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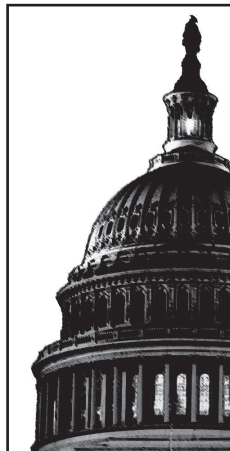
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Confronting **Unlimited Government**

Lessons from the Term Limits Movement



By H. Abbie Erler, Ph.D.

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EXECUTIVE SUMMARY

Many of the Founders advocated term limits and rotation in office in the belief that those in power would be more likely to abuse their authority the more accustomed they grew to exercising it. However, at least at the federal level, the Framers of the Constitution rejected the idea of term limits as detrimental to the stability of republican government.

- They had more faith in the character of the representatives that would be chosen by the people, and term limits would preclude the choice of the best people for office.
- They believed that the requirement to stand for reelection was one of the primary means of keeping elected officials honest and that term limits would remove that constraint.
- They thought that frequent elections and other institutional checks and balances were more effective than term limits in preventing arbitrary and tyrannical government power.

In the early Republic, the debate over term limits continued. Many states asked for a term-limits amendment in the Bill of Rights. This amendment, however, was not passed by Congress.

In the 19th century, before the rise of direct primaries, rotation in office was enforced not by explicit term limits, but by political parties. Because of their control over candidates, parties guaranteed rotation in office by choosing from among several possible nominees rather than always nominating the same candidate.

However, between 1890 and 1910, the nature of legislative service began to change with the rise of congressional careerism. This change was a result of three factors:

- As parties became more realigned on a regional basis, there was less electoral competition. This reduced turnover in office and allowed some parties to hold the same seats for many decades.
- Service in Congress became a desirable career, and the stigma of demagoguery and actively campaigning and seeking office diminished.
- Electoral reforms during the early 20th century reduced the influence of parties over candidates. Members of Congress began to establish personal connections directly with constituents, fostering a rise of credit-claiming and direct service to constituents.

The modern term-limits movement was a response to the growing careerism and professionalization among Members of Congress. Although it was not unified in terms of philosophy, the movement was designed to eliminate two problems of modern government: the professionalization of politics and unlimited government spending. By fostering a new ruling class of citizen legislators who would represent the public rather than organized interests, term limits would be the cure for many of modern society's ills.

The term-limits movement was very successful in passing measures at the state level. Dozens of states passed term-limits measures beginning in the early 1990s. Some of these measures were imposed on state legislatures; others imposed term limits on delegates to Congress.

By 1995, 23 states had adopted term limits for their Members of Congress, but in *U.S. Term Limits v. Thornton*, the Supreme Court struck down these laws, arguing that they added additional qualifications for service in the House of Representatives that were contrary to Article I, Section 2 of the U.S. Constitution. This shifted the strategy of the movement from laws passed by state legislatures to Congress and a potential constitutional amendment.

Because many in both parties opposed term limits, the push for a constitutional amendment proved futile, but the measures imposing term limits on state legislatures remained in effect. We can therefore judge the results of term limits by how they have operated in practice at the state level to:

- Eliminate careerism and facilitate the election of citizen legislators who would represent the average citizen rather than special interests;

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- Reduce state spending by removing the incentives to deliver benefits and pork-barrel projects to constituents in order to be reelected; and
- Promote deliberation by helping to insulate representatives from public opinion.

In at least one respect, term limits did achieve their purpose: They reduced the number of years that state legislators may serve in office. Average tenure levels in state legislatures have plummeted, and this has led to greater turnover. However, the evidence shows that term limits have also had many unintended deleterious consequences.

First, term limits promote progressive ambition and careerism to a greater degree than existed before legislators were term-limited. This is because most state legislators plan to run for another office after they are term-limited and use their limited time in office to establish their credentials. Moreover, amateur politicians do not appear to have filled the void vacated by career politicians. Rather, career politicians at the local and municipal levels are moving up into state legislatures. Ultimately, term limits increased careerism by vacating more seats, thus affording greater opportunities for officeholders to advance while at the same time eliminating the opportunity costs of running since they no longer had to worry about retaining their current office while running for a new one.

Second, and most disappointingly for supporters of term limits, there is little evidence that term limits lowered state government spending. The evidence shows that expenditures are, on average, 1.9 percent higher in states with term limits than in states without term limits.

Third, term limits have not encouraged deliberation; rather, legislatures under term limits tend to be characterized by disorganization and disarray as inexperienced lawmakers try to navigate the policymaking process. Term limits have shortened the time horizons of lawmakers. They accelerate the pace of lawmaking as officeholders seek to use their reduced time to prepare for the next office as much as possible. They have discouraged a long-term approach to legislation, making legislators concerned only about the short-term effects of policies. Also, term limits have weakened the influence of party leaders and committee chairmen over policy, preventing legislatures from acting according to a coherent and unified plan. Finally, term limits have reduced civility in state legislatures, as there is little time for members to build the collegial relationships that promote civil discourse.

It is not likely that many more states will enact term limits. Term limits are already present in the states that allow voter initiatives for constitutional reforms. In other states, legislators would have to impose term limits on themselves. Moreover, recent efforts to repeal term-limits laws where they exist have been largely unsuccessful. The Supreme Court's ruling against the constitutionality of term limits in *U.S. Term Limits v. Thornton* makes it even more unlikely that term limits will be imposed on Members of Congress.

Ultimately, while the term-limits movement was very successful both in reducing the length of time that state legislators serve in office and in rallying the public against runaway government spending and other ills that plague modern government, it did not accomplish its broader political goals of reducing spending and restoring deliberation. The reason for this failure is that runaway spending and the lack of deliberation are only symptoms of a deeper, systemic problem: the rise of the modern bureaucracy and expansion of the administrative state.

The massive expansion of government in the early 20th century and the establishment of bureaucracies in which scientific experts make policy concerning complex issues fostered careerism among Members of Congress. More power made congressional offices more attractive, and the difficulty of dealing with bureaucratic experts required legislators to have more experience to be successful. At the same time, the party system that allowed for greater rotation in office was undermined. These developments created the problem that the term-limits movement confronted.

Term Limits and Rotation in Office in American History

The idea of rotation in office was not a new idea for the Founders. Thomas Paine, in his influential revolution tract *Common Sense*, made the case for rotation in office, arguing that elected officials should “return and mix again with the general body of the electors.”

The original 13 colonies had a long-established norm of term limits for representatives in their colonial assemblies.¹ When called on by the Continental Congress to draft new constitutions, many of the newly independent states included term limits for both their governors and their state legislators.² The Articles of Confederation followed the practice of the states, including provisions designed to continue the practice of rotation in office. Article V of the Articles required that “no person shall be capable of being a delegate for more than three years in any term of six years.”

However, despite America’s previous experience with term limits, no such provisions were included in the new Constitution. Debate during the Constitutional Convention concerning rotation in office for Members of Congress was sparse. The Virginia Plan, drafted by James Madison and proposed by fellow Virginian Edmund Randolph, followed the Articles of Confederation in limiting the number of terms that legislators could serve but did not specify how many times Members could be reelected. Early in the Convention’s proceedings, this provision was eliminated without debate, with only Maryland voting to retain it.³

The issue of rotation in office was raised again when the Convention turned its attention to the Senate. During debate over the length of a Senator’s term, James Madison raised the possibility of term limits for Members of the Senate. Yet he advocated that term limits not be included initially in the new Constitution, but instead added later as an amendment.

Madison favored terms of nine years for Senators and stipulated that longer terms should be included in the Constitution only if Senators were also made ineligible for reelection. While a longer term would allow Senators the time to gain the wisdom and insight necessary for their office, Madison also realized the dangers that such a long stay in office might bring. In order to mitigate these dangers, he advised that a Senator’s term not be extended until “such a period of life as would render a perpetual disqualification to be re-elected little inconvenient either in private or public view.”⁴ It is likely that Madison feared that there would be an insufficient number of qualified individuals to serve as Senators during the early years of the Republic if reelection were barred. While Madison’s suggestion to lengthen the terms of Senators was rejected, proposals for amendments to impose term limits on Members of the House and Senate were soon introduced once the new Congress convened.

The Anti-Federalists’ Argument for Term Limits

Given the long history of rotation in office in many of the colonies, both supporters and critics of the new Constitution were made uneasy by the absence of term limits. While Thomas Jefferson generally supported the proposed Constitution, in a letter to his close friend James Madison, he bemoaned “the abandonment of the necessity of rotation in office.”⁵

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1. Mark P. Petracca, “Rotation in Office: The History of an Idea,” in Gerald Benjamin and Michael J. Malbin, eds., *Limiting Legislative Terms* (Washington, D.C.: CQ Press, 1992).
 2. Delaware, Georgia, Maryland, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, and Virginia all had term limits on elected officials.
 3. Max Farrand, ed., *The Records of the Federal Convention of 1787* (New Haven: Yale University Press, 1966), Vol. 1, p. 20.
 4. *Ibid.*, p. 423.

The Anti-Federalists were more strenuous in their insistence that term limits be included in the Constitution. Their support for term limits stemmed largely from their suspicion of representative government and their fears concerning the corrupting effects of power. In the view of the Anti-Federalists, a government based on the principle of representation was inferior to a direct democracy. Unlike the Federalists, who saw a representative government as a positive good, the Anti-Federalists believed it to be a necessary evil required by the size of the country.

A representative democracy, in the eyes of the Anti-Federalists, brought with it numerous dangers that direct democracy avoided—dangers that made term limits a necessity. One such danger was the fact that the size of the nation would require representatives to live a great distance from those whom they represented. This geographical distance, it was feared, would make representatives too far removed from the interests and sympathies of those they represented. As the Federal Farmer explained:

A representation must be extremely imperfect where the representatives are not circumstanced to make the proper communications to their constituents, and where the constituents in turn cannot, with tolerable convenience, make known their wants, circumstances, and opinions, to their representatives.⁶

In addition, the Anti-Federalists feared that living in the newly proposed federal city would corrupt the tastes of the nation's representatives, leading them to put on aristocratic airs and to be seduced by the appeal of holding power. As Brutus predicted, "In so extensive a republic, the great officers of government would soon become above the controul of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them."⁷ An Anti-Federalist with the pen name of John DeWitt was even more cynical in his assessment of the effects of the "passionate thirst for power":

It cannot be doubted at this day by any men of common sense, that there is a charm in politicks. That persons who enter reluctantly into office become habituated, grow fond of it, and are loath to resign it. They feel themselves flattered and elevated, and are apt to forget their constituents.⁸

Such views were common among the Anti-Federalists because they tended to consider human nature as dominated by the quest for power. As historian Cecilia Kenyon explains, "The Anti-Federalists chided the Federalists for their excessive confidence in the future virtue of elected officials, and criticized the Constitution for its failure to provide adequate protection against the operation of these tyrannical drives."⁹ Term limits would mitigate both the problem of geographical distance and, by restricting the number of years that Members could hold office, the corrupting effects of power.

By preventing long stays in the capital city and increasing the turnover of Members of Congress, term limits would make it more likely that representatives would be knowledgeable about the interests and concerns of their constituents. Term limits would ensure that representatives would not lose touch with those whom they represented. As George Mason argued in Virginia's ratifying convention:

[T]he very palladium of civil liberty [required] that the great officers of State and particularly the Executive, should at fixed periods return to that mass from which they were at first taken, in order that they may feel and respect those rights and interests which are again to be personally valuable to them.¹⁰

More generally, the Anti-Federalists objected to the new view of representation that the Constitution embodied. For the Anti-Federalists, the purpose of a legislature in a representative democracy was to mirror the population

5. Thomas Jefferson to James Madison, December 20, 1787.

6. Herbert J. Storing, ed., *The Anti-Federalists: Writings by the Opponents of the Constitution* (Chicago: University of Chicago Press, 1985), pp. 77–78.

7. *Ibid.*, p. 116.

8. Cecelia M. Kenyon, ed., *The Antifederalists* (New York: Bobbs-Merrill, 1966), p. 105.

9. *Ibid.*, p. lxiii.

10. Farrand, ed., *The Records of the Federal Convention of 1787*, Vol. 2, p. 119.

being represented. The national legislature should act as a substitute for the people at large and resemble the people as closely as possible in terms of demographic characteristics.

Unlike the Federalists, the Anti-Federalists believed that the new Congress should not necessarily be composed of the most distinguished individuals from each state, but rather should be made up of those individuals who most resemble the general population. Yeoman farmers, mechanics, and merchants, according to the Anti-Federalists, should be the main occupations of those who serve in the House since these would be the occupations of the majority of the people that they represent. Representatives, Melancton Smith wrote, “should be a true picture of the people; possess the knowledge of their circumstances and their wants; sympathize in all their distresses; and be disposed to seek their true interests.”¹¹ As Brutus explained:

The very term, representative, implies, that the person or body chosen for this purpose, should resemble those who appoint them—a representation of the people of America, if it be a true one, must be like the people. It ought to be so constituted, that a person, who is a stranger to the country, might be able to form a just idea of their character, by knowing that of their representatives. They are the sign—the people are the thing signified.¹²

The best way to ensure that representatives acted in the interest of those whom they represent, the Anti-Federalists contended, is to rely on their self-interest rather than their sense of civic duty. The greater the extent to which those in Congress share the same interests as those they represent, the greater the likelihood that the interests of the majority will be served. Thus, representatives should be chosen from the ranks of the middle class. As Melancton Smith argued:

A representative body, composed principally of respectable yeomanry is the best possible security to liberty. When the interest of this part of the community is pursued, the public good is pursued; because the body of every nation consists of this class. And because the interest of both the rich and the poor are involved in that of the middling class.¹³

Term limits would increase the likelihood that those from the middle class were elected to office. As Brutus stated, rotation in office “would give opportunity to bring forward a greater number of men to serve their country, and would return those, who had served, to their state, and afford them the advantage of becoming better acquainted with the condition and politics of their constituents.”¹⁴

The Federalists’ Response

Needless to say, the Federalists did not agree with the Anti-Federalists’ views on representation generally or their insistence on term limits specifically. More broadly, the Framers rejected term limits because of the new view of representation that the Constitution embodied. Unlike the Anti-Federalists, who judged representative democracy to be inferior to direct democracy, the Federalists argued that a representative democracy possesses several advantages over other forms of government.

First, the principle of representation allows the government to encompass a larger geographical area, thus reducing the pernicious effects of factions. Small republics, Madison argues in *Federalist* No. 10, are more prone to factions than large republics and, consequently, more liable to fail entirely. A large republic helps to quell the violence of factions by encompassing a larger number of factions and reducing the chance that any one of them will be able to achieve a majority:

Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens,

11. Storing, ed., *The Anti-Federalists: Writings by the Opponents of the Constitution*, p. 340.

12. *Ibid.*, p. 124.

13. *Ibid.*, p. 342.

14. *Ibid.*, p. 190.

or if such a motive exists, it will be more difficult for all who feel it to discover their own strength and to act in unison with each other.¹⁵

Representative democracy also promotes a more deliberate and civic-minded government. Choosing representatives to speak for us helps to “refine and enlarge the public view” by passing the views of the population as a whole “through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations.”¹⁶ Representative democracy, in other words, filters and distills the views of the majority through the medium of the representative.

However, in order for representation to “refine and enlarge the public view,” those who are elected to office must possess certain characteristics. As Madison explains in *Federalist* No. 57, “The aim of every political constitution is, or ought to be, first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue, the common good of the society.”¹⁷ A large republic makes this more likely by precluding the election of unqualified individuals and reducing the likelihood that a demagogue will be voted into office. Because those who aspire to be members of the national legislature in a large republic need to obtain the votes of a greater number of people than is necessary in a small republic, Madison argues:

[I]t will be more difficult for unworthy candidates to practice with success the vicious arts by which elections are too often carried; and the suffrages of the people being more free, will be more likely to center on men who possess the most attractive merit and the most diffusive and established characters.¹⁸

The only individuals who will be able to garner a majority of votes in such large districts will most likely be distinguished individuals with a reputation for service to their localities. Large districts, by encompassing a greater number of people, increase the likelihood that there will be such distinguished individuals to elect.¹⁹ In their support for large districts, we can deduce another argument that the Framers would likely have made against term limits: Term limits artificially decrease the supply of qualified candidates for office by prohibiting some worthy individuals from running for office. Thus, term limits make it less likely that the best possible people will be elected to office.

The most fully developed explanation of the Framers’ antipathy toward term limits is found in Alexander Hamilton’s discussion of the presidency in *The Federalist Papers*. Writing in *Federalist* No. 72, Hamilton argues against term limits for the President, although his arguments can be applied to Members of Congress as well.

In Hamilton’s view, rather than promoting republican government, as the Anti-Federalists claimed, term limits would actually be detrimental to the stability of republican government. Given the self-interested nature of individuals, altruism or notions of duty are not enough to guarantee that elected officials will act in a way that advances the public good. Instead, elected officials need incentives that align their own interests with the interests of their constituents. As Hamilton explains, “the desire of reward is one of the strongest incentives of human conduct,” and “the best security for the fidelity of mankind is to make their interest coincide with their duty.”²⁰

Term limits would eliminate the incentives that Presidents (and other elected officials) have to act responsibly and honorably in office. When elected officials are forced to rely on the good opinion of the people to retain their office, they are more likely to act in a manner deserving of the people’s respect. Without the incentive of reelection, elected officials would be less diligent in fulfilling the responsibilities of their office:

There are few men who would not feel much less zeal in the discharge of a duty when they were conscious that the advantage of the state with which it was connected must be relinquished at a

15. Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers* (New York: Signet, 1999), p. 51.

16. *Ibid.*, p. 50.

17. *Ibid.*, p. 318.

18. *Ibid.*, p. 51.

19. *Ibid.*, p. 50.

20. *Ibid.*, p. 405.

determinate period, than when they were permitted to entertain a hope of *obtaining*, by *meriting* a continuance of them.²¹

Hamilton also feared that term limits would encourage representatives to try to exploit their office for financial gain. Reelection diminishes the incentives of elected officials to line their pockets at the expense of their constituents. “If he could expect to prolong his honors by his good conduct,” Hamilton writes, a representative “might hesitate to sacrifice his appetite for gain. But with the prospect before him of approaching an inevitable annihilation, his avarice would be likely to get the victory over his caution, his vanity, or his ambition.”²²

With term limits, representatives have nothing to lose by acting irresponsibly and dishonestly in office; they need not fear that voters will punish their bad behavior by throwing them out of office. While, absent term limits, their greed might be restrained, in the presence of term limits, elected officials have every incentive to try to get as much material benefit as they can from their office before the stream of benefits dries up.

In Hamilton’s opinion, the presidency was an office for which term limits would be especially pernicious due to the nature of ambition. Hamilton argues that if Presidents were ineligible for reelection, they would be unwilling to give up their position of power, thus potentially destroying republican government altogether.

Moreover, even if these term-limited Presidents could be coaxed into turning over power to their successors and stepping down from office, they would always yearn for the office that they had once held. As Hamilton asked:

Would it promote the peace of the community, or the stability of the government, to have half a dozen men who had had credit enough to raise themselves to the seat of the supreme magistracy wandering among the people like discontented ghosts and sighing for a place which they were destined never more to possess?²³

The histories of Rome and Greece had presented the Framers with enough examples of such situations to know that the answer could be bloody and disastrous.

From the Framers’ point of view, the Constitution already contained many mechanisms that would control the behavior of representatives as effectively as—if not better than—term limits. Foremost among these is frequent elections.

While Anti-Federalists argued that term limits would prevent Members of Congress from becoming too detached from the people, supporters of the Constitution argued that frequent elections would accomplish the same end. Frequent elections would make representatives responsive to those they represent, for if they fail to take into account the interests and opinions of their constituents, they run the danger of being voted out of office. Requiring that representatives stand for reelection every two years makes them dependent on their constituents for continuance in office and, by doing so, keeps them connected to those they represent. As Madison explains:

Before the sentiments impressed on their minds by the mode of their elevation can be effaced by the exercise of power, they will be compelled to anticipate the moment when their power is to cease, when their exercise of it is to be reviewed, and when they must descend to the level from which they were raised; there forever to remain unless a faithful discharge of their trust shall have established their title to a renewal of it.²⁴

Similarly, while Anti-Federalists believed that term limits were necessary to check the corrupting effects of power, Federalists argued that frequent elections would prevent representatives from using their office in a self-serving manner. Any Member of Congress who did act in a manner injurious to his constituents would be removed from office come election day.

21. *Ibid.* Emphasis in original.

22. *Ibid.*, p. 406.

23. *Ibid.*

24. *Ibid.*, p. 320.

