House passed H.R. 4604, the Full Budget Disclosure Act sponsored by Representative John Spratt (D-SC), which would base budgets on the previous year's actual spending and force legislators to justify spending increases rather than claim credit for phony spending cuts.

The House also passed another useful budget reform this Congress: a measure to place tighter controls on emergency spending. Because funding for emergencies is not subject to limits which apply to regular appropriations, well-placed legislators habitually add pork-barrel items to emergency appropriations. For instance, the $6.2 billion requested by President Clinton last year for California earthquake relief was transformed into $11 billion by the time Congress finished adding such obviously non-disaster items as funding for a New York train station and pay raises for federal employees. The House-passed Emergency Spending Control

4 See James K. Glassman, "A Bit of Creative Accounting Makes the Budget a Fraud," *The Washington Post*, July 30, 1993, p. B1.

Act, if passed by the Senate, would make such budgetary sleight of hand a thing of the past by requiring that non-emergency spending in an emergency bill comply with overall spending caps.

Unfortunately, deceptive voting remains common. Two notable reform procedures were blocked by House leaders despite broad public and congressional support. The first was designed to solve the problem of phony spending cuts. Although Members of Congress routinely trumpet the amounts they cut from appropriations bills, these funds are not used to reduce the deficit. Instead, they are recycled by appropriations subcommittees into other programs. Over $1.3 billion in cuts was diverted in this fashion during 1992 alone. The Deficit Reduction Lock Box Act, H.R. 4057, introduced by Representatives Mike Crapo (R-ID) and Charles E. Schumer (D-NY), would earmark individual appropriations cuts for deficit reduction instead of allowing them to be recycled into further spending. The Lock Box Act, one portion of Representative Crapo's program of truth-in-voting reforms, currently has 151 cosponsors.

The A to Z Spending Cuts plan, cosponsored by Representatives Robert Andrews (D-NJ) and Bill Zeliff (R-NH), would provide for a special session for votes on whether to defund a wide array of spending programs; successful spending cuts would be directed to deficit reduction. The plan, which has 230 sponsors, nearly achieved passage but fell 14 signatures short of the 218 needed for a vote on the House floor. It was blocked by massive resistance from congressional barons who oppose any limits on Congress's spending power, but the vigorous efforts of A to Z proponents forced the leadership to allow consideration of the mild budget reforms discussed above. As Representative Gerald Solomon (R-NY) characterized it, "Instead of A-to-Z real spending reforms, we are going to have C-Y-A process reforms."

While useful, internal procedural reforms such as A to Z and the Lock Box are less effective than constitutional reforms to limit Congress's spending power. A balanced budget amendment to the Constitution and a line-item veto that would permit the President to strike wasteful federal spending from legislation provide the best prospects for ridding the federal budget of its pro-spending bias.[5]

The Senate debated a balanced budget amendment but narrowly failed to muster the two-thirds majority needed for passage. In the House, even though 337 Members (far more than two-thirds) voted in favor of some version of a balanced budget amendment, procedural tricks used by the leadership ensured that no one version would receive enough support to go forward. The House did pass a weakened version of a line-item veto (the Enhanced Rescission Act) that would permit the President to propose spending cuts, but those cuts could be blocked by a majority in either the House or the Senate. (A genuine line-item veto would require two-thirds of both houses to override presidential cuts.) Senate Appropriations Committee Chairman Robert C. Byrd (D-WV), however, killed the measure in the Senate. Some action on budget reform will be necessary for the Senate to receive a passing grade.

---

5 Republican House candidates will pledge on September 27 to support votes on these two constitutional reforms, as well as other reform issues, if they elect the leadership of the House in the 104th Congress.

CONGRESSIONAL COVERAGE
House: B Senate: F

Congress refuses to obey many of the laws it imposes on ordinary Americans. Nearly a score of federal laws—including the Civil Rights Act, Americans With Disabilities Act, and Family and Medical Leave Act—either do not cover Congress at all or apply to Congress differently than to the rest of the country. Congress's habit of exempting itself from laws that burden citizens, businesses, and state and local governments is fundamentally undemocratic and makes legislators careless about the regulatory and financial costs of legislation. Unlike private sector employees, congressional employees who allege wrongdoing by their employers face a slow, secretive, internal congressional process fraught with possibilities for political interference. Appeal rights are insufficient and jury trials nearly impossible.

Popular outrage at this double standard led to various legislative proposals purporting to solve this problem. The most popular, the Congressional Accountability Act, was sponsored by Representatives Christopher Shays (R-CT) and Dick Swett (D-NH), eventually garnering 250 cosponsors. When the Joint Committee on the Organization of Congress split into House and Senate groups, House members incorporated a watered-down version of the Shays-Swett legislation in the reform bill they produced. Senate leaders appointed a Bipartisan Task Force on Congressional Coverage which—instead of designing legislation—issued a report advocating half-measures. Nine months later, that report still has not been publicly released.

In August of 1994, the House passed a somewhat improved version of the Congressional Accountability Act. The Act gives aggrieved congressional employees a choice between Congress's internal hearing system (with an eventual right of appeal to federal appellate court) or a lawsuit in federal district court with the possibility of a jury trial. It also incorporates ten specified employment-related laws and permits addition of other employment statutes.

