

# The Executive Memorandum

The Heritage Foundation

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**RUSH!**

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## A NATIONAL VOTE TO ADVANCE TERM LIMITS

Term limit advocates have had difficulty translating their overwhelming successes in state referenda into support in Congress. Freshman Rep. Peter Hoekstra (R-MI) has an idea that may force Congress to pay attention: the Voter Opportunity to Inform Congress Effectively (VOICE) on Term Limits Act, H.R. 3835. This legislation would create a national advisory referendum this fall on limiting the terms of Members of Congress. The question to voters would read: "Should Congress approve a constitutional amendment to limit the number of terms that a Member of the United States House of Representatives and United States Senator can serve in office?" The referendum would be placed on the November 8 general election ballot in every congressional district and would be nonbinding, meaning that ballot results on the question would be tabulated, certified, and sent to Congress, but would not have a direct legal or constitutional effect. Though never before exercised, Congress has the authority to order such a ballot question pursuant to its power to regulate elections.

The VOICE legislation requires that Congress's Judiciary Committees consider the results of the term limit vote and report on it to the House and Senate. Though Congress would not be bound by the national referendum, Members will ignore what is likely to be an overwhelming pro-term limits vote at their own political peril. Thus, a national advisory vote may do more to induce congressional action on term limits than have binding initiatives in individual states.

VOICE supporters also favor a national approach because most states do not allow citizen initiatives. Voters in fifteen states have approved term limits for their own congressional delegations, but only eight additional states allow citizen initiatives. A primary argument against the state efforts has been that referendum states may suffer under term limits relative to the remaining 27 states whose Congressmen would be allowed to continue to amass experience and seniority. The nationwide vote under the VOICE initiative would avoid that issue, give the public its first opportunity to vote on term limits for federal officeholders, and present perhaps the only opportunity for voters in non-initiative states to be heard on the issue. Activists in the 27 states that do not have the initiative process are finding it difficult to push state legislators (many with future congressional ambitions) into voting for term limits on Congressmen.

A legally binding national referendum would require a constitutional amendment. The VOICE Act, however, avoids that need and skirts some problems that could be encountered in a binding ballot. The VOICE question does not include a specific number of years or terms, for instance, postponing at least temporarily a divisive fight between congressional backers and grass-roots activists over the appropriate length for term limits.

Although never implemented, a national referendum is not a new idea. In 1924, the Democratic party asked for a referendum on the consideration of United States membership in the League of Nations. In 1964, Rep. Charles Gubser sponsored a resolution to create a yearly nationwide advisory opinion poll. In 1980, current House Majority Leader Richard Gephardt introduced a bill to poll citizens on three designated issues every two years during the federal election cycle.

**Court Considerations.** Without a national referendum effort, a Supreme Court decision adverse to the constitutionality of state-imposed service limits on federal legislators could fatally wound the term limits movement. On February 10, Federal District Court Judge William Dwyer declared Washington state's term limits law, challenged by Speaker of the House Tom Foley, among others, unconstitutional as it applied to federal officeholders. On March 7, the Arkansas Supreme Court issued a similar ruling on that state's law. Both decisions are being appealed and term limits backers are hopeful that higher courts will reverse the rulings. The cases emphasize, however, the vulnerability of the state-by-state approach to term limits and the need for a national effort.

**Opponents' Arguments.** Opponents of a national referendum on term limits argue that the question should be left up to the states and the court system. But with fifteen states having already acted, and court cases moving forward, there is no reason to wait for further judicial setbacks before launching a national term limits effort. Others oppose referenda generally or assert that petitions and referenda work fine in a town hall atmosphere, but are inappropriate on a nationwide basis. An advisory question, however, such as that proposed on term limits, would represent a useful trial effort for a national referendum process. Foes also claim that the VOICE Act would be confusing to the public, but suggest in a contradictory manner that the question should be more specific about, for instance, the number of terms. However, a national referendum on term limits surely would be the topic of widespread discussion, and any initial voter questions would be clarified through campaign efforts or by the media. Fundamentally, opposition to the VOICE Act is led by anti-term limits insiders who fear the outcome of a national referendum. What they really mean is that voters in the 27 states without the initiative process should not have a voice on term limits.

**Freshman Support.** In an unusual display of election-year bipartisanship, Republican freshman reform leaders Tillie Fowler (R-FL) and Peter Torkildsen (R-MA) were joined by Democratic Freshman Reform Task Force chairs Karen Shepherd (D-UT) and Eric Fingerhut (D-OH) in supporting Hoekstra's bill, declaring, "It is time for Congress to address an issue that is clearly important to the overwhelming majority of the American people.... The American people deserve a voice on the matter of Congressional term limits." They further called for prompt hearings on the reform proposal by the House Administration Committee. To date, 42 cosponsors have signed on to the VOICE Act, and if blocked in committee, Hoekstra has high hopes for House consideration of the legislation through a discharge petition. In addition, numerous grass-roots groups have agreed to support H.R. 3835.

Term limit advocates believe that government truly derives its power from the consent of the governed, and that all Americans should have a voice in the issue. With most polls showing 75 percent to 80 percent support for term limits, it is time for Congress to act on a term limits constitutional amendment. Petitions and referenda are democratically appropriate and historically tested means for citizens to bring the ruling classes into line. Political royalty in Washington should listen to their voters and learn from the past. By giving every voter a voice, H.R. 3835 could break the term limits logjam and force Congress to bend to the will of the American people.

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