Term Limits in the Early Republic

Although the Federalists' vision of representation ultimately prevailed and the new Constitution was ratified, the debate over term limits continued. At several state ratifying conventions, term-limit amendments were proposed and submitted to Congress for consideration. For example, Virginia's ratifying convention declared that in order that legislators "may be restrained from oppression by feeling and participating the public burthens, they should at fixt periods be reduced to a private station, return into the mass of people."²⁵ Similarly, New York's ratifying convention proposed that Senators be limited to a term of six years within any 12 years.

The First Congress debated whether or not it was bound to vote on the amendments proposed by the state ratifying conventions. Representative Thomas Tucker of South Carolina argued that the citizens of the states expected these proposed amendments to be considered by Congress and that failure to do so "might destroy the harmony which had hitherto existed, and which did great honor to their proceedings; it might affect all their future measures, and promote such feuds as might embarrass the Government exceedingly."²⁶ Despite these concerns, the House voted that it was not bound to submit the state-proposed amendments for a vote.

In response, on August 18, 1789, Tucker introduced each one of the amendments proposed by the states. Among these was included a proposal for term limits for Members of the House, Members of the Senate, and the President. Under the amendment, Members of the House were limited to serving no more than six years within a period of eight years; Senators were elected annually and could serve no more than five out of any six years; and the President was limited to eight years in office out of any 12. The House killed this amendment by refusing to refer it to the Committee of the Whole for consideration.²⁷

After this initial failure, a term-limits amendment was not introduced again until 1943. However, it was not until the late 1970s that proposals for term limits became more frequent. From 1975 to 2002, 145 bills in the House and 29 bills in the Senate were introduced to limit the number of years that Members may serve.²⁸

For most of America's history, voters did not feel the need to limit the number of terms their representatives may serve. Prior to the start of the 20th century, Members of Congress rarely served more than a few terms in office, and few sought reelection.²⁹ A system of *de facto* term limits arose during the early years of the nation, in part because of the undesirability of serving in Congress. Being a Member of Congress was a job that featured low pay, extended periods away from home and family, monotony, and little prestige or public esteem.³⁰ Aspiring statesmen preferred to serve in their state legislatures, where they could have a greater influence on issues of relevance to them. As political scientist H. Douglas Price explains, "Career data on the early Senate is a morass of resignations, short-term appointees, elective replacements, and more resignations. There are *no* notable careers in terms of service."³¹

Careers in the House of Representatives also tended to be short-lived. During the first 100 years of the Constitution's history (1789–1889), the average period of service in the House was only 2.14 terms.³² Historian DeAlva

25. Amendments Proposed by the Virginia Convention, June 27, 1788, cited in Leonard Levy, *Origins of the Bill of Rights* (New Haven and London: Yale University Press, 2001), pp. 275–276.

26. *Annals of Congress*, 1st Cong., 1st Sess., p. 788.

27. *Ibid.*, pp. 790–791.

28. Patrick J. Fett and Daniel E. Ponder, "Congressional Term Limits, State Term Limits and Congressional Turnover: A Theory of Change," *PS: Political Science and Politics*, Vol. 26 (June 1993), pp. 211–216. Data found in Sean M. Theriault, *The Power of the People: Congressional Competition, Public Attention, and Voter Retribution* (Columbus: Ohio State University Press, 2005).

29. See, e.g., Samuel Kernell, "Toward Understanding 19th Century Congressional Careers: Ambition, Competition, and Rotation," *American Journal of Political Science*, Vol. 21 (November 1977), pp. 669–693; H. Douglas Price, "The Congressional Career: Then and Now," in Nelson W. Polsby, ed., *Congressional Behavior* (New York: Random House, 1971), pp. 14–27; David Brady, Kara Buckley, and Douglas Rivers, "The Roots of Careerism in the U.S. House of Representatives," *Legislative Studies Quarterly*, Vol. 24 (November 1999), pp. 489–510.

30. James Sterling Young, *The Washington Community 1800–1828* (New York: Harcourt Brace, 1966).

31. H. Douglas Price, "Congress and the Evolution of Legislative Professionalism," in Norman J. Ornstein, ed., *Congress in Change: Evolution and Reform* (New York: Praeger, 1975), pp. 2–23. Emphasis in original.

Stanwood Alexander reports that, “Of the three hundred and ninety-one members who appeared in March 1911, at the first session of the Sixty-second Congress, only four belonged to the House in 1891.”³³ This stands in stark contrast to current trends, where the average length of service at the start of the 109th Congress was 9.3 years in the House and 12.1 years in the Senate.

In addition, during the 19th century, strong political parties and norms of rotation in office prevented Members from remaining in office for more than a few terms.³⁴ Americans still retained a deep-seated distrust of power and of those who desired make a career out of politics.³⁵ In his first address to Congress, Andrew Jackson declared that rotation in office “constitutes a leading principle in the Republican creed.”³⁶

While Jackson made sure that there was sufficient rotation in the executive branch, political parties helped to guarantee that the same was true for Congress, partly because candidates for Congress were chosen by district caucuses rather than primary elections. These caucuses were often highly contentious as potential candidates vied for the party’s nomination, sometimes leading to feuds that threatened to split the party’s cohesiveness and hinder its chances of winning the general election. Insisting that a party’s nomination rotate among several candidates helped to ease these tensions.³⁷

As one contemporary observer explained, “The nomination of a congressional candidate is often determined in advance by a private agreement that the incumbent, after one or more terms of service, shall retire and aid in the nomination of his principal rival in a former convention.”³⁸ Perhaps the most famous example of such a seat-sharing arrangement was that struck by candidates for Illinois’ Seventh Congressional district, where Abraham Lincoln, E. D. Baker, and Steven Logan agreed that each would serve one term in the House.³⁹

Rotation in office was so common during this time that James Bryce observed during his visit to the United States during the late 1800s that:

So far from its being a reason for re-electing a man that he has been a member already, it was, and is still in parts of the West, a reason for passing him by, and giving somebody else a turn. Rotation in office, dear to the Democrats of Jefferson’s school a century ago, still charms the less educated, who see in it a recognition of equality, and have no sense of the value of special knowledge or training.⁴⁰

The Rise of Congressional Careers

However, between 1890 and 1910, important changes in congressional careers began to take place. Prominent among these were increases in the number of consecutive terms that Members of Congress served and in the proportion of Members who sought reelection.⁴¹ For most of the 19th century, turnover rates hovered close to 50 percent, reaching a high of 59.4 percent during the 1840s. Turnover rates plunged to 27.6 percent during the first

32. Nelson W. Polsby, “The Institutionalization of the U.S. House of Representatives,” *American Political Science Review*, Vol. 62 (March 1968), pp. 144–168.

33. DeAlva Stanwood Alexander, *History and Procedure of the House of Representatives* (New York: Houghton Mifflin, 1916), p. 30.

34. A norm of rotation in office was much more prevalent in the North than in the South during this time.

35. Robert Struble, “House Turnover and the Principle of Rotation,” *Political Science Quarterly*, Vol. 94 (Winter 1979–1980), pp. 649–667.

36. Andrew Jackson, “First Annual Message,” December 8, 1829, at <http://www.presidency.ucsb.edu/ws/index.php?pid=29471>.

37. Kernell, “Toward Understanding 19th Century Congressional Careers: Ambition, Competition, and Rotation.”

38. Frederick Dallinger, *Nominations for Elective Office in the United States* (Cambridge: Harvard University Press, 1916), p. 88; Struble, “House Turnover and the Principle of Rotation.”

39. Struble, “House Turnover and the Principle of Rotation.”

40. James Bryce, *The American Commonwealth* (New York: MacMillan, 1918), p. 197.

41. Morris P. Fiorina, David W. Rohde, and Peter Wissel, “Historical Change in House Turnover,” in Norman J. Ornstein, ed., *Congress in Change: Evolution and Reform* (New York: Praeger, 1975), pp. 24–49; Price, “The Congressional Career: Then and Now”; T. Richard Witmer, “The Aging of the House,” *Political Science Quarterly*, Vol. 79 (December 1964), pp. 526–541.

decade of the 20th century, remained low at 29 percent during the 1910s, and continued to fall thereafter, reaching an all-time low of 12 percent during the 1980s.⁴²

Political scientists have proposed several explanations for this rise in legislative careerism.

First, the nation experienced a decrease in electoral competition during this time as the parties realigned themselves on a regional basis following the 1896 election. Prior to 1896, competition between the two parties had been evenly matched, with seats frequently switching parties, but the realignment yielded an increase in the number of safe seats, with Republicans dominating in the North and Democrats prevailing in the South. As E. E. Schattschneider explains:

In 1892 there were thirty-six states in which on the face of the returns something like a competitive party situation existed. By 1904 there remained only six states in which the parties were evenly matched, while there were thirty states in which the situation could no longer be described as competitive.⁴³

This decline in electoral competition paved the way for the development of congressional careers, as incumbents were now more likely to be reelected. As one group of researchers described it, “the realignment of 1896 was a watershed in the history of House turnover because of the subsequent century-long declining trend in total turnover. It created many essentially one-party districts with a reduced risk of general election defeat for incumbents.”⁴⁴

Second, during this time, service in Congress became more attractive as a potential career. As mentioned above, for most of the nation’s history, service in Congress was not viewed as a desirable—or even respectable—career. The concept of the professional politician was unknown during the era of the Founders, when men who displayed the characteristics of our modern-day politicians were derisively labeled demagogues. However, as party competition became regularized and legitimized, being a career politician began to lose some of its distasteful associations.⁴⁵

In addition, the value of holding a seat in Congress increased as Congress experienced greater institutionalization and modernization.⁴⁶ While the decline in electoral competition made longer careers possible, the institutionalization of Congress—especially the House—made longer careers desirable. Chief among these changes were the rise of the seniority system in the House, the increased specialization and power of congressional committees, increases in salaries and staff for Members, and the eventual invention of air conditioning.⁴⁷ As service in Congress became more desirable, many scholars argue, Members ran for and won reelection with greater frequency.

Third, reforms in the electoral process, including the introduction of the Australian ballot, voter registration requirements, the popular election of Senators, and the direct primary, weakened political parties’ control of congressional candidates and facilitated the rise of careerism.⁴⁸ The earliest of these changes was the introduction of the

42. John W. Swain, Stephen A. Borrelli, Brian C. Reed, and Sean F. Evans, “A New Look at Turnover in the U.S. House of Representatives, 1789–1998,” *American Politics Quarterly*, Vol. 28 (2000), pp. 435–457.

43. E. E. Schattschneider, *The Semisovereign People: A Realist’s View of Democracy in America* (New York: Holt, Rinehart and Winston, 1960), p. 83.

44. Swain *et al.*, “A New Look at Turnover in the U.S. House of Representatives, 1789–1998.”

45. James W. Ceaser, *Presidential Selection: Theory and Development* (Princeton: Princeton University Press, 1979), pp. 164–165.

46. Polsby, “The Institutionalization of the U.S. House of Representatives.”

47. Michael Abram and Joseph Cooper, “The Rise of Seniority in the House of Representatives,” *Polity*, Vol. 1 (Autumn 1968), pp. 52–85; Nelson Polsby, *How Congress Evolves: Social Bases of Institutional Change* (Cambridge: Oxford University Press, 2004).

48. Leon D. Epstein, *Political Parties in the American Mold* (Madison: University of Wisconsin Press, 1986); Jonathan N. Katz and Brian R. Sala, “Careerism, Committee Assignments, and the Electoral Connection,” *American Political Science Review*, Vol. 90 (March 1996), pp. 21–33; Dean McSweeney and John Zvesper, *American Political Parties: The Formation, Decline and Reform of the American Party System* (New York: Routledge, 1991); Wendy J. Schiller, “Building Careers and Courting Constituents: U.S. Senate Representation 1889–1924,” *Studies in American Political Development*, Vol. 20 (Fall 2006), pp. 185–197; Jill N. Wittrock, Stephen C. Nemeth, Howard Sanborn, Brian DiSarro, and Peverill Squire, “The Impact of the Australian Ballot on Member Behavior in the U.S. House of Representatives,” *Political Research Quarterly*, Vol. 61 (2008), pp. 434–444.

Australian (secret) ballot, which replaced the party ballots that had been used until the 1890s. With the introduction of the Australian ballot, voters were able for the first time to vote for individual candidates rather than a party slate, thus making split-ticket voting possible, and Members of Congress gained an incentive to establish more personal ties with their constituents, since voters would no longer be voting simply on the basis of party affiliation but would now be able to take into account the personal reputations of each candidate when voting. This reform, according to political scientists Jonathan N. Katz and Brian R. Sala, “made credit-claiming and other personal vote activities by members of Congress significantly more important for reelection.”⁴⁹

Contemporaneous with the introduction of the Australian primary was a move from party caucuses to direct primaries for electing Members of the House. Between 1896 and 1915, nearly all of the states adopted the direct primary for nominating candidates to office at the federal, state, and local levels.⁵⁰ This change in nominating procedures had a significant effect on the parties’ ability to control which candidates were nominated and eventually elected to office. As Samuel Kernell explains:

Direct primaries liberated the congressman from the caucus and allowed him to employ proven campaign skills and the resources of office to maximum advantage. Campaign experience, recognition, franking privileges, and diligent constituent service gave the incumbent, then as today, a competitive edge over the other relatively unknown candidates in the primary.⁵¹

Similarly, the Seventeenth Amendment, which required that Senators be elected by popular vote rather than chosen by state legislatures, further weakened party control and helped to give rise to the personal campaign. No longer dependent on state legislators for the continuation of their careers, Senators turned their attention to establishing direct ties with voters and building a base of support independent of the party. According to political scientist Wendy Schiller, “Once direct elections were implemented, Senators relied less on party leaders and were less captive to factions within the state party. . . . Eliminating the tie to state legislators removed one of the main sources of leverage that state party leaders had over U.S. Senators.”⁵²

Out of the ashes of the caucus system and strong political parties, the professional politician was born. As the 20th century advanced, Members of Congress were choosing to remain in office for longer periods, and the electorate was obliging by reelecting them. Trends that had begun at the turn of the century accelerated in the 1970s with Members of Congress winning reelection with greater frequency and higher margins of victory. While various explanations for this decrease in the competitiveness of congressional elections have been proposed—including the growth of the federal bureaucracy, redistricting, and constituency service—the fact remains that Members of Congress are now more likely to leave office through retirement or death than through electoral defeat.

49. Katz and Sala, “Careerism, Committee Assignments, and the Electoral Connection.”

50. Alan Ware, *The American Direct Primary: Party Institutionalization and Transformation in the North* (Cambridge: Cambridge University Press, 2002).

51. Kernell, “Toward Understanding 19th Century Congressional Careers: Ambition, Competition, and Rotation.”

52. Schiller, “Building Careers and Courting Constituents: U.S. Senate Representation 1889–1924.”

The Modern Term-Limits Movement

The modern term-limits movement arose in response to this professionalization of politics and the American public's growing discontent with Members of Congress. In addition to lengthening congressional careers, the late 1980s saw an increasing number of scandals involving Members of Congress. The Abscam, House banking, and Keating Five scandals all shook voters' confidence in their representatives and, coupled with a growing distrust of government and rising levels of federal spending, created the array of conditions from which the modern term-limits movement emerged.

The term-limits movement was hardly a unified ideological movement. Those who supported term limits did so for a variety of reasons. Some proponents advocated term limits in order to make representatives less dependent on public opinion and thus able to make decisions that might be unpopular; others saw them as a way to make representatives more responsive to the opinion of those they represent. Some favored term limits out of the hope that they would facilitate the election of more women and minorities to Congress; others saw them as a way to benefit the Republican Party.⁵³

While supporters disagreed about how Members of Congress subject to term limits would behave, they agreed that term limits would help to solve two problems that plague modern government: the professionalization of politics and rampant government spending. Lengthy service in office is only one symptom of what supporters of term limits see as a much bigger problem. Professionalized politics, they argue, is incompatible with representative government. It places the people in a client relationship with their government and severs the close connection between representatives and their constituents that is necessary if a representative democracy is to survive. As political scientist Mark Petracca writes, "As the professionalism of a legislative body increases, its capacity for authentic political representation declines."⁵⁴

The professionalization of politics, in this view, is also responsible for the proliferation of interest groups and political action committees that have come to dominate the modern political scene. Politicians are more willing to listen to the demands of these groups, in return for campaign contributions, than they are to listen to the concerns of their own constituents. As Doug Bandow of the Cato Institute argues, "All told, representative government still reflects the interests, not of the public, but of a distinct, career-minded ruling class: legislators, bureaucrats, media elites, and like-minded interest groups."⁵⁵

Term limits, however, were supposed to help reverse this trend toward increasing professionalization by encouraging the election of amateur legislators. As conservative columnist George Will writes:

One function of term limitation is to inscribe in fundamental law and infuse throughout political practice this sentiment: The essential act of republicanism—lawmaking in a representative institution—is not work that requires such a long apprenticeship that most citizens are effectively excluded from the pool of talent from which lawmakers can be drawn. Lawmaking is not the arcane province of a clerisy of experts and specialists whose ranks are open only to people prepared to commit substantial portions of their adult life.⁵⁶

Advocates believed that term limits would transform a hyperprofessionalized Congress and state legislatures, returning them to the citizen legislatures of the past that the Founders supported. Most supporters of term limits

53. Robert Kurfirst, "Term-Limit Logic: Paradigms and Paradoxes," *Polity*, Vol. 29 (Autumn 1996), pp. 119–140.

54. Mark Petracca, "The Poison of Professional Politics," Cato Institute *Policy Analysis* No. 151, May 1991, pp. 1–31.

55. Doug Bandow, "Real Term Limits: Now More Than Ever," Cato Institute *Policy Analysis* No. 221, March 1995, p. 82.

56. George F. Will, *Restoration: Congress, Term Limits, and the Recovery of Deliberative Democracy* (New York: Free Press, 1992), p. 164.

argue that returning to a system of rotation in office would encourage more public-spirited individuals to serve in Congress.⁵⁷ They frequently invoke the images of the Roman leader Cincinnatus, who resigned the dictatorship at the end of his term to return to his plow, and George Washington, who refused to run for a third term as President and spent the remainder of his life on his farm at Mount Vernon. These two statesmen, it is argued, stand in stark contrast to the politicians of today, who spend a lifetime in Congress.⁵⁸

Supporters hoped that term limits would encourage the rise of a new breed of legislator who had no desire to make politics a career. These citizen-legislators, who were expected to take state capitals by storm after the passage of term limits, would take time off from their careers as teachers, CEOs, and mechanics to serve briefly in the legislature, returning to the private sector once their terms of service ended. More important, they would have policy preferences at odds with those of career politicians. Specifically, they would favor a more limited government and endorse the belief that government should do less, not more.⁵⁹

Term limits supposedly would facilitate the election of citizen-legislators for several reasons. First, term limits would weaken the incumbency advantage and make it less costly to run for Congress. Many supporters consider term limits to be a more effective form of campaign finance reform than current laws.⁶⁰ In the opinion of one, “Term limits can bring about what campaign finance reform is supposed to accomplish, but never will—a significant reduction in the ability of incumbents to perpetuate themselves in office.”⁶¹ Term limits were predicted to lower campaign expenditures by “reducing the value of incumbency both to officeholders and to contributors.”⁶²

Term limits were expected to take away a legislator’s main source of campaign contributions by breaking up the close relationships between representatives and special-interest groups. Under term limits, interest groups should be reluctant to contribute money to a legislator because, given the shortened tenure of representatives under term limits, they would get less of a return on their investment in any given legislator.

Term limits would lower the cost of running for office. Candidates should spend less money in their attempts to attain a seat in Congress if holding that seat brings fewer rewards than it once did.⁶³ As political scientists Kermit Daniel and John Lott explain, “Term limits, then, effectively act as a tax on campaign expenditures because the politician’s specific investments would be lost when the term limits becomes binding.”⁶⁴ According to this logic, candidates would be unwilling to spend vast quantities of money to win a seat that they could hold only for a limited time.

Term limits also might decrease the costs of campaigns by increasing the supply of available legislative seats. While open-seat races are generally more expensive than races featuring an incumbent, this might change if the number of open-seat races increased under term limits. This would likely occur if the value of holding office were to decrease as a result of term limits.

Term limits were also expected to reduce the opportunity costs of serving as a legislator, encouraging individuals who had previously shunned political office to run. Holding a seat in Congress or the state legislature means foregoing income from the private sector. While being a Member of Congress may be lucrative and prestigious, serving

57. See, e.g., James K. Coyne and John H. Fund, *Cleaning House: America’s Campaign for Term Limits* (Washington, D.C.: Regnery Gateway, 1992); Elizabeth Garrett, “Term Limitations and the Myth of the Citizen-Legislator,” *Cornell Law Review*, Vol. 81 (1996), pp. 623–697; Will, *Restoration: Congress, Term Limits, and the Recovery of Deliberative Democracy*, p. 164.

58. Bandow, “Real Term Limits: Now More Than Ever.”

59. *Ibid.* and Will, *Restoration: Congress, Term Limits, and the Recovery of Deliberative Democracy*.