Although the Congressional Accountability Act is an important step forward, significant weaknesses remain. Under the Act, a newly created Office of Compliance would propose unique regulations for Congress "that specify the manner in which the laws... shall apply."[6] This means that Congress still will not be following the same laws as the rest of the country. Congress will write its own regulations, different from those faced by the private sector, and it will judge for itself whether those regulations are sufficient, even as the private sector continues to face often hostile enforcement of regulations over which it has little control. Furthermore, the Freedom of Information Act (FOIA) was stripped from the bill when it was considered in the House Administration Committee. As Representative John Boehner (R-OH) has contended, the House Bank and Post Office scandals might have been headed off if FOIA had been applied to Congress. Applying FOIA to Congress also could expose such other abuses of power as use of the congressional frank to influence elections and improper special-interest communications from Members to federal agencies. Finally, the Congressional Accountability Act's application of the Occupational Safety and Health Act (OSHA) to Congress lacks fines and allows Congress to delay any necessary repairs for a year or more after a violation is discovered. Private businesses ordinarily are not granted years to cure a violation of federal health and safety law.

---

6 H. R. 4822, section 5 (c) (1) (A).

Unfortunately, Senate agreement to the Congressional Accountability Act appears unlikely. The principal Senate objection is that the new compliance office would have authority over both the House and Senate; many Senators prefer separate House and Senate offices. Even if the Act should become law, however, its cozy enforcement regime and coverage loopholes leave much room for improvement. Nonetheless, recognition that Congress must obey the laws it imposes on other Americans makes the Congressional Accountability Act one of the most important reforms to achieve any success in the 103rd Congress. Although the Act is flawed, its enactment would be a significant step forward—especially in establishing the principle that Congress is not above the law.

PAY, PERKS, AND STAFF
House: F Senate: F

Congress has become an "incumbent protection society"[7] by using taxpayer-supplied public funds for private political purposes. Weekend trips back to the district are funded by one official account, staff who routinely perform campaign-style work (for example, drumming up media coverage) by another. Television and radio studios in congressional office buildings are funded by taxpayers and used by officeholders to compose and broadcast programs aired in their districts. Perhaps most important, the congressional frank—"free mail" sent to constituents—is worth roughly $160,000 per year for each Member of Congress, an amount greater than the average House challenger's entire campaign budget.

Congress works hard to protect its perquisites, including Members' salaries—which now exceed $133,000 a year. "Ethics reform" legislation passed in 1989, for instance, provides for yearly cost of living adjustments (COLAs) in congressional pay, which means that each Member of Congress receives an annual pay raise without ever having to vote on the question. Congress's pension system is one of the most expansive in the country, roughly twice as generous as any in a Fortune 500 corporation. Legislation to repeal the COLA or otherwise reform congressional pay and benefits languishes with little support. Representative John Boehner (R-OH) has brought suit against the COLA procedure, arguing that it violates the 27th Amendment's stricture against congressional pay raises without an intervening election; so far, his efforts have been unsuccessful. For the most part, other congressional "perks" remained untouched this session as well.

As of mid-September, Representative Jim Lightfoot (R-IA) was attempting to force a vote eliminating the COLA scheduled for December 1994. Lightfoot's commendable effort would fix the problem for one year only, however, since his amendment would be attached to an appropriation measure.

The number of congressional employees—long a subject of public ire—did see some small improvement. Congress employs an army of aides, now numbering over 27,000,[8] and its staff is by far the largest of any legislature in the world.[9] In the last thirty years, operating costs have ballooned by 800 percent.[10] With critics arguing that huge congressional staffs lead to

---

7 The term is Alan Ehrenhalt's; see *The United States of Ambition* (New York: Random House, 1991), p. 230.

8 Norman Ornstein, Thomas Mann, and Michael Malbin, eds., *Vital Statistics on Congress* 1993-1994 (Washington, D.C.: Congressional Quarterly, 1993), table 5-1, p. 127. Hereafter referred to as VSOC.

9 VSOC, p. 121.

inefficient and intrusive government, the House of Representatives has promised to reduce its staff by 4 percent. Its first round of staff cuts, however, relied heavily on eliminating peripheral positions, such as interns and administrative staff (for example, those who distribute office furniture and supplies). In an especially cynical move, Representative Charlie Rose (D-NC), Chairman of the House Administration Committee, transferred control over congressional food services employees to private contractors while ensuring that the services and employees would remain—leaving the same number of employees on Capitol Hill, but reducing the official payroll. While non-legislative staff shouldered the vast majority of cosmetic reductions, highly paid personal and committee aides who function as shadow Congressmen escaped nearly unscathed.

The enormous subsidies for congressional mail, which increase the federal budget and tilt federal elections in favor of incumbents, also remained essentially unchanged. Lawmakers should answer constituent queries, but over nine-tenths of franking costs derive from mass mailings initiated by Congressmen, not from responses to constituents.[11] Although previous Congresses have cut franking accounts and required disclosure of Members' total expenditures, such reforms as limiting the mention of the sender's name to eight per page and capping his pictures at two per page only raise questions about what prior abuses had occurred. Republicans have pressed repeatedly for further reform of franking, but Rose has refused to hold any committee meetings on the subject this election year. The political uses of the frank were illustrated during the tumultuous 1992 elections, when three of the four heaviest House users of the frank lost their reelection bids. On average, the four sent out over a million mass-mailed letters apiece.[12] Although these mailings failed to save them, they demonstrate that those in greatest political peril often use the frank the most.

One change symbolizes the whole of congressional reform this session. Congress has come under fire for reserving select parking for Members at Washington airports. Shortly after a Senate vote narrowly rejecting a proposal to eliminate the special parking arrangement, signs acknowledging that the spaces were reserved for Congressmen were mysteriously altered to read "Restricted Parking: Authorized Users Only." Although one can argue that Members need special airport parking spaces because of frequent travel, cosmetic changes that attempt to divert attention from Congressmen's special status without changing the situation are especially cynical.

The solution to these problems is as easy to understand intellectually as it is difficult to implement politically: further regulate or eliminate congressional "perks" susceptible to electoral abuse. If Congressmen want a pay raise, make them vote on it. If they need a broadcast studio to communicate with their districts, make them find one in the private sector. If they want to send what amounts to political mailings to voters in their districts, make them pay for it out of campaign funds; abolition of these unsolicited mailings by members of the House alone would help level the playing field for challengers and save taxpayers roughly $58 million every congressional session.[13] A rule that Members of Congress could respond to, but not initiate, constituent correspondence would do more for campaign reform than any measure cur-

10 VSOC, p. 124.

11 Senator Pete Wilson, "The Congressional Frank: A Simple Case of Abuse," *Heritage Lecture* No. 221, September 29, 1989, p. 1.

12 "Use of Franking Privilege," *The Washington Post*, October 22, 1992, p. A29.

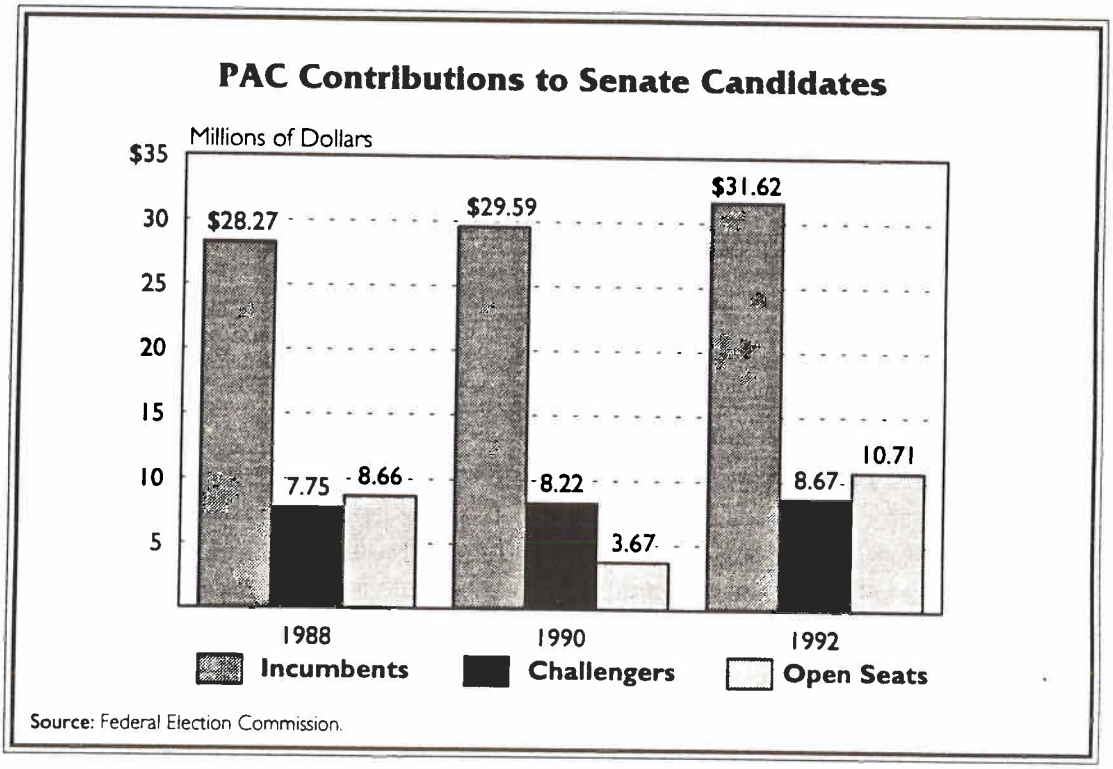
13 Estimate from National Taxpayer's Union news release, April 4, 1994.

rently being debated in Congress. Finally, real cuts—on the order of 25 percent—from committee and personal staff are essential for congressional reform.[14]