60. Patrick Basham, “Term Limit Lessons for Campaign Reform,” *Cato Institute Daily Briefing Paper*, 2001; Dwight R. Lee, “The Case for Congressional Term Limits Is the Same as the Case for Pollution Control,” in Donald P. Racheter and Richard E. Wagner, eds., *Limiting Leviathan* (Northampton, Mass.: Edward Elgar, 1999).

61. Lee, “The Case for Congressional Term Limits Is the Same as the Case for Pollution Control,” p. 169.

62. John M. Carey, Richard G. Niemi, and Lynda W. Powell, *Term Limits in the State Legislatures* (Ann Arbor: University of Michigan Press, 2000), p. 36.

63. Einer Elhauge, John R. Lott, and Richard L. Manning, “How Term Limits Enhance the Expression of Democratic Preferences,” *Supreme Court Economic Review*, Vol. 5 (1996–1997), pp. 59–80.

64. Kermit Daniel and John R. Lott, Jr., “Term Limits and Electoral Competitiveness: Evidence from California’s State Legislative Races,” *Public Choice*, Vol. 90 (March 1997), pp. 165–184.

as a state legislator often is not. Term limits would thus encourage individuals to run for office who might not otherwise have done so, since they could serve only a few years and then return to their former jobs.

This reduction in opportunity costs was thought to benefit Republicans because they are more likely to forgo jobs in the public sector for better-paying private-sector jobs.⁶⁵ Political scientist Morris Fiorina argues that the professionalization of state legislatures affects the incentives of Republican and Democratic candidates disproportionately. Service in a highly professionalized legislature is generally a full-time job, and the opportunity costs are different for members of the two parties. Republicans, who usually have more lucrative careers in business, are less willing to give up their high-paying jobs to serve in state government. For Democrats, who are more likely to pursue jobs in public service or in the nonprofit sector, there is no equivalent salary loss.⁶⁶

Further, service in a professionalized legislature tends to appeal only to those who believe that government is a worthy enterprise and beneficial to society. An individual who believes that the government that governs least governs best will most likely not want to devote his or her life to a career in politics, but this is exactly the level of commitment that full-time service in the state legislature demands. Thus, government service attracts only those who see government as a legitimate solution to the nation's problems. As political scientist Alan Ehrenhalt explains:

In another sort of political environment...in which it did not take much time or trouble to serve in office, belief in government might not be a crucial point. People who disliked government might become candidates and win elections in large numbers whether they found the work exciting or not.⁶⁷

Republicans dedicated to a vision of limited government are unlikely to find service in Congress or state legislatures compatible with their ideals. However, under term limits, government service no longer appeals only to those individuals who favor an activist government.

In addition, many proponents had hoped that term limits would fundamentally alter the nature of representation itself. Part of what ails modern government, it is argued, is the close relationship that has developed between representatives and their constituents. Legislators have strayed far from the Burkean ideal of representation in which lawmakers act as trustees of the public good, deciding issues of public policy based on their own judgments and not the demands of their constituents.

Instead, today's legislators all too often see themselves as delegates, bound to obey the every wish of those they represent. By failing to adhere to a Burkean view of representation, members of Congress and state legislatures have relinquished their ability to deliberate and act in the interest of the public good. In essence, they are too close to those they represent and pander to the voters' every wish for fear of being voted out of office.

Term limits would help to restore the distance between representatives and voters and, in doing so, would return legislatures to their original function: deliberation. "The sensible reason for enacting term limits," writes George Will, "is not to forestall oppression but to nurture deliberation, meaning a disposition to reason about policies on their merits rather than their utility in serving the careerism of legislators."⁶⁸

Term Limits and Government Spending

Part of the appeal of term limits for many voters was the expectation that they would limit wasteful government spending. One reason for this expectation is the belief that term limits remove the rationale behind wasteful pork-barrel spending. Increased government spending is often driven by the electoral ambitions of legislators,⁶⁹ but leg-

65. John B. Gilmour and Paul Rothstein, "A Dynamic Model of Loss, Retirement, and Tenure in the U.S. House of Representatives," *The Journal of Politics*, Vol. 58 (February 1996), pp. 54–68; Scott R. Meinke and Edward B. Hasecke, "Term Limits, Professionalization, and Partisan Control in U.S. State Legislatures," *The Journal of Politics*, Vol. 65 (August 2003), pp. 898–908.

66. Morris Fiorina, *Divided Government*, 2nd ed. (Boston: Allyn and Bacon, 1996).

67. Alan Ehrenhalt, *The United States of Ambition: Politicians, Power, and the Pursuit of Office* (New York: Random House, 1991), p. 21.

68. Will, *Restoration: Congress, Term Limits, and the Recovery of Deliberative Democracy*, p. 110.

islaters would have little incentive to deliver targeted benefits to their constituents or trade legislative favors for campaign contributions if they could no longer run for reelection.⁷⁰

Supporters of term limits also link tenure in office with a proclivity for government spending. It is often argued that the longer a legislator remains in office, the more willing he or she is to spend public money.⁷¹ This relationship between tenure in office and preferences for spending exists despite a Member's ideological position. Legislators do not necessarily enter office with pro-spending views, but the culture of Washington encourages them to "grow" in office, favoring more and more spending the longer they stay in the Capitol.

For political scientist James Payne, this positive relationship between tenure and spending preferences is directly linked to the socialization process that all legislators (both state and national) undergo once in office.⁷² "Government spending grows," he writes, "because the decisions about spending are made by government officials who have been socialized into pro-spending beliefs by their membership in government organizations."⁷³ There are two ways, according to Payne, that legislators are socialized to favor higher spending.

First, legislators become attached to the programs they develop. Members of Congress believe that their main job is to solve the nation's problems. They do this by helping to develop programs that, if they are to succeed, must be amply funded.

Second, there is a "congressional brainwashing machine" at work, operated by interest groups, administrators, and other legislators, that socializes new legislators to favor higher spending.⁷⁴ Legislators are constantly bombarded with pro-spending arguments by individuals and groups that benefit from increased government spending. For example, of 1,060 witnesses who testified before congressional committees in 1986, less than 1 percent testified against the program under consideration.⁷⁵ Given enough exposure to these pro-spending arguments, legislators become brainwashed into favoring higher levels of government spending.

Using data from the 99th Congress (1985–1986), Payne finds evidence for the claim that tenure and spending are positively associated.⁷⁶ To measure a Member's propensity to spend, Payne calculates a spending support score (ranging from zero to 36) for each legislator based on 36 domestic spending votes. In a multivariate analysis, he finds that for each year a Member serves in the House, his or her spending support score increases by more than a third of a point.

To further verify this conclusion, he tracks changes in spending patterns for Members initially elected to the House in 1975 and 1977. Using ratings from the National Taxpayers Union, Payne examines how much a Member's score deviates from the average for his or her party for each additional year served. He finds that Members' scores

69. Morris Fiorina, *Representatives, Roll Calls, and Constituencies* (Lexington, Mass.: Heath, 1974); John Hibbing, "The Liberal Hour: Electoral Pressures and Transfer Payment Voting in the United States Congress," *The Journal of Politics*, Vol. 46 (August 1984), pp. 846–865; Edward R. Tufte, *Political Control of the Economy* (Princeton: Princeton University Press, 1978).

70. Bandow, "Real Term Limits: Now More Than Ever"; Dan Greenberg, "Term Limits: The Only Way to Clean Up Congress," Heritage Foundation *Backgrounder* No. 994, August 10, 1994; Mark P. Petracca, "Restoring 'The University in Rotation': An Essay in Defense of Term Limitation," in Edward H. Crane and Roger Pilon, eds., *The Politics and Law of Term Limits* (Washington, D.C.: Cato Institute, 1994); Will, *Restoration: Congress, Term Limits, and the Recovery of Deliberative Democracy*.

71. Coyne and Fund, *Cleaning House: America's Campaign for Term Limits*; James L. Payne, "The Congressional Brainwashing Machine," *Public Interest*, Vol. 100 (Summer 1990), pp. 3–15; James L. Payne, *The Culture of Spending: Why Congress Lives Beyond Our Means* (San Francisco: ICS Press, 1992); Stephen Moore and Aaron Steelman, "Term Limits: An Antidote to Federal Red Ink?" Cato Institute *Briefing Paper* No. 21, November 1994.

72. Payne, "The Congressional Brainwashing Machine" and *The Culture of Spending: Why Congress Lives Beyond Our Means*.

73. James L. Payne, "Why Government Spending Grows: The 'Socialization' Hypothesis," *Western Political Quarterly*, June 1991, pp. 487–508.

74. Payne, "The Congressional Brainwashing Machine" and "Why Government Spending Grows: The 'Socialization' Hypothesis."

75. Payne, *The Culture of Spending: Why Congress Lives Beyond Our Means*.

76. Payne, "Why Government Spending Grows: The 'Socialization' Hypothesis."

are below their party's average spending score for their first 12 years in office but rise considerably during each additional year in office. This effect is most pronounced for Members who have served previously in government as state legislators, legislative staffers, or Administration officials. These Members' spending ratings remain below their party's average only for their first four years in office. For each subsequent year in office, their scores are consistently above the party average.

From this evidence, Payne concludes that lengthening congressional careers leads to higher levels of aggregate spending.

Stephen Moore and Aaron Steelman of the Cato Institute also present evidence that tenure and spending are positively correlated in their examination of 13 key votes in Congress during the 1980s and 1990s.⁷⁷ To test their hypothesis that junior Members prefer lower levels of spending than more senior legislators, they compare actual policy outcomes with what would have been the outcome if only Members with less than six years of service in the House and 12 years of service in the Senate had voted. They find that several key issues that would have reduced spending, such as a balanced budget amendment and spending cuts to reduce the deficit in 1993, would have passed. Similarly, if only junior Members were allowed to vote, pay raises for Members of Congress in 1989 and 1992 would have failed.

From this, Moore and Steelman conclude that senior Members are less fiscally responsible than their more junior colleagues.

For those who believe that high spending levels are the result of Members of Congress remaining too long in office, term limits are an ideal solution. By precluding lengthy legislative careers, term limits will prevent legislators from being socialized—or “brainwashed”—into a “culture of spending.” Legislators who are subject to term limits will not be in office long enough to develop a taste for higher spending. As Payne writes:

Term limitation doesn't weaken the pro-government lobbyists, but it hampers their ability to indoctrinate congressmen. It means that long-time congressmen who automatically support the federal establishment will be replaced by new legislators who are more independent.⁷⁸

Term Limits at the State and National Levels

Fueled by these intellectual ideas, term limits burst onto the political scene in the early 1990s. Beginning in 1990, voters in three states—California, Colorado, and Oklahoma—approved ballot initiatives restricting the number of consecutive terms that legislators may serve.

- California's term-limits law—Proposition 140—was the brainchild of conservative Republican and anti-tax advocate Pete Schabarum, who had also been active in passing Proposition 13, California's property tax relief law. Advocates of Proposition 140 focused most of their rhetoric on career politicians, especially Speaker of the Assembly Willie Brown, who was first elected to office in 1964 and had served as speaker since 1980. In addition to limiting state legislators' terms, Proposition 140 also called for California's budget to be reduced by 40 percent and eliminated the pension system for state legislators. Proposition 140 limited not only the terms of state legislatures, but those of other state-wide offices as well.⁷⁹
- In Colorado, the push for term limits was spearheaded by former State Senator Terry Considine and Coloradans Back in Charge, the organization that he founded. Considine had introduced term-limits legislation to no avail during his time in the state Senate but found greater success through the initiative process, with 71 percent of voters approving term-limits legislation in 1990.

77. Moore and Steelman, “Term Limits: An Antidote to Federal Red Ink?”

78. Payne, *The Culture of Spending: Why Congress Lives Beyond Our Means*, p. 117.

79. Charles M. Price, “The Guillotine Comes to California: Term-Limit Politics in the Golden State,” in Benjamin and Malbin, eds., *Limiting Legislative Terms*.

- Oklahoma's term-limits drive was led by Lloyd Noble, a failed candidate for state legislative office and member of a prominent political family. Oklahoma's term-limits campaign attracted substantial bipartisan support, with former Democratic Governor Raymond Gray, state Democratic Party leader Cleta Mitchell, and then-Democratic Governor David Walters all lending their support. For Oklahoma voters, term limits was the latest in a series of measures that they had used to reprimand an intransigent state legislature. In 1989, voters passed measures curtailing the length of the legislative session and reducing the salaries of state legislators.⁸⁰

After these initial successes, the term-limits movement soon burgeoned, with term limits adopted through the citizen initiative process in 14 more states just two years later. In 1994, voters in six more states imposed term limits on their delegates to Congress. Term-limitation initiatives passed easily in most states. Term-limits ballot propositions garnered more than 70 percent of the vote in seven states and at least 60 percent in five other states.⁸¹

Enthusiasm for term limits does not seem to have diminished since passage of these initiatives, as subsequent efforts to repeal or modify existing term-limits laws have been consistently defeated by voters. Support for term limits is widespread, with national surveys finding that 81 percent of respondents favor term limits for state representatives and 77 percent favor limiting the number of terms that Members of Congress may serve.⁸² Voter support for term limits is largely fueled by political cynicism. Voters who express anger or dissatisfaction with the political process are more likely than other voters to favor term limits. Party affiliation and ideology are not significantly correlated with voter support for term limits.⁸³

Overall, supporters of term limits were highly successful at passing ballot initiatives limiting legislators' terms. Term limits failed in only one state.

Voters in Washington State initially rejected a ballot measure, Initiative 553, in 1991. More stringent than term-limits initiatives in other states, Initiative 553 would have limited members of Washington's congressional delegation to three terms in the House and two terms in the Senate. Most strikingly, this limit would have been applied retroactively, thus forcing out all of the state's incumbent Members of Congress in 1995. The initiative was defeated by a margin of 54 percent to 46 percent. However, voters in Washington passed a less stringent law in 1992 that limited state representatives to six out of 12 years in the state House and state senators to eight out of 14 years in the state Senate.⁸⁴

The term-limits movement claimed victories in a diverse array of states. States with term limits differ greatly in size, economic and demographic characteristics, and political culture. States with highly professionalized legislatures, such as California and Michigan, have adopted term limits, as have states with citizen legislatures, such as Oklahoma and Maine. Nor are term limits confined to one geographic region. While found mainly in states in the West and South, they also have been adopted by a few states along the eastern seaboard and in the Midwest.

Yet, despite all their differences, term-limited states share one commonality: the presence of the citizen initiative process. Voters in every state with the initiative process, save one, have adopted term limits for their state legislators.⁸⁵ This does not mean that every state with the initiative process currently has term limits in effect. Several states have repealed their term-limits laws, and others have seen their laws struck down by state supreme courts.⁸⁶ Simi-

80. Gary W. Copeland, "Term Limitations and Political Careers in Oklahoma: In, Out, Up, or Down," in Benjamin and Malbin, eds., *Limiting Legislative Terms*.

81. States where term limits passed with more than 70 percent of the vote include Arizona, Colorado, Florida, Louisiana, Missouri, Nevada, and Wyoming. Term limits passed with more than 60 percent of the vote in Maine, Montana, Ohio, Oklahoma, and South Dakota.

82. American National Election Studies, 1992, 1994, at <http://www.electionstudies.org>.

83. Jeffrey A. Karp, "Explaining Public Support for Legislative Term Limits," *Public Opinion Quarterly*, Vol. 59 (Autumn 1995), pp. 373–391; Priscilla L. Southwell, "'Throwing the Rascals Out' versus 'Throwing in the Towel': Alienation, Support for Term Limits, and Congressional Voting Behavior," *Social Science Quarterly*, Vol. 25 (December 1995), pp. 741–748; Robert M. Stein, Martin Johnson, and Stephanie Shirley Post, "Public Support for Term Limits: Another Look at Conventional Thinking," *Legislative Studies Quarterly*, Vol. 27 (August 2002), pp. 459–480.

84. David J. Olson, "Term Limits Fail in Washington: The 1991 Battleground," in Benjamin and Malbin, eds., *Limiting Legislative Terms*.

larly, no state without the initiative process currently imposes term limits on its state representatives. This is not surprising, since it would take a considerable amount of political self-sacrifice for legislators to agree to limit their service in office.⁸⁷

By 1995, 23 states had adopted term limits for their Members of Congress, but the term-limits movement suffered a setback that year when the Supreme Court struck down Arkansas' term-limits law, under which a Member of Congress who chose to run for a fourth term would not have her name placed on the ballot and therefore could win election only as a write-in candidate. In a five-to-four decision, *U.S. Term Limits v. Thornton*, the Supreme Court ruled that Arkansas' term-limits law was in fact adding additional qualifications for service in the House of Representatives on top of the age, residency, and citizenship specified in Article 1, Section 2.

Writing for the majority, Justice John Paul Stevens rejected the petitioner's argument that the Tenth Amendment gave states the power to impose term limits on their delegates in Congress. Instead, Stevens argued that the principles of federalism prohibited states from changing the qualifications for service in Congress and that "[a]llowing individual States to adopt their own qualifications for Congressional service would be inconsistent with the Framers' vision of a uniform National Legislature representing the people of the United States."⁸⁸ The Tenth Amendment, the majority argued, reserved to the states only those powers that they possessed at the time the Constitution was ratified. Since Congress is a creation of the Constitution, the states do not possess a reserved right to set qualifications for their representatives. "Electing representatives to the National Legislature," explained Stevens, "was a new right arising from the Constitution itself."

Justice Clarence Thomas, writing in dissent and joined by Chief Justice William Rehnquist and Justices Sandra Day O'Connor and Antonin Scalia, took issue with the majority's reading of the Tenth Amendment. Nothing in the Constitution, Thomas argued, denied the states the power to set additional qualifications for their representatives: "Unless the Federal Constitution affirmatively prohibits an action by the States or the people, it raises no bar to such action." Further, "The selection of representatives in Congress is indisputably an act of the people of each State, not some abstract people of the Nation as a whole." Since it is the people of each state acting within the state—and not as agents of the national government—that choose representatives, the states can impose qualifications and limitations on how those elections are to be conducted and who is qualified to be elected.

With this ruling, the Supreme Court invalidated term-limit laws in 23 states and required a constitutional amendment to impose term limits on Members of Congress. After the Court's ruling in *Thornton*, term-limits activists shifted their attention away from state legislatures to Congress.

The 1994 mid-term election, which saw the Republicans take control of Congress for the first time in 40 years, propelled term limits onto the national agenda. The movement within Congress for term limits was not new. The key group, the Committee on Limiting Terms, was founded in 1985 by Representative Bill McCollum (R-FL) and other House Members who had been elected in 1980. Their efforts were focused more broadly on restricting political power in Congress and developed two proposals that became part of the Republican Contract with America and figured prominently in the 1994 Republican congressional campaigns to wrest control of Congress from the long-standing Democratic majority. The first proposal concerned term limits for committee chairmen as the key way to break down the institutional control that certain Members of Congress had over the political process. A term limit of six years was implemented successfully for committee chairmen as a rule for the House of Representatives by the new Republican majority, a policy that was maintained until its repeal in January 2009.

85. Mississippi is the only state with the initiative process where voters rejected a term-limits initiative. However, it is likely that Mississippi's adoption of the initiative process in 1995 was correlated with its rejection of term limits the following year.

86. Term-limit laws were struck down in Massachusetts, Oregon, Washington, and Wyoming. The state legislatures repealed term limits in Idaho and Utah.

87. State legislators in Utah did pass a term-limits bill that limited their tenure in office. However, this act was born of political expediency. Legislators passed their own bill to stave off a popular term-limits initiative that would have imposed harsher limits on service than were imposed in the bill passed by the legislature. Legislators in Utah have since repealed term limits.

88. *U.S. Term Limits v. Thornton*, 514 U.S. 779 (1995).

The second proposal, anticipating the possibility of a Supreme Court decision against the state adoption of congressional term limits, was for a constitutional amendment to impose term limits on Members of Congress. A term-limits amendment was included among Republican legislative priorities in the Contract with America. Through a “Citizen Legislature Act,” the Contract with America promised to “replace career politicians with citizen legislators.” Republican leaders vowed to hold a “first ever vote” on an amendment that would limit Members of the House to six terms and Senators to two terms. Polling found that of all the points in the Contract with America, the term-limits and balanced-budget amendments were the most popular with the public. Media coverage of term limits also exploded during the 104th Congress, with *The Washington Post* and *The New York Times* mentioning term limits in nearly 800 stories.⁸⁹

Yet, in many respects, the results of the 1994 election belied the arguments of term-limits supporters. Incumbents in Congress proved very vulnerable to public control, with 34 incumbents—all Democrats—defeated in their reelection bids. Among those voted out of office were Democrats who held top leadership positions, including House Speaker Tom Foley (D-WA), Ways and Means Committee Chairman Dan Rostenkowski (D-IL), and Judiciary Committee Chairman Jack Brooks (D-TX).