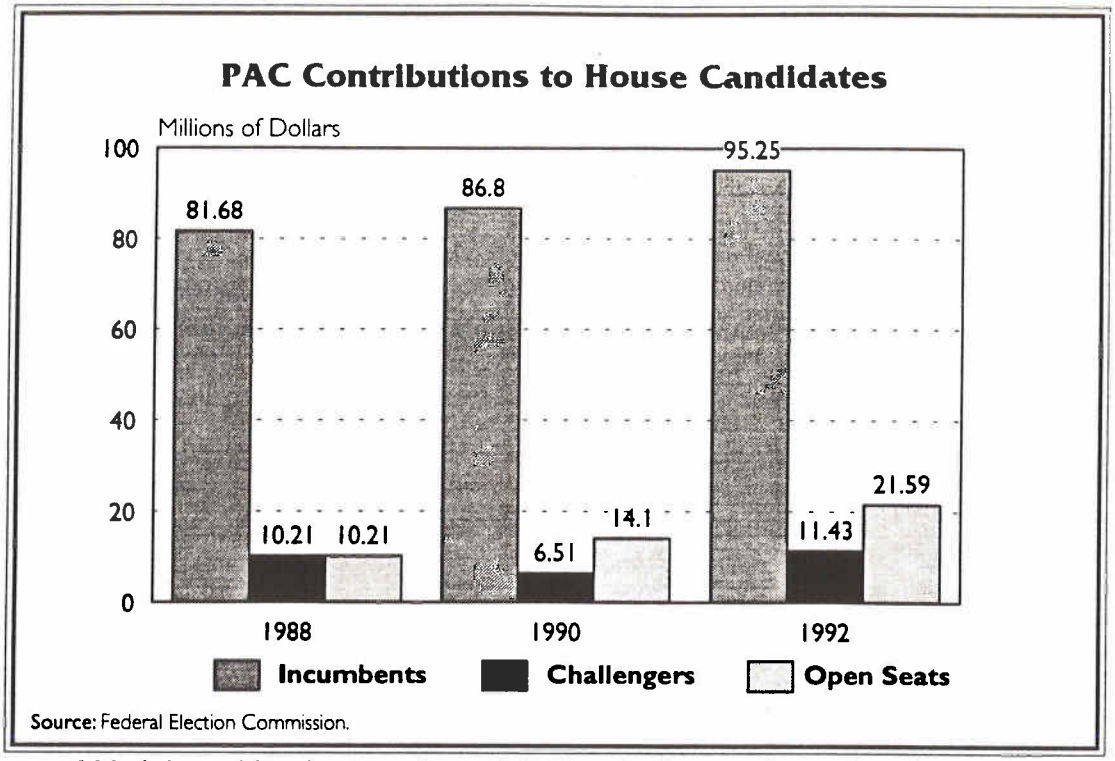
CAMPAIGN FINANCE REFORM
House: F Senate: F

In 1992—a year noted for anti-incumbent sentiment—over 88 percent of incumbents running for reelection to the House or Senate were victorious. (In the previous decade, the average reelection rate among House incumbents was over 95 percent.[15]) Incumbent dominance of congressional elections was acknowledged by President Clinton, who claimed that his campaign finance plan "levels the playing field between challengers and incumbents and pays for it by taxing lobbyists and not the American people."[16] The President's plan and similar congressional proposals (H.R. 3 and S. 3), however, fail to meet this standard. On the central test of campaign finance reform—giving challengers a fair chance—these proposals flunk.

Instead of leveling the electoral playing field, campaign finance reform legislation passed by the House and Senate (though not in final form) would enhance incumbents' already formidable advantages, many of which are funded by the American taxpayer. These advantages snowball when it comes to campaign contributions, because donors prefer to give to likely winners. Special interest group political action committee (PAC) donations to incumbents especially outpace those to challengers, and the House-passed version of campaign finance re-



14 The House Republican pledge discussed in note 5 above also includes a commitment to reduce committee staff by a third.
15 VSOC, tables 2-7 and 2-8, pp. 58-59.
16 "Statement by the President... on Finance Reform," Office of the Press Secretary, May 7, 1993, p. 2.



Source: Federal Election Commission.

form would heighten this advantage by prohibiting challengers from offsetting their lack of PAC contributions with large donations from individuals. Because the House scheme limits the number of donations greater than $200 that a campaign can accept, challengers in effect would be forced to scramble for funds in $200 increments to match the showers of $5,000 PAC gifts that go to incumbents.

Most of the taxpayer-funded advantages enjoyed by incumbents (see "Pay, Perks, and Staff" above) are ignored by the campaign finance reform bills. There is a ban on election-year mass mailings in the Senate bill, for example, but this probably will be eliminated if the bill goes to conference. Instead, these bills limit the amounts that congressional candidates can spend. Since these spending caps are equal for challengers and incumbents , however, they add even more to incumbents' built-in advantage. Two decades ago, the Supreme Court declared that spending limits are an unconstitutional limit on First Amendment freedoms;[17] that is why the bills call their limits "voluntary." But candidates who exceed those limits are penalized harshly by such measures as punitive taxation and awards of hundreds of thousands of dollars in federal subsidies to opponents. Since incumbents 'advantages make their effective spending limits far higher than those of challengers, this penalty amounts to an ingeniously pro-incumbent ploy. Incumbents will not have to exceed the limit—challengers will.

Challengers who try to avoid the problem by running cheaper campaigns will be effectively disarmed, because it takes a substantial amount of spending just to reach parity with incumbents' taxpayer-funded privileges, to say nothing of their natural advantages in media access and name recognition. $600,000, the proposed spending limit for House candidates, is set just where challengers start to become dangerous. While a quarter of House challengers who spent between $400,000 and $600,000 were victorious in the 1992 general elections, over half of

17 *Buckley v. Valeo*, 424 U.S. 1 (1976).

the those who spent over $600,000 won their races. Spending limits will shackle challengers by blocking them from reaching effective spending parity with incumbents, who can tap public resources for private political purposes.

WHY INCUMBENTS LIKE SPENDING LIMITS

Challenger spends less than $200,000	0.0% win
Challenger spends $200,000 - $400,000	14.7% win
Challenger spends $400,000 - $600,00	25.0% win
Challenger spends $600,000+	**54.0% win**

Source: Federal Election Commission.

The dangers of the campaign reform plans do not stop with their profoundly anti-competitive, challenger-stifling provisions. They also include direct attacks on free speech and citizen participation in elections. President Clinton, for instance, proposed to pay for his plan's public campaign financing by taxing corporations for the exercise of their First Amendment rights to petition the government. The Senate bill attempts to conceal its public funding by forcing candidates who do not abide by spending limits to pay punitive taxes—for exercising their First Amendment rights—at the top corporate rate of 34 percent on all campaign receipts, with the proceeds being funneled to those who obey the spending limits.

This double-barreled attack on freedom of speech is only the tip of the iceberg. Robert Peck of the American Civil Liberties Union has argued that there are at least a dozen unconstitutional provisions in the House bill that stifle political expression. For instance, it regulates political expression so broadly that a citizen who wished to buy a sign supporting or opposing a political candidate could become ineligible to do so by requesting a copy of the candidate's platform.[18] The Senate bill also restricts free speech. An amendment offered by Democratic Senator Robert Graham of Florida, for example, would require anyone who sends out a "communication to the general public" about a congressional candidate to file copies with the state and federal governments. Graham's amendment is drafted so carelessly that fines could be levied for a letter to the editor of a newspaper, for a union mailing, or even for a holiday newsletter to family and friends which comments on a political candidate.

In short, the regulation of campaigns envisioned in these bills is intended not to enhance political discourse, but to restrict political activity to the advantage of incumbents while doing nothing about the handicaps facing challengers. This is precisely the opposite of what real campaign reform should accomplish. The only redeeming value of these competing campaign reform packages is that, because the House and Senate cannot agree on their details, they appear unlikely to pass.

COMMITTEE REFORM
House: F Senate: F

In 1947, Congress had 38 committees and subcommittees; today, there are 266. Over the last two decades alone, committee staffs in the House of Representatives have grown by 158 percent. The growth of committees and their attendant staffs insulates Congressmen from policy choices and hinders the legislative process by ensuring that important legislation, because it will have to pass through more committees, will be subjected to more special-interest group influence. Although committee reform was one of the major announced goals of the Joint

18 "The Devil in Campaign Finance Reform," speech given at the Conference on Campaign Finance, American University Law School, February 10, 1994.

Committee on the Organization of Congress, that panel ultimately proposed only minor tinkering with the committee system.

The House did make some minor progress in downsizing committees. In early 1993, it eliminated fifteen subcommittees and four select committees. The latter were obvious targets for elimination because they lacked the power to craft legislation—the central reason committees exist. But real committee reform remains unexplored.

Committees function too frequently as legislative roadblocks, especially when the tenure of their committee chairmen—who have the power to set the agenda—is measured less easily in years than in decades. Over 90 percent of House committees, for instance, are chaired by Members who have served at least ten terms in office. Among the popular measures perennially bottled up by hostile committee chairmen are the balanced budget amendment, the line-item veto, term limits, and product liability reform. While House Republicans have adopted a rule to limit the tenure of their top committee members, House Democrats—who control the committees—have refused to adopt a similar measure. The majority party's refusal to enact rules that would ensure turnover ensures that most chairmen will continue to have little experience in public life outside of government work.

Because committee members typically will be willing to put more energy into defending their committees than other legislators will devote to abolishing them, the likelihood of collective decision-making to eliminate more committees is minimal. Furthermore, the experience of the Joint Committee suggests that the chairmen of all endangered committees, recognizing their common interest in the status quo, will join to block any serious committee reform. The most promising route to committee reduction is to reduce the number of each Members' committee *memberships*. When Members are given seats on too many committees, their legislative participation typically is confined to frantic journeys between different committee hearings where, in an attempt to sound informed, they read questions to witnesses written by their staffs. House Members should be limited to memberships on two major committees and four subcommittees thereof; panels whose memberships drop by half because of these restrictions should be eliminated. Senators should be limited to membership on three committees along the same lines with legislators' preferences thus determining what committees would be eliminated.