Republican support for term limits in Congress was far from unified. Calling term limits “an idea whose time has arrived,” freshmen Representative Jon D. Fox (PA) predicted that term limits would “bring to the Congress an infusion of new ideas, new enthusiasm, and a fresh perspective. By passing term limits, more people will have the chance to personally contribute their individual talent, their energies to the representative process.”⁹⁰

However, more senior Republicans were critical of term limits, including House Judiciary Committee Chairman Henry Hyde (IL) and Senate Judiciary Committee Chairman Orrin Hatch (UT). Sixteen-year veteran lawmaker Toby Roth (WI) stated that he would vote in favor of the amendment only because he had signed the Contract with America. Bemoaning the lack of experience that term limits would bring to Congress, he argued, “If I have to go in for open heart surgery, I don’t want a man or woman just out of medical school, I want someone who has been there for awhile and knows what they are doing.”⁹¹ Representative Hyde was harsher in his criticism: “I just can’t be an accessory to the dumbing down of democracy.” Similarly, eight-year veteran Christopher Shays (CT) described term limits as “the lazy man’s excuse for what’s wrong with Congress.”⁹²

Given this division in the Republican Party, a term-limits amendment had little hope of garnering the two-thirds vote in both chambers of Congress that is needed for a constitutional amendment. The House defeated four proposed term-limits amendments during March 1995.

The amendment that received the most votes was the least restrictive of those proposed and would have limited Members of both the House and Senate to 12 years in office. Despite receiving a majority of votes, it fell short of the 290 votes needed for a constitutional amendment, with 227 Members in favor and 204 opposed. While the voting was largely along party lines, 38 Democrats voted for the measure, and 40 Republicans voted against it. Republican support for term limits was influenced by seniority, with Republicans voting against the amendment averaging 13 years of service in the House and those voting for term limits averaging a scant 4.2 years of service. Additionally, Members of Congress from states where voters had passed term-limits initiatives were more likely than other Members to vote in favor of the amendment.⁹³

The other three amendments considered by the House were more stringent in their provisions. One, widely favored by term-limits groups, limited Members to six years in the House and 12 years in the Senate. A second limited Members to 12 years in the House and Senate but gave states the option of setting shorter terms. The final proposal, offered by Democrats, limited Members of the House and Senate to 12 years in office but made term limits retroactive. If passed, anyone who had already served 12 years in office would be ineligible for reelection.

89. Theriault, *The Power of the People: Congressional Competition, Public Attention, and Voter Retribution*, p. 113.

90. *Congressional Record*, 104th Cong., 1st Sess., March 29, 1995, p. H3915.

91. *Ibid.*

92. “Excerpts from Debate on House Term Limits,” *The New York Times*, March 30, 1995.

93. Theriault, *The Power of the People: Congressional Competition, Public Attention, and Voter Retribution*, p. 123.

Despite failing to reach the necessary two-thirds approval, Speaker of the House Newt Gingrich (R-GA) pledged that “term limits will be the first vote of the next Congress.” He urged supporters to “keep the pressure on. Keep your hopes up.” He also observed that Republicans were not expecting a victory on term limits in 1995, realizing that this vote was just the first step in a long struggle: “This is the beginning of a long process. I don’t know of any sophisticated person in September or October, including the columnists who are now writing columns attacking us, who believed we would have 290 votes this year.”⁹⁴ Gingrich rejected other means to enact term limits such as a statute that would limit congressional terms but could be repealed by future Congresses. While such a statute would require only a majority of votes, Gingrich doubted that even a majority of Republicans would be willing to support such a measure.

A term-limits amendment limiting Members of the House and Senate to 12 years was introduced again in the 105th Congress but was never brought to the floor for a vote. Introduced in the Senate by Fred Thompson (R-TN), the measure was successfully filibustered by Democrats, with supporters falling two votes short of cloture.

The House voted on several amendments in 1997, but term limits fared worse than it had in 1995. These votes were described as “a messy display of internecine warfare that promised to banish the issue from the chamber for the foreseeable future.”⁹⁵ In all, the House voted on 11 different versions of a constitutional amendment, with none coming close to achieving a two-thirds majority. The most widely supported bill, which would have limited members of both chambers to 12 years in office, garnered a majority of 217 votes but was 73 votes shy of passing. As in 1995, voting was along party lines, with only 37 Democrats breaking ranks to support term limits and 45 Republicans voting against the measure.

Term-Limits Organizations

Term-limits campaigns in the states owe much of their success to the work of grassroots organizations. Three main organizations were at the fore of the term-limits movement: Americans Back in Charge, Americans to Limit Congressional Terms, and U.S. Term Limits.

- Americans Back in Charge grew out of a state organization, Coloradans Back in Charge, founded by Colorado State Senator Terry Considine. The organization was successful in getting Colorado’s term-limits initiative on the ballot and approved by voters. After his initial success in Colorado, Considine changed Coloradans Back in Charge from a state organization to a national organization that disbursed tactical and financial aid to other term-limits organizations around the country.
- Americans to Limit Congressional Terms was formed in 1989 by Republican political consultants Eddie Mahe and LaDonna Lee. Based in Washington, D.C., Americans to Limit Congressional Terms did not establish local chapters in the states, but instead focused its attention on lobbying for congressional support for term limits and acting as a spokesman and coordinator for the various state organizations.⁹⁶
- U.S. Term Limits grew out of Citizens for Congressional Reform, founded in 1990 by Republican entrepreneurs Charles and David Koch of Kansas and under the auspices of Citizens for a Sound Economy. Citizens for Congressional Reform contributed \$1 million to term-limits campaigns in California, Washington, and Michigan. Approximately three-quarters of the money raised for the failed term-limits campaign in Washington State came from the organization. Citizens for Congressional Reform soon disbanded in 1991 amid complaints that it had violated campaign finance laws in Michigan.⁹⁷ However, the organization’s mailing lists and headquarters were bought by Howard Rich in 1992 and used as the

94. “Excerpts from House Speaker’s Address on the First 100 Days,” *The New York Times*, April 19, 1995.

95. Laurie Kellman, “House Again Rejects Term Limits; Measure Got More Votes in ’95,” *The Washington Times*, February 13, 1997, p. A1.

96. Stuart Rothenberg, “Transplanting Term Limits: Political Mobilization and Grass-Roots Politics,” in Benjamin and Malbin, eds., *Limiting Legislative Terms*.

basis to form U.S. Term Limits. At its peak, U.S. Term Limits claimed 80,000 members, and its president, Paul Jacobs, became the public face of the movement, frequently quoted by major newspapers and news organizations.

Both U.S. Term Limits and Americans Back in Charge had a strong presence in Washington, where they worked to lobby Members of Congress to support a term-limits amendment and heavily criticized Members that voted against the amendment that was introduced in the 104th Congress. Relations between Republican Members of Congress and these two groups were not always congenial. Much of this tension stemmed from disagreements over specifics of the proposed constitutional amendment.

U.S. Term Limits criticized the term-limits amendment proposed by Republican leaders as being too lenient and refused to support any amendment that did not limit Members to three terms in the House and two in the Senate. The group was harshly criticized by Republicans in the Senate, including Senator Bob Dole (KS), for its attack ads and direct mailings that targeted Republicans who favored what the group viewed as a watered-down term-limits amendment. Singled out for rebuke was one of the organization's hard-hitting ads that compared Representative Bill McCollum of Florida, the chief sponsor of a term-limits amendment that would have limited Members to 12 years in office, to Fidel Castro. McCollum fired back by blaming U.S. Term Limits for the defeat of term limits in Congress in 1995: "It is very ironic and tragic and unfortunate that U.S. Term Limits has taken the stance they have. They are the reason why we didn't make progress this year."⁹⁸

Americans Back in Charge focused most of its attacks on Democrats in the House and Senate who refused to support term limits, a decision that angered the Democratic Members of Congress who were members of the organization. However, they also drew the ire of Republican leaders in the Senate for their attacks on Senator Mitch McConnell (KY), an opponent of the proposed term-limits amendment, who was facing a tough reelection campaign in 1996.⁹⁹

After the defeat of term limits in Congress, American Back in Charge and U.S. Term Limits pursued very different strategies. Americans Back in Charge focused its attention on persuading Members of Congress to support term limits. The group eventually dissolved after achieving only limited success. In contrast, U.S. Term Limits abandoned its strategy of lobbying Members of Congress and instead focused its attention on the states. It hoped to convince enough state legislatures to call for a constitutional convention where a term-limits amendment could be adopted. This strategy had the advantage of bypassing Congress altogether.

Speaking of Congress, U.S. Term Limits President Paul Jacobs remarked, "I think they'll do everything in their power not to bring it to vote. The reality is that Congress has a clear conflict of interest when it comes to term limits."¹⁰⁰ In addition to working for a constitutional convention, U.S. Term Limits encouraged candidates for Congress to sign term-limits pledges that read: "I commit to be a citizen legislator, not a career politician, and therefore declare and pledge to the citizens of my state and district: I will not serve in the United States House of Representatives for more than 3 two-year terms." While many candidates signed such pledges, few have actually abided by them.

97. Amy E. Young, "The Money Behind the Movement: Term Limits Is Touted As a Grassroots Uprising. But Guess Who's Paying the Bills?" *Common Cause*, Summer 1993.

98. Kellman, "House Again Rejects Term Limits; Measure Got More Votes in '95."

99. Benjamin Sheffner, "Term Limits Lobbying on the Net," *Roll Call*, Vol. 11 (1996).

100. "Term Limits in America," *Hotline*, November 14, 1997.

The Effects of Term Limits

Term limits were predicted to have several beneficial effects on state legislatures.

- *First*, term limits would eliminate the careerism that plagues modern politics by precluding individuals from making a career out of service in the statehouse and by facilitating the election of citizen legislators—individuals who would have no interest in serving multiple terms in public office.
- *Second*, term limits were expected to reduce state spending by taking away the incentive for lawmakers to engage in wasteful pork-barrel spending in order to win reelection.
- *Third*, term limits would help to insulate representatives from those they represent and thereby restore a sense of deliberation and reasoned judgment to state legislatures.

In one respect, term limits have accomplished exactly what they were intended to do: They have reduced the number of years that state legislators may serve in office. Gone forever are the days where lawmakers could expect to make a career out of service in the legislature. Average tenure levels in state legislatures have plummeted as a result of term limits.

In the lower chamber of state legislatures, average tenure declined precipitously after the passage of term limits. In Michigan, the average state representative spent 8.4 years in office before term limits; the average stay in the House was cut nearly in half to 4.6 years following the implementation of term limits.¹⁰¹ In California, average tenure in the Assembly fell from roughly six years before term limits to 2.34 years after term limits.¹⁰² During the 1990s, the average stay in the Ohio legislature was 21.6 years—far longer than the eight years members are now allowed to serve.¹⁰³ In Missouri, legislators in the House during the 1990s had approximately six years of service. After term limits, the average lawmaker had served for two years. Even states with citizen legislatures, which usually have higher levels of turnover than their more professional counterparts, have seen their tenure levels drop under term limits.

Coupled with this reduction in average tenure is an increase in member turnover within state legislatures.¹⁰⁴ States with term limits had average levels of turnover in their lower houses roughly 10 percentage points higher than states without term limits from 1990–2002. In state Senates, the difference in turnover levels between term-limited and non-term-limited states is 5 percentage points.¹⁰⁵

This increase in turnover is especially pronounced in states with highly professionalized legislatures. In California, before term limits, average turnover in the Assembly was 15 percent before term limits; following the adoption of California's term-limits law, average turnover more than doubled to 37 percent. Similar results are found in Mich-

101. James M. Penning, "Michigan: The End is Near," in Rick Farmer, John David Rausch, Jr., and John C. Green, eds., *The Test of Time: Coping with Legislative Term Limits* (Lanham, Md.: Lexington, 2003), p. 37.

102. Richard A. Clucas, "California: The New Amateur Politics," in Farmer, Rausch, and Green, eds., *The Test of Time: Coping with Legislative Term Limits*, p. 23.

103. John C. Green, Jesse Marquette, and Rick Farmer, *Assessing Legislative Term Limits in Ohio* (Akron: Ray C. Bliss Institute of Applied Politics, n.d.).

104. Wayne L. Francis and Lawrence W. Kenny, "Projecting Consequences of Term Limits upon Expected Tenure, Institutional Turnover, and Membership Experience," *Journal of Politics*, Vol. 59 (February 1997), pp. 240–252; Daniel Franklin and Tor Westin, "Predicting the Institutional Effects of Term Limits," *Public Choice*, Vol. 96 (September 1998), pp. 381–393; Gary F. Moncrief, Richard G. Niemi, and Lynda W. Powell, "Time, Term Limits, and Turnover: Trends in Membership Stability in U.S. State Legislatures," *Legislative Studies Quarterly*, Vol. 24 (August 2004), pp. 357–381; W. Robert Reed and D. Eric Schansberg, "The House Under Term Limits: What Would It Look Like?" *Social Science Quarterly*, Vol. 76 (December 1995), pp. 699–716.

105. Moncrief *et al.*, "Time, Term Limits, and Turnover: Trends in Membership Stability in U.S. State Legislatures."

igan, where turnover rates jumped from 21 percent in 1996 to 58 percent in 1998, when the first cohort of legislators were forced out of office by term limits.¹⁰⁶

Even less professionalized states, which normally have high levels of turnover, have seen their turnover levels increase after the implementation of term limits. Turnover levels in Maine rose from 25 percent in 1990 to 48 percent in 2002. In Missouri, turnover increased from 20 percent to 60 percent during the same period.¹⁰⁷

Increases in turnover as a result of term limits began well before legislators were forced out of office. Instead, legislators anticipated the onset of term limits, and many lawmakers chose to leave office before they had served the maximum number of terms allowed. Using a multivariate model, researchers estimate that term limits increase turnover by 4 percentage points when they are first adopted and increase turnover another 14 percentage points when they are first implemented.¹⁰⁸

However, while term limits have achieved their immediate goal of reducing the tenure of state legislators, studies have shown that they are not having their intended beneficial effects: They are neither facilitating the election of citizen legislators nor decreasing state spending. In addition, term limits have had several unintended deleterious effects on the operation of state legislatures. Far from returning state legislatures to institutions of rational deliberation and reasoned decision-making as supporters had hoped, term limits have changed them into dysfunctional bodies focused on short-term gains and easily manipulated by interest groups, governors, and other outside groups. Contrary to expectations, term limits have in fact made it harder for state legislators to formulate policy by reducing the institutional power of party leaders and committee chairmen.

Term Limits and Political Careerism

Supporters of term limits had hoped that preventing reelection would help to end legislative careerism, but this expectation proved to be unfounded. Instead, term limits promote progressive ambition, with legislators running for higher office with greater frequency rather than returning to the private sector after their time in office has ended.

Surveys of term-limited legislators in various states have found that most plan to run for another office after their term expires. For example, in a survey of Arizona legislators, a majority reported that they intended to run for another office rather than leave politics altogether; 70 percent of those surveyed did eventually run for another office, and 60 percent won election.¹⁰⁹ Similarly, a study of state legislators in Colorado found that 53 percent of legislators forced out of office by term limits run for another office.¹¹⁰

This progressive ambition is especially pronounced if we look at the number of members in the lower house who run for state Senate. Term limits dramatically increase the number of House-to-Senate career moves. For example:

- In California, current Assembly members constituted 6 percent of all two-party challengers in state Senate races in 1990 when Proposition 130, California's term-limits law, was passed. However, in 1996, when the first cohort of legislators was forced from office, Assembly members made up 33 percent of all state Senate challengers, and by 2000, current Assembly members continued to account for over one-third of all state Senate challengers.
- Election data from Colorado show a similar pattern. In 1990, when Colorado voters adopted term limits, state General Assembly members made up 19 percent of all state Senate challengers. By the time the

106. *The Book of the States* (Lexington, Ky.: Council of State Governments, 2003).

107. Moncrief *et al.*, "Time, Term Limits, and Turnover: Trends in Membership Stability in U.S. State Legislatures."

108. *Ibid.*

109. David R. Berman, "Effects of Legislative Term Limits in Arizona," Joint Project on Term Limits, 2004. The Joint Project on Terms Limits is self-described as "a unique three-year cooperative venture" involving the National Conference of State Legislatures, the Council of State Governments, and the State Legislative Leaders' Foundation. See "Joint Project on Term Limits 2004," NCSL Web site, at <http://www.ncsl.org/jptl/casestudies/CaseContents.html>.

110. John A. Straayer and Jennie Drage Bowser, "Colorado's Legislative Term Limits," Joint Project on Term Limits, 2004.

first cohort of General Assembly members were termed out in 1998, current members accounted for 36 percent of all state Senate challengers; in 2000, they accounted for 48 percent.

- Even a less professionalized legislature such as Maine's experienced a similar increase in the number of House-to-Senate moves. When Maine's term limits law was passed in 1993, 18 percent of all challengers for seats in the Senate were current House members. By 2000, this number had risen to 28 percent.¹¹¹

Further, term limits do not seem to have increased the number of political novices elected to the lower house of state legislatures. A study of the Ohio legislature found that it contained few political newcomers, as many new members had prior experience as county or municipal officials.¹¹² The same is true in California, where the percentage of mayors, city council members, and county supervisors running for seats in the Assembly increased following the passage of term limits. The number of new members entering the Assembly who had previously held elected office either at the local or state level was 30.8 percent in 1992 but rose to 71 percent by 2000.

This increase in careerism following term limits is explained by considering how term limits alter the opportunity structure facing state legislators. Legislative careers are determined largely by the way the hierarchy of offices or the opportunity structure facing politicians encourages or constrains a politician's ambition.¹¹³

In his study of legislative careers, political scientist Joseph Schlesinger identifies three types of political ambition: discrete, static, and progressive. Individuals with discrete ambition serve in office for a term and then, instead of running for reelection or higher office, return to private life. These are the citizen legislators lauded by supporters of term limits. Legislators with static ambition are content to establish a career in one office instead of running for higher office. In contrast, politicians with progressive ambition seek to advance within the hierarchy of political offices. Term limits drastically alter the opportunities available to legislators by precluding static ambition and unintentionally promoting progressive ambition.

Term limits increase the expected utility associated with running for higher office in two ways.

First, by forcing incumbent state Senators from office, term limits increase the number of open-seat Senate races and consequently increase a current Assembly member's probability of winning a state Senate seat.¹¹⁴

Second, term limits decrease the cost of running for higher office. Before term limits, Assembly members running for the state Senate faced the risk of losing their bid not only for a state Senate seat, but for their Assembly seat as well. Since term limits prohibit a member of the Assembly from being reelected indefinitely, the opportunity cost of running for higher office is reduced. Even legislators entering the Assembly who intend to stay in office for only a few years may decide to run for higher office in order to receive a return on their investment of time and effort spent in developing their campaign organizations and political skills.¹¹⁵

Those who hoped that term limits would diversify state legislators by increasing the number of women and minority legislators have also been disappointed. So far, term limits have not led to more diverse legislatures. Using survey data from 1995, 1997, and 2002 for legislators in all 50 states, political scientists have found few differences in the demographics of representatives elected before and after the adoption of term limits.¹¹⁶ Term-lim-

111. Data compiled from *Annual Register of Maine*, *State of Maine General Election Tabulation*, *State of Colorado Abstract of Votes Cast*, and *California Journal*.

112. Rick Farmer and Thomas H. Little, "Legislative Power in the Buckeye State: The Revenge of Term Limits," Joint Project on Term Limits, 2004.

113. Joseph A. Schlesinger, *Ambition and Politics: Political Careers in the United States* (Chicago: Rand McNally, 1966); Wayne L. Francis, "House to Senate Career Movement in the U.S. States: The Significance of Selectivity," *Legislative Studies Quarterly*, Vol. 18 (August 1993), pp. 309–320; David W. Rohde, "Risk-Bearing and Progressive Ambition: The Case of Members of the United States House of Representatives," *American Journal of Political Science*, Vol. 23 (February 1979), pp. 1–26; Gordon Black, "A Theory of Political Ambition: Career Choices and the Role of Structural Incentives," *American Political Science Review*, Vol. 66 (March 1972), pp. 144–159.

114. Francis, "House to Senate Career Movement in the U.S. States: The Significance of Selectivity."

115. Elizabeth Garrett, "Term Limitations and the Myth of the Citizen-Legislator," *Cornell Law Review*, Vol. 81 (1996), pp. 623–697.

ited legislators tend to be drawn from the same professions and occupations as their predecessors. Nor have researchers found any significant differences between termed legislators and untermmed legislators in other key demographic characteristics such as age, religion, education level, and race. A detailed study of the California Assembly and the Michigan House of Representatives also failed to find significant differences between these two groups of legislators.¹¹⁷

There is also little evidence that term limits have helped to facilitate the election of women to state legislatures. Despite an increase in the number of open-seat races after term limits, women do not seem to be capitalizing on these opportunities. Political scientists Susan Carroll and Krista Jenkins found that the number of women in House seats in states with term limits actually decreased after the 1998 and 2000 elections.¹¹⁸ In 1998, 47 female incumbents were forced out of office in the lower house due to term limits, but only 43 won election to take their places. Similarly, in 2000, 70 female legislators left office, but only 65 women were elected to fill these vacancies. Women fared a bit better in state Senate races. In 1998, three women left office, but 10 were elected to Senate seats for a net gain of seven female legislators. The 2000 election, however, saw no change in the proportion of women in state Senate seats: 19 were forced out of office, while only 19 new female representatives were elected.