Not only does an excess of committees and committee memberships harm deliberation, it also leads to proxy voting, a practice in which one Member casts votes for another. Although the Rules of the House and Senate prohibit one Member of Congress from casting another's vote on the floor, no such prohibition applies in committees, where proxy voting is a frequent practice. In the first year of the 103rd Congress, for instance, proxies were used in every legislative vote in such important House committees as Energy and Commerce, Judiciary, and Public Works and Transportation. Proxy voting encourages members to vote on legislation without ever hearing arguments for or against it and makes a mockery of representative government.

Finally, committees that handle public business often prevent public access. Legislative committees that handle the nation's business routinely close their doors to observers by majority vote. Although confidentiality is defensible in cases involving such sensitive matters as national security, such subjects are rarely the reason committee meetings are closed. The two House committees that close their doors most frequently are Ways and Means and Appropriations, both of which must make politically controversial choices about federal taxation and spending.

The attempt to establish an open-meeting rule in the Joint Committee's reform bill failed on a party-line vote. Although there was some provision for weakening the force of proxy votes in the Senate version of the bill, that bill's demise suggests that no such reform will take place. In short, opportunities for reductions in size and membership, elimination of proxy voting, and establishment of an open meeting rule for committees were ignored.

NONPARTISAN HOUSE ADMINISTRATION
House: F Senate: N/A

Scandals in the House Bank and Post Office were significant catalysts for congressional reform. In the wake of federal indictments related to drug dealing in the House Post Office, Majority Whip Richard A. Gephardt (D-MO) conceded that the House of Representatives' administrative functions had been penetrated with "abuses and management inefficiencies,"[19] and pledged to fix these problems by—among other steps—creating a new congressional office with a nonpartisan Director of Nonlegislative and Financial Services, subject to bipartisan oversight. Gephardt promised that patronage employees in the House restaurant and computer operations would vanish once responsibility for them was transferred to the nonpartisan administrator and the bipartisan oversight structure. The political patronage system has produced incompetent but unfireable employees and allowed partisan abuse of public resources, including distribution of sensitive information in a partisan fashion, running political errands on public time (such as picking up campaign contributions), and using congressional equipment for political campaign mailings. Implicit in promises of reform was the idea that the opportunities for massive patronage and corruption that this army of aides represented would vanish under nonpartisan administration.

Over two years after these reforms, however, the patronage system remains fundamentally unreformed. The problem lies with an oversight subcommittee which must ratify decisions of the nonpartisan administrator for him to act. Though the subcommittee has equal numbers of Republicans and Democrats, any deadlock has the effect of granting decision-making powers to the congressional leadership. If the Chairman of House Administration dislikes any subcommittee outcome, he can simply raise the issue in the full committee, which routinely defers to its Chairman: Representative Charlie Rose, who can—and often does—veto any change that threatens the majority party's political preferences. The first Director, Leonard P. Wishart, attempted to fulfill the office's duties but was repeatedly rebuffed.

- ✘ After responsibility for employees in charge of office equipment and supply was transferred to Wishart, he reviewed payrolls and found that two employees who had been hired under the patronage system were being paid inflated salaries for the work they were doing. In order to make their salaries commensurate with their duties, Wishart submitted suggested salary changes. Rose refused to approve the changes.

- ✘ Rose bypassed the Director by introducing a resolution in his committee to contract out the House Restaurant System, despite the fact that the restaurant system had been under the Director's authority for nearly a year.

---

19 *Congressional Record*, April 9, 1992, p. H-2547.

✘ Rose refused to cede control over House Information Systems (HIS)—the House's internal computer operations—even though the legislation that created the Office of the Director mandated that HIS would be transferred to the nonpartisan office. Apparently, the patronage possibilities were simply too tempting to ignore. As of July 1993, HIS had 277 employees drawing an average yearly salary of $48,400, which is sharply higher than the average House employee's paycheck. A party-line deadlock in the oversight subcommittee continues to block HIS transfer.

Wishart resigned abruptly in early 1994, suggesting in his letter of resignation that some Members were attempting to undercut serious moves toward neutral congressional administration. His interim replacement, Randall Medlock, apparently sees himself as a partisan functionary not subject to bipartisan oversight. He has refused to provide information on franking costs to House Republicans, for instance, explaining that Rose had ordered him to keep the data confidential. More recently, Medlock extended a food service contract for a House cafeteria without obtaining the required subcommittee approval. In stark contrast to the elaborate bidding process required for federal contract rewards—which was followed when the House contracted out the rest of its $9.3 million in food service business earlier this year—the million-dollar-a-year contract was extended to the Skenteris family of North Carolina for an additional five years without competitive bidding. The contract originally had been awarded in 1993 by Rose to his former constituents without competitive bidding.[20]

Abusively partisan administration of the House will not be eliminated without pressure by an informed public, and congressional leaders make it difficult or impossible to find out how they manage their internal affairs. For instance, the Freedom of Information Act (FOIA), which applies to much of the federal government, excludes Congress. Both the principle that Congress should be subject to the laws it writes for everyone else and the public's right to know demand that Congress comply with FOIA. Knowing in advance that its internal operations would be subject to outside scrutiny would encourage Congress to conduct its affairs with probity.