In part, the failure of term limits to increase the number of women in state legislatures is due to female candidates neglecting to take advantage of the open-seat races created by term limits. Across states with term limits, women were candidates in open-seat Democratic primaries only 42.2 percent of the time in 1998 and 46.6 percent of the time in 2000. Republican women fared just as poorly, running in just 48.1 percent of open-seat primaries in 1998 and 41.7 percent in 2000.¹¹⁹

The inability of women to take advantage of the opportunities created by term limits can be traced in part to their failure to capture the nomination in districts where their party had a reasonable chance of winning. Other studies have found that in states with term limits, women are less likely than their male counterparts in open-seat races to receive the nomination of the outgoing incumbent's party. Similarly, women are more likely to receive the nomination from their party if the party has little chance of winning the seat.¹²⁰

A similar story can be told about minority representation after term limits. In California, term limits have not led to a net gain of seats for minority legislators, since as many minorities won election to the California legislature as were termed-out in any given election.¹²¹ Other states with term limits have also failed to see an increase in the number of minority legislators elected after term limits.¹²²

116. Carey *et al.*, *Term Limits in the State Legislatures*; John M. Carey, Richard G. Niemi, Lynda W. Powell, and Gary F. Moncrief, "Term Limits in the State Legislatures: Results from a New Survey of the 50 States," *Legislative Studies Quarterly*, Vol. 31 (February 2006), pp. 105–134.

117. Jean-Phillippe Faletta, Charles D. Elder, Marjorie Sarbaugh-Thompson, Merry Herring, Eric W. Rader, Shannon K. Orr, and Stanley M. Caress, "The Effects of Term Limits on the Electoral Environment and Composition of the California Assembly and Michigan House of Representatives," *American Review of Politics*, Vol. 22 (2001), pp. 445–469.

118. Susan J. Carroll and Krista Jenkins, "Unrealized Opportunity? Term Limits and the Representation of Women in State Legislatures," *Women and Politics*, Vol. 23 (September 2001), pp. 1–30; Susan J. Carroll and Krista Jenkins, "Do Term Limits Help Women Get Elected?" *Social Science Quarterly*, Vol. 82 (March 2001), pp. 197–201.

119. Carroll and Jenkins, "Unrealized Opportunity? Term Limits and the Representation of Women in State Legislatures."

120. Robert A. Bernstein and Anita Chadha, "The Effects of Term Limits on Representation: Why So Few Women?" in Farmer, Rausch, and Green, eds., *The Test of Time: Coping with Legislative Term Limits*.

121. Bruce E. Cain and Thad Kousser, *Adapting to Term Limits: Recent Experiences and New Directions* (San Francisco: Public Policy Institute of California, 2004). However, Cain and Kousser find that term limits do not affect minority groups equally. Asians and Chicanos have benefited under term limits at the expense of African-Americans.

122. David R. Berman, *The Effects of Legislative Term Limits in Arizona* (Tempe: Morrison Institute of Public Policy, 2004); James M. Penning, "Michigan: The End is Near," in Farmer, Rausch, and Green, eds., *The Test of Time: Coping with Legislative Term Limits*; John A. Straayer, "Colorado: Lots of Commotion, Limited Consequences," in Farmer, Rausch, and Green, eds., *The Test of Time: Coping with Legislative Term Limits*.

Term Limits and Spending

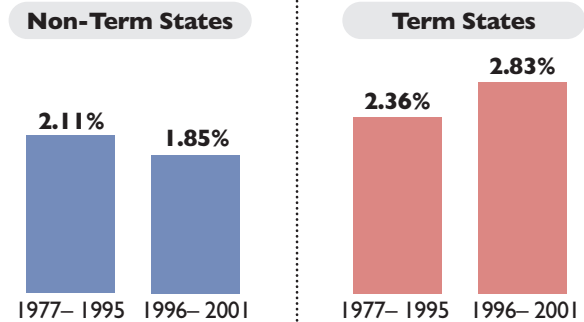
Most disappointingly for term-limits supporters, there is little evidence that term limits have lowered state government spending. To assess the effects of term limits on state spending, this study analyzes fiscal data from the states from 1977 to 2001.¹²³ This analysis looks at general spending, which includes spending on education, highways, welfare, and interest on general debt. Both expenditures per capita and expenditures as a percentage of income are used as measures of the dependent variable. Data were obtained from *Statistical Abstracts of the United States*, *State Government Tax Collections*, and the *Book of the States*.

At first glance, term limits appear to have had a considerable impact on state spending. As Chart 1 shows, in states with term limits, the average growth rate of expenditures jumped from 1.8 percent to 2.8 percent after term limits were implemented. In contrast, the average growth rate of expenditures in states without term limits remained relatively stable during the same period. However, a multivariate analysis is needed before we conclude that term limits is the cause of this increased spending. (For a discussion of the methodology used in this analysis, see the Appendix.)

As Table 1 makes clear, term limits have not had the effect on spending that their supporters expected. Instead of reducing spending, states with term limits have higher levels of expenditures than other states, whether spending is measured as expenditures per capita or as expenditures as a percentage of income. Expenditures are, on average, 1.9 percent higher in states with term limits than in states without term limits. Spending as a percentage of income is 1.7 percent greater in states with term limits than in states without term limits. These results are both statistically significant at the 99 percent confidence level. Other variables that

123. Alaska and Hawaii are omitted from this analysis because their fiscal structures are unlike those found in other states. Nebraska is excluded due to its unicameral legislature since the analysis includes variables that control for party control.

Average Per-Capita Growth Rate of Expenditures



Note: California and Maine were the first states to implement term limits in 1996. The remaining states implemented term limits shortly thereafter.

Source: Author's calculations.

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Effects of Term Limits on State Expenditures, 1977–2001

	Expenditures Per Capita	Expenditures as a Percentage of Income
Term limits	59.8 (20.9)***	0.004 (0.001)***
Divided government	42.6 (13.4)***	0.001 (0.0007)
Governor (I=Democrat)	32.8 (12.7)***	0.0009 (0.0007)
Grants	0.83 (0.115)***	0.00003 (0.000006)***
Income	0.0000001 (0.0000001)***	
Population Density	0.0008 (0.0004)**	0.00000004 (0.00000002)**
Unemployment rate	0.276 -0.392	0.00004 (0.00002)***
Observations	1,175	1,175
Number of states	47	47
Number of years	25	25
R-squared	0.94	0.92

Note: All estimates include fixed effects for states and years (not reported). Entries are regression coefficients from panel data regression models. Figures in parentheses are panel corrected standard errors: ***p<0.01, **p<0.05, *p<0.1

Sources: Author's calculations.

Table 1 • SR 48 heritage.org

lead to higher levels of spending include unified government and having a Democratic governor.

To check the robustness of these results, the above model was estimated again, but this time with a different set of independent variables. These new variables include the presence of gubernatorial term limits, gross state product, the percentage of the population over 65 years of age, the number of seats in the legislature, and whether or not a Democratic majority controls both houses of the legislature.

As seen in Table 2, the original results are confirmed in this alternative specification of the model. Term limits are still positively associated with higher levels of spending. In this specification of the mode, term limits increase expenditures per capita by \$36, or 1.3 percent. Expenditures as a percentage of income are 3.5 percent greater in states with term limits than in other states. Both of these results reach standard levels of statistical significance.

To test whether the objects of state spending change after term limits, this study examines four categories of spending: education, health, highways and transportation, and welfare. The results are presented in Table 3.

Term limits do not appear to affect all spending categories equally. Education spending is unaffected. In contrast, the other three categories of expenditures exhibit substantial increases following the implementation of term limits. States with term limits spend 9.2 percent more on highways and transportation and 13.7 percent more on welfare than is spent by states without term limits. Both of these results are statistically significant at the 90 percent confidence level. By far the biggest increase is found in health spending. Health expenditures are 21 percent higher in term-limited states than in other states. This result is statistically significant at the 99 percent confidence level. Further research is needed to determine why these categories of spending are most affected by term limits.

States with term limits differ from each other in several important respects. Foremost among them is the fact that the provisions of state term-limit laws vary, both with respect to the number of terms legislators may serve and with respect to whether or not they include a lifetime ban on future service in the legislature.

States can be classified as having either strict or lenient term-limit laws. Those with the most restrictive laws limit members to six years (three terms) in the House and eight years (two terms) in the Senate. These states include Arkansas, California, Michigan, and Oregon. The remaining states with term limits have provisions that are only slightly less restrictive. Seven states—Arizona, Colorado, Florida, Maine, Missouri, Nebraska, and South Dakota—limit their state Senators and state Representatives to eight years of service in each chamber. At the other end of the continuum, Nevada and Wyoming limit their state legislators to 12 years of service in each house.

In five states—Arkansas, California, Michigan, Missouri, and Nevada—legislators are prohibited from serving again in the state legislature once they have served the maximum number of terms allowed in both chambers. Okla-

Robustness Check

	Expenditures Per Capita	Expenditures as a Percentage of Income
Term limits	36.8 (19.0)**	0.004 (0.0008)***
Gross state product	0.03 (0.004)***	-0.0000008 (0.0000002)***
Percent over 65	1.79 (.83)**	-0.000002 (0.00003)
Democratic legislature	16.9 (17.5)	-0.0008 (0.0006)
Number of seats	3.93 (1.18)***	0.0001 (0.00004)***
Gubernatorial term limit (I=Lame Duck)	-9.76 (14.1)	-0.0006 (0.0006)
Population density	0.001 (0.0002)***	0.00000005 (0.00000001)***
Unemployment rate	0.784 (0.431)*	0.00002 (0.00002)
Observations	1,175	1,175
Number of states	47	47
Number of years	25	25
R-squared	0.93	0.91

Note: All estimates include fixed effects for states and years (not reported). Entries are regression coefficients from panel data regression models. Figures in parentheses are panel corrected standard errors: ***p<0.01, **p<0.05, *p<0.1
Sources: Author's calculations.

Table 2 • SR 48  heritage.org

homa’s law is even more restrictive, permitting legislators to serve a total of no more than 12 years. In the remaining states, there is no lifetime ban on service. In these states, limits on service apply only to consecutive terms. A legislator previously termed out of office may return to the legislature after sitting out a term. For example, a state Senator in Colorado termed out of office in 1998 is free to run for the state Senate again in 2002.

To test whether these differences in the provisions of term-limit laws have an impact on fiscal policy, the above analysis was rerun coding for the severity of a state’s term-limit law. A dummy variable was coded 1 if a state limited members of the House to eight years in office and imposed a lifetime ban on future legislative service.

The results are presented in Table 4. They show that states with strict term-limit laws have higher levels of spending than states with less restrictive laws. Expenditures per capita in these states are \$174, or 6.2 percent, greater relative to the mean than in other states. The coefficient for this variable is statistically significant at the 99 percent confidence level. A similar result is found if expenditures as a share of income is the dependent variable. Spending levels are 4.3 percent greater in states with strict term-limits laws than in states with less restrictive laws or no term limits at all.

Expenditure Categories

	Education	Transportation	Welfare	Health
Term limits	-116 (382)	117 (55.5)**	677 (356)*	246 (98.6)***
Divided government	298 (106)***	64.1 (22.1)***	293 (95.8)***	47.9 (29.1)*
Governor (I=Democrat)	-41.9 (74.5)	-35.1 (18.8)*	-78 (78.6)	14.9 (29.7)
Grants	-1.05 (0.463)**	-0.204 (0.088)**	0.836 (0.436)**	-0.212 (0.13)*
Income	0.000002 (0.000001)**	0.0000004 (0.0000001)***	0.0000003 (0.0000007)***	0.00000006 (0.0000002)
Population density	0.003 (0.002)*	0.0008 (0.0005)*	-0.008 (0.002)***	0.0009 (0.0005)*
Unemployment rate	2.49 (2.84)	1.19 (.60)**	9.76 (2.73)***	1.35 (0.71)**
Observations	1,128	1,128	1,128	1,128
No. of states	47	47	47	47
No. of years	24	24	24	24
R-squared	0.93	0.93	0.9	0.9

Note: All estimates include fixed effects for states and years (not reported). Entries are regression coefficients from panel data regression models. Figures in parentheses are panel corrected standard errors: ***p<0.01, **p<0.05, *p<0.1

Sources: Author’s calculations.

Table 3 • SR 48  heritage.org

Term Limits and Deliberation

The prediction that term limits would encourage greater deliberation and better policy seems belied by observations of how legislatures under term limits actually function. Legislatures under term limits have been characterized by disorganization and disarray as inexperienced lawmakers try to navigate the policymaking process. In many respects, term limits have made formulating policy more difficult.

First, term limits have shortened the time horizons of state legislators, making lawmakers impatient to pass legislation before they are forced out of office.

Second, term limits have weakened two key policymaking institutions within the legislature: party leaders and committees.

Third, term limits have decreased the level of civility within state legislatures and the ability of legislators to trust each other.

Term limits have shortened the time horizons of state legislatures, bringing with them a greater sense of urgency. Term-limited legislators come to office acutely aware that their time in office is short and that they must learn the legislative process as quickly as possible to start using it to their own advantage.¹²⁴ “You used to come up here [to the state capitol] and learn the process. Now it’s like a relay race. You have to come up running,” said

a Missouri lawmaker.¹²⁵ A Maine legislator concurred: “I don’t have much time. This is like you’re taking an exam, and that’s the pressure every day. It never goes away.”¹²⁶

Sensing the end-game nature of term limits, lawmakers repeatedly expressed the need to get things done as soon as possible.¹²⁷ Introduction of bills can no longer be put off until a future session. Choice committee assignments must be obtained as soon as possible. Waiting for a propitious time to run for a leadership position is no longer a viable option.

Whether a lawmaker wants to pass legislation favorable to her district, position herself for a run for higher office, or gain influence and power within the chamber, she must take these actions now while she still has time in office. One Missouri Senator, reflecting on giving up her post as a committee chairman at the end of the session, said, “I find myself being more assertive—‘This has to be passed. Now!’—and I don’t know if that’s good or bad.”¹²⁸ A Colorado state

Senator echoed these sentiments: “Many legislators now come to the job with an agenda and a stopwatch, in a hurry to get things done because they know they have to move on.” “People have to do their things today because they don’t have tomorrow,” said another Colorado Senator.¹²⁹

Strict Term Limits

	Expenditures Per Capita	Expenditures as a Percentage of Income
Term Limits	174.4 (28.3)***	0.005 (0.002)**
Divided Government	43.9 (13.4)***	0.0008 (0.0006)
Governor (I=Democrat)	37.1 (13.8)***	0.0009 (0.0007)
Income	0.0000009 (0.0000001)***	
Population Density	0.001 (0.0003)***	0.00000004 (0.00000002)*
Unemployment rate	0.358 (0.403)	0.00004 (0.00002)***
Observations	1,175	1,175
Number of states	48	48
Number of years	25	25
R-squared	0.94	0.86

Note: All estimates include fixed effects for states and years (not reported). Entries are regression coefficients from panel data regression models. Figures in parentheses are panel corrected standard errors: ***p<0.01, **p<0.05, *p<0.1

Sources: Author’s calculations.

Table 4 • SR 48  heritage.org

124. Jim Ash, “Freshmen Making Their Voices Heard: New Legislators Keep Feeney on the Go,” *Palm Beach Post*, October 26, 2001, p. 10; Peter Blake, “Even Raw Rookies Want to Be Leaders,” *Rocky Mountain News*, December 1, 1999, p. 57; Michelle Boorstein, “Term Limits Shake Up the Status Quo in Five State Capitols,” *Los Angeles Times*, August 9, 1998, p. 18; Gary Fineout and Lloyd Denkelberger, “Rookies Try to Stand Out: A Wave of Freshmen Legislators Are Navigating the Corridors of Power,” *Sarasota Herald-Tribune*, April 2, 2001, p. B1; Kevin Freking, “House OKs Bill to Help Legislative Greenhorns,” *Arkansas Democrat-Gazette*, March 22, 1997, p. 12; Karen Hansen, “Term Limits for Better or Worse,” *State Legislatures*, July 1, 1997; Noel E. Oman, “Legislators Prime Rookie Members for Duties in House: Unopposed Candidates Learn Traditions,” *Arkansas Democrat-Gazette*, August 23, 1998, p. B1; Steven K. Paulson, “Legislators Chafing as Term Limits Take Toll,” Associated Press, April 30, 2000; Bill Rufty, “With Term Limits, Legislators Have to Be Ready to Move Quickly,” *The Ledger*, March 12, 2001, p. B1.

125. Virginia Young and Terry Ganey, “Term Limits Take Toll on Legislators: Restrictions Are Ousting 43% of Lawmakers,” *St. Louis Post-Dispatch*, May 13, 2002, p. 1.

126. “Legislators Begin to Feel Impact of Term Limits,” *Bangor Daily News*, April 24, 1995.

127. See, e.g., Laura A. Bischoff and William Hershey, “Legislators Considering Ohio Term-Limit Issue: Some Leaders Favor Extending Office Time,” *Dayton Daily News*, September 8, 2001, p. B1; Terry Ganey and Bill Bell, “Turnover Will Play Big Role in Session: Term Limits Mean 87 Members Are Leaving,” *St. Louis Post-Dispatch*, January 6, 2002, p. 1; Len Iwanski, “Term Limits Mean ‘New Kids’ in Legislature Have to Grow Up Fast,” Associated Press, April 21, 1999; Robyn Meredith, “Michigan Term Limits Bring Reversal of Roles and Power,” *The New York Times*, June 13, 1999, p. 39; Dan Morain, “Term Limits Hinder Legislative Diligence,” *Los Angeles Times*, September 2, 2002, p. B1; Janet Pearson, “Term Limits: Unintended Consequences,” *Tulsa World*, January 6, 2002, p. 1.

128. Jo Mannies, “With Term Limits, Every Lawmaker Becomes ‘Survivor,’” *St. Louis Post-Dispatch*, June 9, 2001, p. C2.

129. Steven K. Paulson, “Senate Wants Voters to Extend Term Limits,” Associated Press, April 26, 2000.

Observers of state legislatures have noticed that these changes in behavior have manifested themselves in the types of policies that term-limited legislators pass. Rather than introducing an increased focus on deliberation as some term-limits supporters had hoped,¹³⁰ term limits have encouraged short-term thinking. “Nobody worries about tomorrow, only today,” remarked a representative in Colorado, and a member of the California Assembly said that term limits “limit long-term thinking. The tendency is to vote more for political expediency or because of the pressure to support the caucus position than on something that is in the long-term best interests of the state.”¹³¹

Under term limits, lawmakers appear more interested in passing policies that have immediate benefits, even if those benefits may be overshadowed by long-term costs in the future. Legislators are less interested in considering the future effects of proposed policy, according to a former chairman of the Arizona Senate Appropriations Committee, because “by the time the consequences come to bear, they will have moved on.”¹³² Similarly, according to a representative in Maine, “If you say to somebody, ‘This may seem like a good idea, but in six years this may come back to haunt us,’ they don’t care. They just look at you like you’re crazy.”¹³³ According to one observer of the Ohio legislature, term limits have reduced the ability and incentive of legislators to tackle big policy issues. Instead, legislators “pass the pieces that make headlines and don’t solve the total problem.”¹³⁴

This pattern was particularly pronounced in a recent session of the Colorado legislature, which experienced an increase in the number of resolutions and ceremonial bills passed. As one Colorado Representative lamented, “It’s out of hand. Every resolution means something to somebody, but do we need to spend our time honoring beekeepers? We’re giving them out like tissues.” Said another: “It’s become a tidal wave. It’s resolution pork.” The number of resolutions passed in Colorado increased from nine in 1997 to 212 in 2001. Examples include “Greyhound Adoption Day,” “Celebrate Children Day,” and “Armenian Genocide Day of Remembrance.”¹³⁵

It is not surprising that term limits would lead members to focus more on passing symbolic rather than substantive measures. First, members are not in office long enough to grasp all the subtleties of a complex issue and gain the knowledge necessary to pass innovative policy. Further, the fact that members will not be around in the legislature to claim credit for policies whose benefits may not be felt for several years gives lawmakers little incentive to pursue such policies. This is especially true for legislators who are planning to run for higher office and need to build a record on which to base their future run.

“Too many legislators feel hard-pressed to make an immediate impact without full knowledge of the implications of their decisions,” said one lawmaker.¹³⁶ The former governor of Maine, Angus King, expressed similar sentiments in his description of the legislature under term limits: “The other thing [term limits] create inevitably is a kind of rush to do things before you leave. There is sometimes a sense that, ‘I’m gone after this year so I’m going to get this done and leave it to someone else to deal with the consequences.’”¹³⁷ A California representative explained the situation as follows:

Before, if your goal was to craft good health-care legislation, you would invest the time to build a coalition and bring people to the table. Now, it’s like the doctor has told you that you have only one year to live. There is no incentive for the long-term push. Instead, you just go out and introduce a bill.¹³⁸

More evidence of this short-sightedness is clearly on display during the final weeks of the legislative session. In states with term limits, the end of each legislative session has been characterized by an even greater rush of last-

130. See Will, *Restoration: Congress, Term Limits, and the Recovery of Deliberative Democracy*.

131. Lynn Bartles, “Legislature Hampered by Term Limits, Too Many Bills,” *Rocky Mountain News*, April 30, 2000, p. 4; Peter Nicholas, “The California Budget: A Budget Process Built to Fail,” *Los Angeles Times*, July 29, 2003, p. 1.

132. Paul Davenport, “Term Limits: Impact Anticipated Apart from Numbers,” Associated Press, April 10, 2000.

133. “Legislators Begin to Feel Impact of Term Limits.”

134. Lee Leonard, “Term Limits at Statehouse Make It Tough to Take on the Big Issues,” *Columbus Dispatch*, October 6, 2003.

135. Trent Seibert, “Resolution Pork Growing Fatter: Declarations Eating Up More of Legislators’ Time,” *The Denver Post*, May 10, 2002, p. 18.

136. Pearson, “Term Limits: Unintended Consequences.”

137. Gary J. Remal, “King: Lengthen Term Limits,” *Portland Press Herald*, February 15, 1999, p. B4.

138. Kevin O’Leary, “Time’s Up,” *The American Prospect*, Vol. 12 (December 17, 2001).

minute policy proposals and demands for district spending. At the end of the 1999–2000 legislative session in Florida, lame-duck lawmakers spent their final days in office focused on establishing their legacies. Many of them hoped to do this largely through the distribution of pork-barrel projects to their districts. Some of these “legacy projects” ended up being quite expensive. For example, Florida House Speaker John Thrasher’s proposal for a medical school at Florida State University cost taxpayers \$30 million.¹³⁹ “The effect of all these members leaving due to term limits was to put a lot of people in positions where they had nothing to lose and to put a lot of lobbyists in a position to call back their chits,” a Florida lobbyist explained.¹⁴⁰

Legislators’ increased interest in last-minute district-level spending has also been noted in Arkansas and Colorado. In the final session of the Arkansas legislature before term limits were implemented, the Joint Budget Committee submitted a plan that changed the way funds for district projects are distributed. The plan gave the governor control of 40 percent of the funds earmarked for capital improvements and left the other 60 percent in the hands of the legislature to distribute as members see fit. In prior years, the governor had sole authority over capital improvements, although the legislature often submitted recommendations for projects. In the view of many observers, this change in the budget process was driven by term limits as members attempted to get funds for their districts before they were forced out of office.¹⁴¹

Similarly, political scientist Thad Kousser notes that legislators in Colorado were more inclined to spend money on projects as term limits approached: “Colorado’s capital construction budget averaged \$259 million and never exceeded \$303 million in the four budgets enacted between 1994 and 1997. The fiscal 1998–1999 budget, passed on the eve of term limits, spent \$608 million on these projects.”¹⁴²

Along with shortening the time horizons of state lawmakers, term limits have substantially decreased the power of party leaders over rank-and-file legislators. Party leaders derive their authority from the resources and powers granted to them through formal rules as well as from their seniority and expertise.¹⁴³ Long-serving members who are elected to leadership positions will be better placed than younger members to assume the responsibilities that come with these positions. Senior legislators are more likely to grasp the rules of the legislature, understand the norms governing leadership behavior, are more attuned to the delicate relationship between leaders and rank-and-file members, have been exposed to a wider variety of leadership styles through having served under other speakers, and have a better sense of what sort of leadership strategies are likely to work. Other members will be more willing to defer to a leader’s authority because of this experience. Members respect leaders’ knowledge and experience and are thus more willing to defer to them and delegate power to them.

Under term limits, however, legislators are bringing less experience to leadership positions and serving in these positions for shorter periods. In 2000, speakers in states with term limits had, on average, six years of experience in the House before assuming their posts; in states without term limits, speakers had an average of 24 years of prior legislative service.¹⁴⁴ In every term-limited state, the average number of years that legislators have served before assuming leadership positions has dropped. In Maine, for example, before the implementation of term limits, the average House leader had 14 years of experience, while Senate leaders averaged 9.2 years of service. By the 2000–2001 legislative session, four years after the first cohort of legislators were forced out of office by term limits, House leaders had, on average, only four years of prior experience. In the Senate, legislative leaders elected after term limits actually

139. David Royes, “For Scores of Lawmakers, Term Limits Mean Last Session,” Associated Press, March 4, 2000; Jim Saunders, “Expect Session of Renegades: Term Limits Are Likely to Embolden Lame Ducks,” *Florida Times-Union*, February 27, 2000, p. 1.

140. Noah Bierman and Mary Ellen Klas, “Some Blame Term Limits for Extreme Bill,” *Palm Beach Post*, May 7 2000, p. 14.

141. Rachel O’Neal, “Plan to Cut His Spending Power by 60 Percent Miffs Huckabee,” *Arkansas Democrat-Gazette*, April 1, 1997, p. 1; Rachel O’Neal, “Senators Reject Split-up over Budgets,” *Arkansas Democrat-Gazette*, April 3, 1997, p. 12.

142. Thad Kousser, *Term Limits and the Dismantling of State Legislative Professionalism* (Cambridge: Cambridge University Press, 2005), p. 45.

143. Malcolm E. Jewell and Marcia Lynn Whicker, *Legislative Leadership in the American States* (Ann Arbor: University of Michigan Press, 1994).

144. Jennifer Drage Bowser, Rich Jones, Karl T. Kurtz, Nancy Rhyme, and Brain Weberg, “The Impact of Term Limits on Legislative Leadership,” in Farmer, Rausch, and Green, eds., *The Test of Time: Coping with Legislative Term Limits*.

had more experience— 13.3 years—but almost all of this increase was due to the fact that most Senate leaders had previously served as members of the House.

The situation in Missouri is similar. Throughout the 1990s, legislative leaders had an average of 15.3 years of experience in the House and 13.5 years of experience in the Senate. By 2003, two years after Missouri implemented term limits, House leaders had an average of only 3.4 years of experience. Only two of the 11 leadership positions in the Missouri Assembly were held by members with over four years of experience.¹⁴⁵

Not surprisingly, the amount of time legislative leaders are serving in these positions has also decreased as a result of term limits. Leadership tenure is an important indication of a leader's influence within the legislature.¹⁴⁶ Long-serving leaders have more time and greater opportunities to develop and maintain a base of power than do leaders who serve only one term. In legislatures where it is commonplace for them to serve multiple terms, leaders can reward and sanction other members more effectively; under term limits, leadership tenure has decreased so dramatically that leaders are lame ducks almost as soon as they accept their positions.

One study finds that speakers in term-limited states generally hold their positions for only 2.63 years—just a little more than one term in office. Before term limits, speakers in these same states served for an average of 5.3 years.¹⁴⁷ In some states, this drop in tenure is even more dramatic. Before term limits, leaders in California served as speaker for an average of 9.5 years. After term limits, average tenure fell to only two years. A similar statistic is found in Colorado, with average tenure levels for leaders dropping by four years (from six years to two years) after the implementation of term limits. In contrast, speakers in states without term limits have not experienced a decline in average tenure; in fact, leadership tenure increased in many states during the 1990s.¹⁴⁸

Since most leaders in term-limited states are spending less time in their positions, there has been a subsequent increase in the level of turnover in leadership posts. From 1990 to 1997, 87 percent of all Senate presidents, House speakers, and majority and minority leadership positions changed hands.¹⁴⁹ While some of this turnover was due to changes in party control and resignations, a substantial amount of it can be attributed to term limits. An examination of leadership turnover in term-limited states during the 2000–2001 legislative session alone is enough to demonstrate the constant rotation and instability that plague these top positions. During the 2000–2001 session:

- The South Dakota legislature lost its president pro tem, Senate majority leader, Speaker of the House, House majority leader, and House minority leader to term limits;
- Colorado, Montana, and Maine all saw their top three Senate leaders as well as their House speakers forced from office by term limits;
- Arkansas also lost its top three House leaders along with three Senate leaders;
- The Senate president, House speaker, House majority leader, and House minority leader were forced out of office by term limits in Oregon;
- Florida lost its Senate president and House speaker;
- Arizona lost its Speaker of the House, House majority leader, and House minority leader; and
- Ohio and Michigan were forced to appoint new speakers and new House majority leaders.

The fact that leaders are serving in these positions for less time has had important repercussions for their ability to do their jobs. Term limits have fundamentally altered the relationship between party leaders—especially the speaker—and rank-and-file members by creating the unique situation of lame-duck party leaders within the legislature. Because of term limits, it is unlikely that lawmakers will serve in leadership positions for more than one term.

145. Lilliard E. Richardson, David Valentine, and Shannon Stokes, "Missouri Case Study: Assessing the Impact of Term Limits," paper presented at Life with Term Limits Conference, Akron, Ohio, 2004.

146. Jewell and Whicker, *Legislative Leadership in the American States*.

147. Bowser *et al.*, "The Impact of Term Limits on Legislative Leadership."

148. Kousser, *Term Limits and the Dismantling of State Legislative Professionalism*.

149. Nancy Rhyme, "Turnover at the Top," *State Legislatures*, September 2000.

By the time a member has acquired the experience and seniority needed to fill a leadership position, she will most likely be in her final term in office.

Leaders whose final date in office is already known can hardly be effective leaders. To begin with, they are neither able to enforce sanctions against recalcitrant party members nor able to dispense rewards to loyal members; consequently, they cannot enforce party discipline.¹⁵⁰ A member who goes against the party's leader has little to fear, since the leader will most likely not be in power the following term. She needs only to wait out the current leaders. Because of term limits, leaders are often lame ducks as soon as they assume their posts. Not only does this make it harder for leaders to keep rank-and-file members under control; it also makes it harder for these members to hold their leaders accountable for their actions as leaders. Leaders are usually not in office in the next term to be reelected or deposed from their positions of power.

Another factor that has weakened party leaders is the contentious battles for leadership positions that take place in party caucuses. Term limits have created a more volatile and uncertain political environment in which members find themselves constantly jockeying for leadership roles.¹⁵¹ This increase in competition for top leadership spots results from a combination of causes, all of which can be traced to term limits. First, by limiting the amount of time leaders may serve and, as a result, increasing the number of vacancies in these positions, term limits increase the supply of available leadership positions. At the same time, however, term limits also increase the demand for these positions by shortening the time horizons of legislators, making them more impatient, and by increasing the pool of potential candidates for leadership spots.

While the paths that legislators take to leadership positions vary from state to state, most include prior service in an assistant leadership role or as a committee chairman. Prior to term limits, in some states, seniority was also a consideration when determining who was elected speaker. Only members who had served several terms in the legislature could reasonably expect to hold such a position. However, by rendering seniority inoperable as a means of selecting leaders, term limits increase the number of legislators who have a reasonable chance of being selected for these positions.

In a term-limited legislature, a substantial proportion of members can be expected to serve the maximum number of years allowed in office. In this case, seniority is no longer a useful way to sort out potential leaders from other legislators. With seniority no longer a requirement for leadership positions, more legislators are competing for these few spots. This has resulted in more infighting and friction within party caucuses. As a former Michigan House speaker explained:

There is much more jockeying for leadership and much less collegiality. Several freshmen already see themselves as speaker of the House and are working the lobbying community for financial support and influence. This has an impact on the leader's ability to hold his caucus together and work on consensus building.¹⁵²

An Ohio lobbyist agreed:

The proponents of term limits had hoped they would have citizen legislators who would not be preoccupied with elections and politics, but rather be focused on doing the people's work. Instead we have campaigns starting immediately after the previous election for positions within the caucuses.¹⁵³

150. Carey *et al.*, *Term Limits in the State Legislatures*; Michael J. Malbin and Gerald Benjamin, "Legislatures After Term Limits," in Benjamin and Malbin, eds., *Limiting Legislative Terms*.

151. See, e.g., Blake, "Even Raw Rookies Want to Be Leaders"; Becky Bohrer, "State Dems Weigh In on Session, Term Limits," Associated Press, May 8, 2003; Paul Carrier, "Term-limits Law Brings Newcomers to Top, Ready or Not," *Portland Press Herald*, December 6, 2000, p. 1; Hansen, "Term Limits for Better or Worse"; Julie Hauserman, "Term Limits Spark Spat Between Lawmakers," *St. Petersburg Times*, February 11, 1999, p. B4; Lee Leonard, "Term Limits Drive Statehouse Change," *Columbus Dispatch*, November 23, 1998, p. 7; George Skelton, "Term Limits Have Legislators Doing the Speaker Shuffle," *Los Angeles Times*, October 21, 1999, p. 3.

152. Hansen, "Term Limits for Better or Worse."

The shortened time horizons of members are further exacerbating this problem. Since members realize that their time in the legislature is limited, they are running for leadership positions earlier and earlier. Said one House member in Maine: “You have people running for leadership in their second term whether they are ready to do so or not.”¹⁵⁴ A party leader in Ohio echoed this sentiment: “Freshmen must literally make their move for the speakership by the end of their first term.”¹⁵⁵

In an attempt to alleviate the constant turnover in leadership positions and its accompanying problems, many term-limited states, including Arkansas, California, Florida, and Oklahoma, have adopted a speaker-designate system. Under this system, a speaker-designate is elected at the same time that the speaker is elected and is slated to take over once the current speaker steps down or, more likely, is forced out of the legislature by term limits. Such an arrangement gives the speaker-designate the chance to serve as an apprentice, learning how the legislature works before taking over as speaker. It also helps the legislature to run more smoothly despite the frequent rotations in leadership and helps to reduce fighting within the party caucus over these positions. Of course, such a system is predicated on the assumption that legislators tapped for a future leadership role will continue to be reelected.

States have also tried to ease tensions among ambitious legislators by creating more leadership positions. The Arkansas legislature, for example, created four new deputy speaker positions. Members are selected for these positions by regional caucuses, with the four posts corresponding to the four congressional districts within the state. The Ohio legislature has also created more leadership spots in an attempt to bring peace to the caucus.

While these new positions and speaker-rotation systems may help to groom lawmakers for leadership spots, they also reduce the authority of the current speaker. Expanding the number of leadership positions has fragmented power, making it harder for leaders to act as one coherent unit. Power has also tended to shift toward the speaker-designate as members try to curry favor with the incoming speaker.¹⁵⁶ Lame-duck speakers are made even more irrelevant to the day-to-day business of the legislature by the diffuse and fragmented nature of leadership authority.

Numerous studies have found that party leaders have lost power after the passage of term limits.¹⁵⁷ In the most comprehensive of these studies, political scientists John M. Carey, Richard G. Niemi, and Lynda W. Powell conducted a survey of roughly 3,000 state legislators nationwide in 1995 and 2002. They found that legislators in term-limited states rated the influence of majority party leaders significantly lower than did legislators in non-term-limited states.¹⁵⁸

Other political scientists found similar results from interviews conducted in 1999 with 338 legislators holding the positions of speaker, speaker pro tempore, or floor leader. Of those who responded, 41.5 percent of leaders in term-limited states felt that their influence had declined over the past five years; only 14.7 percent of leaders in non-term-limited states experienced a similar loss of influence.¹⁵⁹

153. Mike Wagner and William Hershey, “Many Fear Term Limits Produce Timid Legislature,” *Dayton Daily News*, January 18, 2000, p. 1.

154. Carrier, “Term-limits Law Brings Newcomers to Top, Ready or Not.”

155. Francis Z. Clines, “Term Limits Bring Wholesale Change into Legislatures,” *The New York Times*, February 14, 2000, p.1.

156. David Lieb, “New House Speaker Reaches Out to All, Relishes Role in Term Limits,” Associated Press, January 16, 1999; David Lieb, “Broadway Chosen Speaker-designate for 2001–2002 Term,” Associated Press, March 3, 1999.

157. John M. Carey, Richard G. Niemi, and Lynda W. Powell, “The Effects of Term Limits on State Legislatures,” *Legislative Studies Quarterly*, Vol. 23 (May 1998), pp. 271–300; Carey *et al.*, *Term Limits in the State Legislatures*; Carey *et al.*, “Term Limits in the State Legislatures: Results from a New Survey of the 50 States”; Matthew C. Moen, Kenneth T. Palmer, and Richard J. Powell, *Changing Members: The Maine Legislature in the Era of Term Limits* (Lanham, Md.: Lexington, 2005); George Peery and Thomas H. Little, “Views from the Bridge: Legislative Leaders’ Perceptions of Institutional Power in the Stormy Wake of Term Limits,” in Farmer, Rausch, and Green, eds., *The Test of Time: Coping with Legislative Term Limits*; Joel A. Thompson and Gary Moncrief, “Lobbying Under Limits: Interest Group Perspectives on the Effects of Term Limits in State Legislatures,” in Farmer, Rausch, and Green, eds., *The Test of Time: Coping with Legislative Term Limits*.

158. Carey *et al.*, “The Effects of Term Limits on State Legislatures”; Carey *et al.*, “Term Limits in the State Legislatures: Results from a New Survey of the 50 States.”

159. Peery and Little, “Views from the Bridge: Legislative Leaders’ Perceptions of Institutional Power in the Stormy Wake of Term Limits.”

Committee chairmen have also seen their power and authority decline significantly following term limits. It is hard to overstate the importance of legislative committees to the policymaking process. Committees allow legislators to manage their workload effectively and increase their policymaking expertise. Committees are also the main tool that state legislators use to screen and shape legislation. As was true of legislative leaders, committee chairmen under term limits are bringing less experience to their positions and serving in these positions for fewer terms. Before the passage of term limits, committee chairmen in the California Assembly served an average of 7.26 years, while those in the Senate served 8.43 years. Following term limits, Assembly chairmen held these positions for just under two years, while Senate chairmen served an average of 2.54 years.¹⁶⁰

Moreover, California is hardly an anomaly. In Maine, committee chairmen served an average of four terms in the House before term limits. Now they serve less than two terms.¹⁶¹ In Colorado, during the 1997–1998 legislative session, 90 percent of all committee chairmen in the House were new to their positions. In the Senate, 70 percent were assuming their chairmanships for the first time.¹⁶²

Single-state studies of term-limited legislatures have found that this lack of experience hinders committee performance.¹⁶³ Two national surveys of state legislators found that legislators in states with term limits are more likely than those in other states to report that their committees have less authority.¹⁶⁴ Based on interviews with lobbyists, researchers reported that 86 percent of respondents in California, 56 percent of respondents in Colorado, and 71 percent of respondents in Maine said that committee members were less knowledgeable about the issues discussed in committee following term limits.¹⁶⁵ A study of Michigan lawmakers found that before term limits, committee chairmen were frequently named as most responsible for bringing legislation to the floor but that after term limits, a majority of legislators named the governor's office and the House majority leader as most instrumental in bringing bills before the legislature for consideration.¹⁶⁶

One of the most important tasks of committees is screening legislation.¹⁶⁷ It is at this stage that committees make crucial decisions concerning which bills will survive and face a vote on the floor and which will never see the light of day. Term limits have substantially reduced the ability of committees to perform this job.

A comparison of legislative sessions before and after term limits in California, Colorado, and Oregon shows that committees are killing fewer bills under term limits. In California, major Assembly committees rejected 46.6 percent of all bills submitted to them during the 1995–1996 session. After term limits, however, the percentage of bills killed by these committees dropped to 19 percent. The findings for Oregon and Colorado are similar. In the House, the number of bills that died in committee dropped by 17.9 percentage points in Oregon and 9.4 percentage points in Colorado from the 1997 to the 2001 sessions. These results indicate that House committees have experienced a decrease in their ability to screen legislation effectively.

160. Richard A. Clucas, "California: The New Amateur Politics," p. 24.

161. Matthew C. Moen and Kenneth T. Palmer, "Maine: The Cutting Edge of Term Limits," in Farmer, Rausch, and Green, eds., *The Test of Time: Coping with Legislative Term Limits*, p. 54.

162. Bob Ewegen, "A Legislature Led by Rookies," *Denver Post*, January 3 1999, p. 4; Straayer, "Colorado: Lots of Commotion, Limited Consequences," p. 67.