Partisan abuse of staff will continue as long as the underlying problem remains unsolved. The House needs to do what it promised: hire a professional administrator who is not turned into a pawn in a continuing effort to maintain partisan advantage. That administrator must have as his central priority the professionalization of administrative tasks—especially including House Information Services—and be under the direction of the bipartisan oversight committee, not a partisan committee chairman. A deadlock in the oversight subcommittee should lead to a vote on the floor for difficult cases, replacing unilateral action by the House Administration Committee. This would force partisan disputes to be debated openly. Until the commitment to nonpartisan administration under bipartisan oversight is honored, reforms remain cosmetic and the Director remains an arm of the congressional leadership.

The House and Senate both have refused to open their internal operations and finances to the public through the Freedom of Information Act, and the House has taken a step backward from reform by refusing to implement its promise of nonpartisan administration. These policies are scandalous and are likely to breed even more scandals.

---

20 Alice A. Love, "Republicans Blast Renewed Contract for Ford Cafeteria," *Roll Call*, September 14, 1994, p. 14.

TRUTH IN VOTING
House: F Senate: N/A

When constituents judge the job performance of Congressmen, voting records are a central factor. But Members of Congress, well aware that their political support can stand or fall with the votes they cast, have rigged the system to avoid accountability for the choices they make. In some cases, they make decisions without ever voting on them. In others, they use procedures that make their votes deceptive or meaningless.

A favorite tactic of the congressional leadership is to manipulate the rules by which the House of Representatives conducts its legislative business. While the rules of the House are generally fair, they are routinely ignored and can be waived at any time by a bare majority vote. A special rule for each piece of major legislation is crafted in the Rules Committee and then ratified by the full House. More often than not, these special rules prevent pertinent amendments from being considered, making it possible for legislators to claim they favor popular policies while lamenting the lack of opportunity to vote on them. For the last six years, a majority of special rules have limited amendment opportunities, and the problem continues to grow: the percentage of restrictive rules mushroomed from 15 percent in the 95th Congress (1977-1978) to nearly three-quarters of all legislation in this Congress.[21]

An even greater abuse of the legislative process is the leadership's practice of producing legislation and then forcing votes almost immediately, so that legislators do not have a chance to read a bill before voting on it. Although House Rules require that legislation be available to Members three days before a vote, this rule is often waived. Copies of the 3,000-page, $496 billion tax increase that Congress passed in 1993 were available to Members for roughly twelve hours; any Congressman who wanted to read the bill would have had to scan 250 pages per hour, making decisions at the rate of nearly $700 million per minute. More recently, the crime bill's revised conference report was passed under a rules waiver only a few hours after it was put together, and the text was unavailable to most Members until the day after House passage.

Another procedural trick creates opportunities for Congressmen to vote for popular measures without actually advancing them in the legislative process. Under a "king-of-the-hill" rule, Members can vote on a long string of competing legislative proposals, but only the last one to receive a majority vote becomes law. When a balanced budget amendment was considered under a king-of-the-hill rule in the House, many more than the required two-thirds voted for the amendment, but it ultimately failed to pass. The rule permitted Members to divide their votes among four different proposals, ensuring that any Member who wanted to take credit for a balanced budget vote could do so without any risk that the House would pass the measure. A recent king-of-the-hill vote on the crime bill permitted Members to vote in favor of narrowing appeal rights for death row inmates and then, moments later, to vote in favor of expanding them. The legislative significance of such contradictory procedures is dwarfed by their electoral importance, as legislators can compile a voting record suitable for nearly any audience.

Just as some procedures enable Members to vote without legislative consequences, others allow them to take real action without votes. For example, House Members have rigged the

21 *Congressional Record*, August 10, 1992, p. H-7330.

budget process so that they now no longer have to cast a vote on raising the debt limit if the overall federal budget is out of balance. Instead, a procedural vote on the budget is deemed to have legislative significance. Last year, a similar procedure was used to enact new deficit targets for future years without an actual vote. Whatever one thinks of the wisdom of such choices, the procedure used to make them (or, more precisely, to avoid making them) cheats representative democracy.

Representative Mike Crapo (R-ID) has introduced truth-in-voting legislation that would abolish several of these deceptive procedures; although the bill has 83 cosponsors, the House so far has declined to act on it.[22]

The House needs a five-day waiting period before voting on legislation, which would create more time for analysis and improvement; a two-thirds requirement to waive House rules, which would dampen the current trend towards their subversion; and elimination of such deceptive voting procedures as the automatic debt limit hike and the king-of-the-hill rule. Although some Members doubtless have an interest in keeping the legislative process as rapid and secret as possible, this is not an interest that should be respected.

One of the few successful reforms in this Congress was Representative Jim Inhofe's (R-OK) success in eliminating the secrecy of the signatures on House discharge petitions (as discussed in "Commitment to Reform," earlier in the paper). Disclosing the signatures on these petitions reveals which Members of Congress actually support up-or-down votes on legislation that House leaders wish to sidetrack. Because this reform changed House Rules and will lead to more votes on controversial questions, Congress's performance on truth-in-voting reforms merits a barely passing grade.

TERM LIMITS
House: F Senate: F

The changes in the legislative process, congressional perks, and internal administration discussed above are attempts to solve Congress's central problem: abuse of power. For too long, incumbents have been able to conceal the policy choices they make through deceptive voting and accounting procedures and cement their reelection by using taxpayer-funded perks. Congressional reform must be crafted and passed by Congress, and incumbents' experience permits them to design legislation which evades—or, in some cases, contradicts—its stated goals. (See the discussion of congressional coverage and campaign finance reform above.) Term limits, the best prospect for real congressional reform, come from outside of Congress; across the country, strong public support for term limits (74 percent in one recent poll[23]) is counterbalanced only by furious resistance from elected officials.

Term limits are the best solution to many of Congress's larger problems. Limiting the terms of federal legislators would change the composition of Congress by attracting candidates with demonstrated expertise in something besides politics. Limits would change legislators' incentives: citizen-legislators would serve briefly, focus their energies on solving a few discrete problems, and go home. They also would ensure congressional turnover and mandate inde-

22 For a more extensive discussion of truth in voting, see Dan Greenberg, "It's Time for Truth in Voting," Heritage Foundation *Backgrounder* No. 977, February 23, 1994.

23 Americans Talk Issues poll, January 1994.

pendent representation that better reflects the sentiments of the electorate. Ever-present concerns about reelection would be removed from Congress by the deprofessionalization that term limits would bring to American politics.

Despite strong public support for limiting congressional terms, Congress has refused to act. Term limits have passed overwhelmingly in every state that permitted its voters a choice, but the House Judiciary Committee has held only two inconclusive hearings on term limits—two more than were held in the Senate, where limits came up for a vote only once; a proposed amendment to the campaign finance reform bill, which would have limited candidates who accepted public campaign funds to two terms, failed 39-57.

Generally, legislators prefer to fight term limits in private, through litigation and by delaying votes on term limit proposals. The Senate, for example, voted in 1993 to authorize its legal counsel to argue against term limits in an Arkansas case that questioned their constitutionality—a case currently before the Supreme Court. Such use of public resources for political purposes is especially galling when it flies in the face of the unambiguous majority of the voters. Speaker Foley has blocked a House vote on term limits until their constitutionality is "decided by the courts."[24] The Speaker's constitutional scruples do not apply universally, however; he championed campaign finance reform legislation in the 103rd Congress despite significant questions about its encroachment on First Amendment rights. Congress frequently has approved constitutionally disputable legislation with special provisions for expedited judicial review. Furthermore, Foley is by no means a neutral party in this case, having sued the voters of his own state in an effort to overturn their 1992 vote in favor of term limits.

There are defenders of term limits in Congress, where over 100 House Members have signed a discharge petition that would wrest control over term limits legislation from the Judiciary Committee. That committee is controlled by Texan Jack Brooks, a Member of Congress since the Truman Administration who is currently running for a 22nd term. The elimination of senior committee Members' power to bottle up for decades any ideas they oppose will be one of the most salutary effects of congressional term limits. House Republicans already have imposed term limits on their top committee members through an internal party caucus rule.[25]

Congress should allow a vote on, and approve, an amendment to the Constitution that establishes term limits. This vote should be free of the procedural roadblocks that characterized the deceptive voting procedures used by the House earlier this session to foil the balanced budget amendment. Until Congress takes action, it deserves opprobrium for ignoring the most significant political mass movement the United States has seen for decades.[26]

CONCLUSION

Students who fail their coursework are forced to repeat a grade. Ideally, incumbents who fail at their assignments should face an even harsher punishment: removal from office. The 103rd Congress, swept into office by promises of reform made to the American people, has

---

24 "This Week with David Brinkley," November 8, 1992, ABC transcript.

25 The House Republican pledge discussed in note 5 above also includes a commitment for a floor vote on term limits.

26 For a more extensive discussion of term limits, see Dan Greenberg, "Term Limits: The Only Way to Clean Up Congress," Heritage Foundation *Backgrounder* No. 994, August 10, 1994.

failed to deliver on a broad array of measures. The 104th Congress, which will be elected this fall, in the next two years should:

- ✓ **Create a legislative process which permits up-or-down votes on important reforms;**
- ✓ **Eliminate misleading budget procedures;**
- ✓ **Fully apply all relevant federal laws to itself;**
- ✓ **Eliminate congressional perks that are used to influence elections;**
- ✓ **Pass campaign finance reform that gives a fair chance to challengers;**
- ✓ **Rationalize the ineffective committee system by limiting memberships;**
- ✓ **Eliminate party politics from internal congressional administration;**
- ✓ **Pass truth-in-voting reforms to eliminate deceptive voting practices; and**
- ✓ **Limit congressional terms.**

Individual Members of Congress should make such reforms their top legislative priority. Continued inaction will contribute to further decline in public approval for—and public legitimacy of—Congress. The 103rd Congress gets poor marks on its reform record, especially considering its tremendous initial promise. But like every recipient of a poor report card, Congress can learn from it that there is tremendous room for improvement.

Dan Greenberg
Congressional Analyst