163. Richard A. Brake, "Who's in Charge? The Impact of Term Limits on State Legislative Budgeting in Maine and Michigan," paper presented at annual meeting of the Northeast Political Science Association, Providence, R.I., 2002; Moen and Palmer, "Maine: The Cutting Edge of Term Limits"; Moen *et al.*, *Changing Members: The Maine Legislature in the Era of Term Limits*; Christina Wong, "In California, the Governor Has Become the Legislative Gatekeeper," *Public Affairs Report*, Vol. 44 (2003).

164. Carey *et al.*, "The Effects of Term Limits on State Legislatures"; Carey *et al.*, "Term Limits in the State Legislatures: Results from a New Survey of the 50 States."

165. Thompson and Moncrief, "Lobbying Under Limits: Interest Group Perspectives on the Effects of Term Limits in State Legislatures."

166. Marjorie Sarbaugh-Thompson, Lyke Thompson, Charles D. Elder, John Strate, and Richard C. Elling, *The Political and Institutional Effects of Term Limits* (New York: Palgrave Macmillan, 2004).

167. Alan Rosenthal. *The Decline of Representative Democracy: Process, Participation, and Power in State Legislatures* (Washington, D.C.: CQ Press, 1998); Alan Rosenthal. *Legislative Life: People, Process, and Performance in the States* (New York: Harper and Row, 1981).

A second measure that can be used to examine the policymaking strength of legislative committees is the frequency with which they amend legislation. Here, too, there are substantial differences before and after term limits. In all three legislatures, the percentage of bills amended in committee dropped after the implementation of term limits. Specifically, the percentage of bills amended dropped by 3.1 percentage points in Colorado, 6.8 percentage points in Oregon, and 7.3 percentage points in California.

In California, term-limited legislators frequently bypass the committee system altogether. Observers of the California legislature have noted an increase in the use of a procedure known as “Gut and Amend.”¹⁶⁸ “Gut and Amend” refers to a situation in which a legislator takes a bill that is dormant in committee and strips (or guts) it of its original language; amends it by substituting entirely new language (although keeping the original title); and then brings it to the floor for a vote. This is often done without the knowledge of the bill’s original sponsor.

Using this procedure, several non-controversial bills have been transformed into highly contentious proposals that, despite dealing with controversial issues, can slip unnoticed through the legislature. For example, a bill that dealt with the state courts died in committee but was resurrected as a bill granting free tuition to state universities for undocumented immigrants. Similarly, a bill on domestic violence was transformed into a bill to allow undocumented immigrants to obtain driver’s licenses.¹⁶⁹

Even though “Gut and Amend” was not unheard of in previous legislative sessions, legislators have used it more frequently under term limits, especially in the final two weeks of the session. In 2002, at least 50 bills were gutted and amended during the end of the session. In 2004, 105 bills suffered the same fate. More often than not, these bills are passed by the legislature, slipping by unnoticed in the end-of-session flurry of legislation. In 2004, over two-thirds of these “Gut and Amend” bills were passed by the legislature.¹⁷⁰

Finally, term limits have eroded the level of comity within state legislatures. Comity refers to the system of norms, including those of reciprocity, courtesy, respect, and cooperation, that legislators are expected to observe.¹⁷¹ Numerous representatives have reported that the statehouse has become a more hostile and less collegial place after the implementation of term limits.¹⁷² Since the enactment of term limits, the Arkansas legislature has been described as rife “with contention and confusion.”¹⁷³ A Colorado representative described a recent session as “the most negative, nastiest, and poorest-managed session I’ve ever been in.”¹⁷⁴ According to one observer, the California Assembly is characterized by a “unique combination of instability, bad behavior, political frenzy, and legislative paralysis.”¹⁷⁵ Legislators under term limits are also described as less willing to compromise.¹⁷⁶

168. Cain and Kousser, *Adapting to Term Limits: Recent Experiences and New Directions*; Gregg Lucas and Lynda Gledhill, “Legislators Using Gut and Amend to Pass Pet Bills,” *San Francisco Chronicle*, September 1, 2002, p. 21; Morain, “Term Limits Hinder Legislative Diligence”; Harrison Sheppard, “State Lawmakers Rush Through Bills to Meet Deadline,” *Los Angeles Daily News*, June 3, 2005; Jennifer Warren, “Legislators Take Stock of Rookie Year,” *Los Angeles Times*, January 19, 2000, p. 1.

169. Jeff Denham, “Cut ‘Gut and Amend,’” *Sacramento News and Review*, November 6, 2003; Kimberly Kindy, Hanh Kim Quach, and Jim Hinch, “Trojan Horse Alive and Well in Sacramento,” *Orange County Register*, August 29, 2004.

170. Lucas and Gledhill, “Legislators Using Gut and Amend to Pass Pet Bills”; Kindy *et al.*, “Trojan Horse Alive and Well in Sacramento.”

171. Eric M. Uslander, “Is the Senate More Civil Than the House?” in Burdett A. Loomis, ed., *Esteemed Colleagues: Civility and Deliberation in the U.S. Senate* (Washington, D.C.: Brookings Institution Press, 2000); Eric M. Uslander, *The Decline of Comity in Congress* (Ann Arbor: University of Michigan Press, 1993).

172. See, e.g., Dawson Bell, “Reducing Rancor in Michigan,” *State Legislatures*, December 1999; Bohrer, “State Dems Weigh In on Session, Term Limits”; Brake, “Who’s in Charge? The Impact of Term Limits on State Legislative Budgeting in Maine and Michigan”; Cain and Kousser, *Adapting to Term Limits: Recent Experiences and New Directions*; Angela Dire, “Colorado on Term Limits,” *State Legislatures*, August 1998; Brendan Farrington, “Term Limits Contribute to Session Breakdown,” Associated Press, May 10, 2003; Hansen, “Term Limits for Better or Worse”; Hauserman, “Term Limits Spark Spat Between Lawmakers”; Rich Jones, “The Next Generation of Legislatures,” *State Legislatures*, July/August 1999; Mark Martin, “Politics Intensify Budget Troubles: Redrawn Districts, Term Limits Decrease Compromise Incentives,” *San Francisco Chronicle*, July 6, 2003, p. 1; Nicholas, “The California Budget: A Budget Process Built to Fail”; Francis L. Partsch, “Term Limit Tenacity Pays Off in Nebraska,” *State Legislatures*, August 2002; Steven K. Paulson, “Custom Falls by Wayside as Legislature Adjusts to Term Limits,” Associated Press, January 2, 2000; Pearson, “Term Limits: Unintended Consequences.”

173. Seth Blomeley, “Term Limits Blamed for Legislature’s Woes,” *Arkansas Democrat-Gazette*, March 23, 2003, p. 1.

Part of this decrease in comity results from the shortened time horizons of term-limited legislators. State legislatures have become more competitive environments as lawmakers rush to pass legislation before they are forced out of office.¹⁷⁷ A former House speaker in Michigan described the change: “There is a sense of urgency that comes with term limits. Everyone is trying to rush through their goals. You have to step on toes. You don’t have time to worry about long-term relations.”¹⁷⁸ Another political observer concurred:

Term limits have placed significant pressure on legislators to want to do things now. In the past you had people with different agendas, but you had time to meld them and work all sides of an issue. Now there isn’t the time to meld the agendas, and you get greater divisiveness even among people in the same party.¹⁷⁹

Further, since lawmakers under term limits serve for only a few short terms, they have neither the time nor the incentive to establish close friendships with other members, especially those on the other side of the aisle.¹⁸⁰ However, without these close friendships and repeated interactions, there is little chance for trust to develop between legislators. According to a Michigan legislator:

Trustworthiness is like gold in the policy arena, and it’s questionable whether you could build that trust in a short stint. Now it’s very hard to spend precious hours building up a cache of friendships with other members. [Term limits] tend to balkanize an already atomized mentality where people are concerned only about their own districts.¹⁸¹

Term limits have dissolved the social glue that held state legislatures together and helped to facilitate deals among members. “The way that people who have philosophical differences get along and reach agreements is through relationships,” said one member of the California Senate. “Those relationships don’t exist as much [under term limits].”¹⁸²

The implications for policymaking from this decline in comity are dire. As political scientist Eric Uslander argues, comity is essential for encouraging the deliberation and considered policymaking that supporters hoped term limits would foster. Comity, he writes, “helps overcome the collective action problems inherent in policymaking. Legislators want to make deals with each other, but each has incentives to defect to a more profitable, more narrowly based coalition. Trust holds them together.”¹⁸³ Without this trust, consensus cannot be reached, deals cannot be brokered, and policy deadlock results.

174. Bartles, “Legislature Hampered by Term Limits, Too Many Bills.”

175. Peter Schrag, “The Populist Road to Hell,” *The American Prospect*, Vol. 24 (November 30, 2002), pp. 24–30.

176. Bartles, “Legislature Hampered by Term Limits, Too Many Bills”; Farrington, “Term Limits Contribute to Session Breakdown”; Andrew Welsh-Huggins, “Term Limits Helped Drive Budget Compromises,” Associated Press, June 29, 2001; Green *et al.*, *Assessing Legislative Term Limits in Ohio*.

177. Marie Price, “Term Limits Are Shaking Up Lawmakers’ Usual Practices,” *Tulsa World*, April 13, 2003, p. 28; Mannies, “With Term Limits, Every Lawmaker Becomes ‘Survivor.’”

178. Bell, “Reducing Rancor in Michigan.”

179. Jones, “The Next Generation of Legislatures.”

180. Malcolm Johnson, “Term Limits Have Senators Planning Future,” Associated Press, August 16, 1999; David A. Lieb, “Inexperienced House Did More Than Expected,” Associated Press, April 19, 1999; David A. Lieb, “Missouri Term Limits Pose Unprecedented Change, Experts Say,” Associated Press, November 2, 2001; Mark Martin, “Term Limits Have Contributed to Disarray in State Assembly,” *San Francisco Chronicle*, July 25, 2003, p. 1; Nicholas, “The California Budget: A Budget Process Built to Fail.”

181. “New, Veteran Lawmakers Criticize Term Limits,” Associated Press, June 5, 2000.

182. Martin, “Politics Intensify Budget Troubles: Redrawn Districts, Term Limits Decrease Compromise Incentives.”

183. Uslander, *The Decline of Comity in Congress*, p. 127.

The Future of Term Limits

Term Limits in the States

No state has adopted term limits since 2000, and it is highly unlikely that any state will do so in the near future. Term limits are present in almost all states that allow voter initiatives for constitutional reforms. To be adopted in other states, they would have to be enacted by state legislators rather than adopted by the voters directly through ballot initiatives, and it is doubtful that legislators would limit their own power in such a way, even in the face of pressure from voters.

Legislators have voluntarily imposed term limits on themselves in only one state: Legislators in Utah passed a bill that limited members to 12 years in the legislature. However, they voted for this bill not because they supported term limits, but rather out of political expediency—in order to preempt a ballot initiative that had strong voter support and would have placed stricter restrictions on the number of terms that members could serve. Moreover, the Utah legislature later repealed the term-limits law that it had passed before term limits took effect.

Legislators in 10 other states have introduced term-limits legislation, but none of these measures has come close to winning majority support. More recently, Pennsylvania Governor Ed Rendell urged state lawmakers to adopt term limits. Rendell's plan would limit lifetime service to eight years in both the House and Senate. Not surprisingly, lawmakers rejected the governor's proposal. Given the reluctance of state legislators to limit their own power, the term-limits movement in the states appears to be stalled.

This does not mean, however, that term limits have become a dead issue in the states. There have been frequent attempts to repeal term limits. Since 1999, a total of 66 bills have been introduced in various states to repeal existing term-limits laws. Only in two states—Idaho and Utah—have legislators been successful in repealing them. In addition, there have been several attempts to reform term limits.

The most popular of these proposals would either increase the number of terms that members may serve or lengthen the duration of each term. Since 1999, over 100 bills have been introduced to increase the number of terms that members may serve, but only four have been put before voters. Measures to increase the number of terms that lawmakers may serve were defeated easily in Arkansas and Montana. Voters in California also rejected a bill that would have lengthened a term in the Assembly from two years to four years and a term in the Senate from four years to six years. This would have increased the number of years that legislators could serve from six years to 12 years in the Assembly and from eight years to 12 years in the Senate. The measure was defeated by a margin of 58 percent to 42 percent.

More recently, California voters defeated a measure—Proposition 93—that would have reduced the time that legislators could serve in office from the current 14 years (six years in the Assembly and eight in the Senate) to 12 years. However, this new law would allow lawmakers to serve all 12 years in the Assembly, the Senate, or some combination of the two. The rationale behind this change was to allow members to gain more experience and expertise and perhaps prevent the weakening of crucial institutions such as committees and party leaders. However, Proposition 93 contained a loophole that allowed members to serve a total of 12 consecutive years in the chamber in which they were currently serving, despite any previous service. This would have allowed, for example, a state Senator who had already served the maximum six years in the Assembly to serve an additional 12 years in the Senate. If it had been passed, 41 incumbents could have taken advantage of this loophole.

In short, while the push for new term-limits measures in the states has stalled, efforts to remove term-limits laws where they exist have been largely unsuccessful.

Term Limits in Congress

While it is unlikely that any more states will adopt term limits for their state representatives, it is even more improbable that term limits will ever be imposed on Members of Congress. Following the Supreme Court's decision in *U.S. Term Limits v. Thornton*, which declared state efforts to impose term limits on congressional delegations unconstitutional, term limits for Members of Congress can become a reality only through constitutional amendment. Even during the peak of the term-limits movement, such amendments were unable to muster the two-thirds support needed in both chambers. Given the currently low salience of term limits as a political issue, it is unlikely that a campaign for a constitutional amendment could succeed. The last time a term-limits amendment was proposed was during the 107th Congress (2001–2002) when two such bills were introduced. Since then, no Member of Congress has introduced a term-limits amendment.

A constitutional amendment could also be adopted without action by Congress if two-thirds of the state legislatures called for a constitutional convention. Some supporters of term limits see this as a more promising avenue for obtaining an amendment. Calling a convention bypasses Congress altogether, thus getting around Members' unwillingness to limit their own power. However, other advocates see this as a risky strategy. If a constitutional convention were called, there would be no way to limit such a body to considering an amendment for term limits. Instead, the entire Constitution might be subject to wholesale change. While this could possibly result in the addition of term limits to the Constitution, there is no telling what other sorts of changes would emerge from such a convention.

Given this uncertainty and the radical nature of such a proposal, few supporters of term limits advocate a constitutional convention. However, U.S. Term Limits did spend time and money in the mid-1990s lobbying a handful of states to call for a convention. The group hoped to get 20 states to call for a constitutional convention before the 1998 election and 34 (two-thirds) to be on record asking for a constitutional convention by the 2000 election.¹⁸⁴ Needless to say, the group fell well short of this goal. No state legislature took them up on their proposal.

After a string of failures in Congress, term-limits organizations turned their energy to convincing candidates for Congress to take a term-limits pledge, vowing to step down after three or four terms. By the 2004 congressional election, a total of 40 Members of Congress had come face to face with their self-imposed term limits. Many had defeated long-serving incumbents in 1994 at the height of the term-limits movement and had pledged not to make a career out of service in Congress.

However, of these 40 Members, only 13 honored their pledge and voluntarily resigned from office. Six left the House and ran for the Senate, thus honoring the letter—but perhaps not the spirit—of their pledge. The other 21 ran for reelection and were all reelected despite, in some cases, significant opposition from term-limits groups enraged at these Members' decisions to renege on their promise.¹⁸⁵

Perhaps the most brazen of these pledge-breakers was Representative George R. Nethercutt, Jr. (R-WA). Nethercutt's victory in 1994 was perhaps one of the biggest of the election cycle as he defeated Speaker of the House Tom Foley (D), who had been elected to Congress in 1964. With his defeat, Foley became the first sitting Speaker ousted since 1860. Throughout his campaign, Foley had argued that if voters did not reelect him, the state of Washington would lose influence within Congress and, because of the loss of his seniority and institutional power, would no longer benefit from federal largesse.

In the end, voters took little heed of this argument. Foley was defeated by a scant 2,000 votes. Exit polls indicated that most people voted against him because they thought he had been in office for too many years.¹⁸⁶ Nethercutt, however, looked as if he would follow in Foley's footsteps of lifelong congressional service when he rejected his pledge to voters to serve only three terms and announced that he would run again in 2000. Nethercutt defended his decision by echoing Foley's 1994 campaign pitch that it was a bad idea to have the district "perpetually served by freshmen." When asked about his change of mind, he retorted that "only fools and dead people never change their minds."¹⁸⁷

184. Katharine Q. Seelye, "Term-limit Groups Appeal to States, Ignoring Congress," *The New York Times*, September 19, 1995.

185. Theriault, *The Power of the People: Congressional Competition, Public Attention, and Voter Retribution*.

186. Timothy Egan, "Foley, Defending Congress to the Last, Concedes Election Defeat by Newcomer," *The New York Times*, November 10, 1994.

U.S. Term Limits responded to Nethercutt's decision by threatening to spend millions of dollars to defeat him and running commercials that compared Nethercutt's broken pledge to such other broken political pledges as George H. W. Bush's "Read my lips—no new taxes" and Bill Clinton's "I did not have sexual relations with that woman."¹⁸⁸ However, U.S. Term Limits' efforts were for naught: Nethercutt easily won reelection in 2000 and again in 2002. He was finally ousted from Congress when he lost a bid for the Senate in 2004. Nethercutt's case is not uncommon, as other Members of Congress who also broke their term-limits pledges have easily won reelection. Voters seem more than willing to forgive their lawmakers for their broken promises.

While a term-limits amendment appears to have little hope of passing Congress, term limits on committee chairmen persist in both the House and Senate. Instituted in 1995, the rule limits committee chairmen to no more than six consecutive years as chairmen. The Speaker of the House was limited to no more than four consecutive terms. When Democrats regained control of Congress in 2007, there was speculation that they would repeal term limits on committee chairmen, but Democrats opted to keep term limits in place, at least for the time being.

Successes and Failures of Term Limits

In several respects, term limits have been overwhelmingly successful as a political reform. First, they accomplished exactly what they were intended to accomplish. The expressed purpose of term limits was to reduce the number of terms that state legislators may serve in office, and there is no doubt that they have done just that. Since the first group of legislators was forced out of office in 1996, term limits have ended the careers of close to 1,500 state legislators. In addition, average tenure levels have plunged dramatically, and turnover has increased since the adoption of term limits.

Further, term limits proved to be incredibly successful as a political movement. Term-limits initiatives passed in every state in which they were introduced, often by overwhelming majorities, and term limits remain popular with the public. More important, the term-limits movement was instrumental in bringing to light many of the ills that plague our system of government. Supporters of term limits helped to educate the public on the dangers of legislative careerism and incumbency. In doing so, they helped to energize the conservative movement at a critical time and certainly share the credit for the stunning election results of 1994, which gave Republicans majority control of Congress for the first time in 40 years.

Yet while term limits have been extremely successful at their stated goal—reducing the number of terms that legislators may serve—for most supporters, reducing tenure in the legislature was not an end in itself, but instead merely a means to accomplish a broader political goal. For most conservative supporters of term limits, this broader political goal was twofold.

First, term limits were expected to limit government spending. As noted, many supporters of term limits argued that lengthy political careers were the explanation behind increasing levels of government spending. They contended that by severing the electoral connection and thereby decreasing the incentives for legislators to engage in wasteful spending, term limits would reduce expenditure levels. Legislators who can no longer stand for reelection have little reason to use pork-barrel projects and particularistic spending to woo voters. Likewise, by precluding reelection, term limits liberate legislators from the grip of special-interest groups, which frequently trade campaign contributions for favorable policies. Freed from these parochial demands, legislators could formulate policies that are advantageous for society as a whole and not just their particular constituents.

Advocates further argued that term limits would restore fiscal sanity to state legislatures by changing their character. Term limits would encourage political amateurs to run for office, and once elected, these citizen legislators would have neither the desire nor the opportunity to make politics a career. As a result, service in the state legislature would become a civic duty that citizens—perhaps reluctantly—would undertake. No longer would service in the state legislature be seen as a viable lifelong profession.

187. Sam Howe Verhovek, "Some Backtracking on Term Limits," *The New York Times*, April 12, 1999.

188. *Ibid.*

By changing the character of the legislature, supporters claimed, term limits would lead to changes in public policy. Citizen legislators, who have yet to be inculcated into the culture of ruling that permeates state legislatures, would be more likely than professional politicians to favor a more limited government. They would be less willing to use the machinery of government to solve the problems facing society and consequently would not engage in excessive or frivolous legislation. Accordingly, states with term limits would have lower levels of spending than states without term limits.

A second, broader political goal that conservative supporters of term limits hoped they would achieve is restoring deliberation to state legislatures. These advocates blame political careerism for creating too close a connection between representatives and those whom they represent.¹⁸⁹ Legislators are too dependent on the people for their livelihood and thus are inclined to give in to every whim and desire of public opinion, no matter how ill considered or harmful to the common good. Term limits would restore a political distance between legislators and their constituents and, in doing so, create a new space for reasoned deliberation.

However, as this study has argued, term limits have failed to achieve both of these broader political goals. The citizen legislators who were expected to take state capitals by storm under term limits never materialized. More damning, term limits have not ended lengthy legislative careers; they have simply forced them to take a different form. Term limits have encouraged progressive ambition among incumbent legislators, increasing the frequency of House-to-Senate career moves and encouraging more local officials to run for seats in the state legislature.

Additionally, from an economic point of view, term limits have exacerbated the economic woes of state governments. Spending levels have not decreased after the implementation of term limits; instead, they have risen.

Finally, term limits have done little to encourage greater deliberation within state legislatures. Instead, they have helped to create dysfunctional state legislatures that are unable to pass serious legislation. They have done this by weakening two key legislative institutions—committees and party leaders—and by shortening the time horizons of lawmakers.

Formulating innovative policies that benefit the entire state requires strong leadership. Strong leaders are necessary to force rank-and-file members to subordinate their own policy aspirations to those of the good of the whole. They are also responsible for hammering out compromises with leaders across the aisle. Yet term limits have created a situation in which effective leadership can no longer develop, and it is harder for legislatures to solve the myriad problems facing the states.

Whether legislators are dealing with rising health care costs or disaster preparedness, designing and implementing successful policy requires time. Legislators need time to learn about the issues and to study the various approaches to these problems that have been adopted by other state governments. They need time to debate these issues and deliberate on the merits of various policies. They need time to iron out inevitable policy differences in order to reach an acceptable compromise. And they need time to oversee the implementation of those policies that do pass in order to evaluate whether or not they are meeting their goals.

Yet time is the last thing that term-limited legislators have. Thus, in addition to impairing state fiscal policy, term limits have decreased the ability of state legislatures to legislate effectively.

Why did term limits fail to achieve these broader objectives? In the case of state government spending, the arguments of term-limits supporters were based on a faulty premise. Many believed that there was a positive relationship between tenure in office and preferences for government spending. The more time a legislator serves in office, the higher the level of spending she prefers.

However, despite the claims made by supporters of term limits, the relationship between tenure in office and spending remains unclear.¹⁹⁰ At the aggregate level, there is little evidence that increases in the average tenure of Members of Congress have led to higher government spending measured as real spending.¹⁹¹ Similarly, at the indi-

189. See Will, *Restoration: Congress, Term Limits, and the Recovery of Deliberative Democracy*.

190. For a detailed summary of this literature, see Edward J. Lopez, "Term Limits: Causes and Consequences," *Public Choice*, Vol. 114 (January 2003), pp. 1–56.

vidual level, there is no clear connection between length of service and spending preferences. Empirical research on Congress finds little evidence that tenure in office is positively associated with congressional spending or that legislators not running for reelection spend less than those who are running for reelection.¹⁹²

While some researchers have found limited support for the “culture of spending” hypothesis, the increase in congressional spending attributed to tenure is small enough to lead them to conclude that term limits are likely to have a negligible impact on government spending.¹⁹³ Given the inconclusive relationship between tenure and spending, as well as the failure of term limits to facilitate the election of citizen legislators, it is therefore not surprising that term limits have failed to lower state spending.

What remains to be accounted for is why term limits have led to an increase in state government spending. The results presented here are to some extent counterintuitive and certainly the opposite of what supporters of term limits expected. It is commonplace in the political science literature to view representatives as single-minded pursuers of reelection, doling out pork-barrel projects to their districts in an attempt to woo voters and reward supporters. It is not unreasonable to assume that once this electoral connection is severed, Members of Congress and members of state legislatures no longer have this incentive to pursue targeted benefits for their constituents.

However, this assumption ignores the myriad ways by which term limits can shape both institutional structures and, as a result, the incentives of politicians. Part of the explanation for the increase in spending levels can be traced to changes in institutional structure that are wrought by term limits as well as changes in the incentives of state legislators who are elected following the adoption of term limits. Previous research on the relationship between institutional structure and fiscal policy may hold some clues.

Excessive state spending is frequently attributed to the existence of a common-pool problem. The degree to which individual legislators bear the costs of spending has important ramifications for the total level of government spending.¹⁹⁴ Tax revenues can be viewed as a common pool that legislators use to finance projects for their constituents. While each legislator fully internalizes the benefits from such spending as any projects financed with money from this pool benefit her district, she bears only a fraction of the total cost, which is spread out over the entire legislature. Because of this unequal distribution of costs and benefits, there exists the potential for overexploitation of the common pool of tax revenues. This danger increases as the size of the legislature increases and more and more legislators demand projects for their districts, the costs of which are borne by all districts.

However, while this common-pool problem is potentially great, it is not inevitable. The institutional structure of the legislature in general and the budget process in particular can go far toward alleviating the exploitation of the common pool of state revenue. Numerous studies have found that a centralized budget process is more effective than a decentralized system in lowering aggregate spending levels.¹⁹⁵

Concentrating authority over the common pool of resources in the hands of a few helps to ensure that the costs associated with government spending are fully borne. For example, political scientists have found that congressional spending began to increase when the number of committees with control of spending decisions increased. Before the

191. Arsene Aka, W. Robert Reed, D. Eric Schansberg, and Zhen Zhu, “Is There a ‘Culture of Spending’ in Congress?” *Economics and Politics*, November 1996, pp. 191–209.

192. R. Michael Alvarez and Jason Saving, “Congressional Committees and the Political Economy of Federal Outlays,” *Public Choice*, Vol. 92 (July 1997), pp. 55–73; Michael K. Moore and John R. Hibbing, “Length of Congressional Tenure and Federal Spending: Were the Voters of Washington State Correct?” *American Politics Quarterly*, Vol. 24 (March 1996), pp. 131–149.

193. W. Robert Reed, D. Eric Schansberg, James Wilbanks, and Zhen Zhu, “The Relationship Between Congressional Spending and Tenure with an Application of Term Limits,” *Public Choice*, Vol. 94 (January 1998), pp. 85–104.

194. John Charles Bradbury and W. Mark Crain, “Legislative Organization and Government Spending: Cross-Country Evidence,” *Journal of Public Economics*, Vol. 82 (December 2001), pp. 309–325; Thomas W. Gilligan and John G. Matsusaka, “Deviations from Constituent Interests: The Role of Legislative Structure and Political Parties in the States,” *Economic Inquiry*, Vol. 33 (July 1995), pp. 383–401; Nouriel Roubini and Jeffrey Sachs, “Political and Economic Determinants of Budget Deficits in the Industrial Democracies,” *European Economic Review*, Vol. 33 (May 1989), pp. 903–938; Barry R. Weingast, Kenneth A. Shepsle, and Christopher Johnson, “The Political Economy of Benefits and Costs: A Neoclassical Approach to Distributive Politics,” *Journal of Political Economy*, Vol. 89 (August 1981), pp. 642–664.

1880s, spending authority was placed largely in the hands of a single committee in the House and a single committee in the Senate. However, beginning in the 1880s, spending authority was transferred from the Appropriations Committee to various other committees, such as Agriculture and Rivers and Harbors. Government spending quickly rose after this balkanization of spending authority. One study estimates that spending increased at an annual rate of 1.8 percent from 1887 to 1897 and steadily thereafter as a result of this change.¹⁹⁶ This steady increase in legislative appropriations came to a halt in the 1920s, when the House and Senate voted to remove spending authority from the various committees and once again centralize it in a single committee.

A study of state budgeting practices from 1982 to 1990 reaches a similar conclusion. States with centralized spending authority have expenditure levels that are 6 percent lower, on average, than expenditure levels in states where spending power is spread among several committees.¹⁹⁷

Term limits have exacerbated this common-pool problem by decentralizing the budget process in state legislatures, and this, as we have seen, correlates with increased spending. Term limits further decentralize the budget process by weakening the committees in charge of budgeting and appropriations and increasing the number of legislators involved in the budget process. A strong argument can be made that the legislative committees hardest hit by term limits have been those responsible for the budget and appropriations. These are generally the most prestigious committees in state legislatures. Assigned the task of formulating a multimillion-dollar budget, members of these committees have the opportunity to shape policy directly by deciding which programs to fund.

Given their important responsibilities, the members of these committees are usually the most senior members of the legislature. Thus, the reduction in legislative tenure due to term limits poses a serious problem for these committees. For example:

- Of the six legislators on Colorado's Joint Budget Committee in 2000, all three members from the House and one from the Senate were serving on the committee for the first time.
- Ohio's Finance Committee included 11 freshmen members and went through three chairmen in a single year.¹⁹⁸
- In Maine, the Joint Appropriations Committee lost six of its 13 members to term limits the first year they were in place.¹⁹⁹

These committees have lost much of their expertise as more experienced members are forced out of office.

Not only have appropriations and budget committees seen their expertise diminish, but their authority has decreased as well. In many states, party leaders have been forced to open the appropriations process to more members. Once it becomes clear that the members of the appropriations committee are no longer policy experts, there is little rationale for investing so much power in one committee. After term limits, according to a former Colorado Speaker of the House, rank-and-file members began to rebel against giving members of the Joint Budget Committee exclusive control of such a crucial function as budgeting. "They're going to start saying: 'Why should I entrust this to six people when they don't understand the budget any better than I do?'" he explained. "I don't think the Joint Budget Committee can continue to exist the way it does today."²⁰⁰

195. David W. Brady and Mark A. Morgan, "Reforming the Structure of the House Appropriations Process: The Effects of the 1885 and 1919–1920 Reforms on Money Decisions," in Matthew D. McCubbins and Terry Sullivan, eds., *Congress: Structure and Policy* (Cambridge: Cambridge University Press, 1987); John F. Cogan, "The Dispersion of Spending Authority and Federal Budget Deficits," in Jon F. Cogan, Timothy J. Muris, and Allen Schick, eds., *The Budget Puzzle: Understanding Federal Spending* (Stanford: Stanford University Press, 1994); W. Mark Crain and Timothy J. Muris, "Legislative Organization of Fiscal Policy," *Journal of Law and Economics*, Vol. 38 (October 1995), pp. 311–333; Mark Hallerberg and Patrick Marier, "Executive Authority, the Personal Vote, and Budget Discipline in Latin American and Caribbean Countries," *American Journal of Political Science*, Vol. 48 (July 2004), pp. 571–587.

196. Cogan, "The Dispersion of Spending Authority and Federal Budget Deficits."

197. Crain and Muris, "Legislative Organization of Fiscal Policy."

198. Francis Z. Clines, "Term Limits Bring Wholesale Change into Legislatures," *The New York Times*, February 14, 2000, p.1.

199. Matthew C. Moen and Kenneth T. Palmer, "Term Limits, the Standing Committees, and Institutional Response," *Maine Policy Review*, Vol. 11 (January 2002), pp. 12–24.

Indeed, many states with term limits have made adjustments in their budget processes in order to increase participation by other members. For example, in the Ohio Senate, the majority leader allowed his entire 59-member caucus to sit on the Finance Committee and dissect the state's budget.²⁰¹ In Oklahoma, the House Speaker went even further in an attempt to make the budget process accessible to more members. He put all 101 House members from both parties on the general conference committee on appropriations. The Senate President did the same thing.²⁰²

Ostensibly, such a move helps members gain valuable experience and makes the appropriations process more democratic, but it also exacerbates the common-pool problem that is inherent in budgeting. With more members involved in the budget process, more demands are made on a state's limited revenue. As a study of budgeting processes in Michigan and Maine demonstrates, term limits have led to an increase in the number of floor amendments to budget bills proposed in both states. Amendments were rare when the budget process was controlled by the chairman of the appropriations committee and party leaders.²⁰³ These changes in the budget process, in combination with the shortened time horizons of legislators, are a recipe for higher spending.

Term Limits and the Administrative State

More fundamentally, term limits have had unintended effects because their supporters misunderstood the nature of the problem they were confronting. The long tenure of incumbents is not the cause of higher spending or lack of deliberation within the legislature, but rather a symptom of a larger problem: the expansion of the modern bureaucracy and the rise of the administrative state.

The idea of the administrative state has its roots in the Progressive Era. The move away from localized agrarianism toward greater industrialization and modernization brought with it a host of social ills including overcrowded urban slums, unsafe food and medicine, workers forced to work long hours for low wages in unhealthy and unsafe conditions, small-business owners forced under by large corporations, and women and children subject to the harshness of a wage-earner's life. Progressives blamed many of these social problems on the concentration of economic and political power in the hands of a few elites.

Their ire was directed at two institutions in particular: large corporations and political parties.²⁰⁴ Both of these institutions came to symbolize the dangerous concentration of power that Progressives believed was undermining the very foundations of American democracy. Corporations and trusts exercised undue sway over Members of Congress, making them more responsive to the interests of big business than to those of ordinary citizens. Likewise, political parties separated ordinary people from their government by controlling nominations, elections, and access to the halls of government.

Progressives turned to the state to break up this concentration of power and alleviate many of the social problems that, in their view, had resulted from this concentration. To this end, the beginning of the 20th century saw an explosion in the use of governmental power on a scale never before seen and certainly not anticipated by those who framed the Constitution. Beginning with the establishment of the Interstate Commerce Commission in 1887 and burgeoning during the Administration of Theodore Roosevelt, a burst of legislative activity between 1903 and 1920 established new independent commissions within the executive branch to oversee and regulate large portions of the growing economy.²⁰⁵

200.Dire, "Colorado on Term Limits."

201.Lee Leonard, "Committee Chairmanships Reflect Effects of Term Limits," *Columbus Dispatch*, January 12, 2001, p. 2B.

202.Price, "Term Limits Are Shaking Up Lawmakers' Usual Practices."

203.Brake, "Who's in Charge? The Impact of Term Limits on State Legislative Budgeting in Maine and Michigan."

204.As political scientist Jerome Mileur explains, "The twin cancers on the body politic were the party bosses with their machines and the robber barons with their trusts, who were united by a mutuality of interests: the machines for money and patronage, the trusts for sympathetic legislatures and courts." Jerome M. Mileur, "The Legacy of Reform: Progressive Government, Regressive Politics," in Sidney M. Milkis and Jerome M. Mileur, *Progressivism and the New Democracy* (Amherst: University of Massachusetts Press, 1999), p. 265.

State legislatures followed suit, passing an assortment of legislation designed to further the Progressive vision of social and economic justice that included minimum wage and maximum hour laws, workers' compensation measures, mothers' pensions, child labor laws, and housing and building codes.

This expansive use of administrative power required a new theory of government to justify and sustain it. The Progressives argued that the Constitution that the Founders had bequeathed to the nation was no longer sufficient to meet the challenges that the country faced. The economic and political conditions that confronted America at the beginning of the 20th century were nothing like those that faced the new nation as it emerged from its dependence on Great Britain. While the Founders' Constitution might have served the nation adequately in simpler times, it was no longer up to the task.

Chief among the Progressive critics of the Constitution was Woodrow Wilson. In *Constitutional Government in the United States* (1908), Wilson derided the Constitution for its inability to adjust to the changing needs of the country. The Framers of the Constitution had been influenced by outdated principles; namely, those of the famous physicist Sir Isaac Newton. "The government of the United States," in Wilson's view, "was constructed upon the Whig theory of political dynamics, which was a sort of unconscious copy of the Newtonian theory of the universe."²⁰⁶

Just as Newton believed that he could subject the operation of nature to a single principle—the law of gravity—the Framers believed that they had discovered a similar overriding principle in the doctrine of the separation of powers. To this end, they equipped the Constitution with a vast array of checks and balances to keep each branch and level of government within its proper sphere of operation. "Our statesmen of the earlier generations quoted no one so often as Montesquieu," wrote Wilson, "and they quoted him always as a scientific standard in the field of politics. Politics is turned into mechanics under his touch. The theory of gravitation is supreme."²⁰⁷

In Wilson's view, however, politics should follow the laws of biology rather than those of physics. Newton's ideas should be replaced by those of Charles Darwin, who recognized that nature and living organisms are not static but are instead continually adapting and evolving to their environment. The same truth that Darwin discovered about nature applies to government as well: "[G]overnment is not a machine, but a living thing," wrote Wilson. "It falls not under the theory of the universe but under the theory of organic life. It is accountable to Darwin, not Newton. It is modified by its environment, necessitated by its tasks, shaped to its functions by the sheer pressure of life." A theory of government based on the doctrine of the separation of powers is contrary and inimical to this organic view of government: "No living thing can have its organs offset against each other as checks, and live."²⁰⁸

If the Progressives were to develop an impartial, effective bureaucracy that they could use to achieve their ends, political parties would have to be weakened and transformed. Civil service reform, with its goal of removing party regulars from administrative positions and staffing them instead with experts, had only just begun. Even during Wilson's Administration, the bureaucracy was still in the hands of party bosses and staffed with their patronage appointees.²⁰⁹ For a strong administrative state to take root in the United States, party influence on the bureaucracy would therefore have to be removed.

"The overthrow of the two-party system," wrote Herbert Croly, "was declared to be indispensable to the success of progressive democracy, because, under American conditions, the vitality of the two-party system had been purchased and must continue to be purchased at the expense of administrative independence and efficiency." Political parties not only distort the will of the people, but also weaken the state to such an extent that it can no longer serve the people in an effective manner: "Party government has interfered with genuine popular government both by a

205. The Bureau of Corporations, the Department of Commerce and Labor, the Federal Trade Commission, the United States Forest Service, and the Food and Drug Administration, along with the Hepburn Act, the Sherman Antitrust Act, the Pure Food and Drug Act, the Meat Inspection Act, and the Child Labor Act, all originated during this era.

206. Woodrow Wilson, *Constitutional Government in the United States* (New York: Columbia, 1961), p. 55.

207. *Ibid.*, p. 56.

208. *Ibid.*

209. Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities* (Cambridge: Cambridge University Press, 1982), pp. 195–204.

mischievous, artificial and irresponsible method of representation, and by an enfeeblement of the administration in the interest of partisan subsistence.”²¹⁰

The new view of the administrative state that the Progressives championed and the destruction of political parties that such a view required helped to establish the conditions that have led to longer congressional careers. The Progressives forever changed Americans’ conception of the purpose and scope of government. As historian Alonzo Hamby notes, “A critical mass of Americans came out of the Progressive Era with a vastly expanded concept of what government was about and what it should try to do.”²¹¹ The New Deal further exacerbated this trend with its establishment of even more regulatory agencies and the introduction of massive new entitlements, while Franklin D. Roosevelt weakened political parties even further, subordinating the party to the President.²¹²

As the administrative state expanded, it fueled the professionalization of Congress. Serving in Congress was seen as more desirable as the role of government grew. Long careers in Congress gave Members the ability to direct the resources of the administrative state to their constituents, thus ensuring their reelection. The nature of representation changed as well as lawmakers performed more constituent service, acting as the link between citizens and the federal bureaucracy. As political scientist Charles Kesler explains, “Constituent service is gradually transforming the House of Representatives from the most popular branch of the legislature into the highest branch of the civil service.”²¹³

Term limits were offered as a way to try to break this cycle by taking away the incentive for Members of Congress to perform such casework. However, they do nothing to attack the real culprit: the administrative state.

210. Herbert Croly, *Progressive Democracy* (New Brunswick, N.J.: Transaction, 1998), p. 349.

211. Alonzo L. Hamby, “Progressivism: A Century of Change and Rebirth,” in Milkis and Mileur, *Progressivism and the New Democracy*, p. 46.

212. Sidney M. Milkis, *The President and the Parties: The Transformation of the American Party System Since the New Deal* (Oxford: Oxford University Press, 1993).

213. Charles Kesler, “Bad Housekeeping: The Case Against Congressional Term Limitations,” *Policy Review*, Vol. 53 (Summer 1990), pp. 20–25.

CONCLUSION

Many of the Founders advocated term limits and rotation in office in the belief that those in power would be more likely to abuse their authority the more accustomed they grew to exercising it. At least at the federal level, however, the Framers of the Constitution rejected the idea of term limits because they believed that term limits would be detrimental to the stability of republican government. Beginning in the late 19th century, congressional careerism began to emerge alongside an activist federal government.

The modern term-limits movement attempted to fight the professionalization of politics and the growth of government spending. It was very successful in achieving many of its objectives, including the passage of term-limits measures in many states. The average tenure levels in state legislatures have decreased as a result of these measures. However, because it did not confront the underlying cause of the growth of government—the modern administrative state—the term-limits movement was less successful in reducing spending and increasing the number of citizen legislators.

Term limits in fact promoted progressive ambition and careerism by providing incentives to officeholders to build a record more quickly for the sake of winning future office. They failed to lower spending and actually reduced deliberation by shortening the time horizons of legislators and reducing the level of collegiality in legislative bodies.

The failure of the term-limits movement, particularly at the state level, to achieve its most fundamental objectives can be attributed to the fact that the professionalization of politics and growth of spending are symptoms of a deeper sickness in American government. Those seeking to reform American government in a profound way must therefore redirect their focus to the real culprit.



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