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SENATE

{ REPORT
104-158

CONGRESSIONAL TERM LIMITS

OCTOBER 17 (legislative day, OCTOBER 10), 1995.—Ordered to be printed

Mr. HATCH, from the Committee on the Judiciary,
submitted the following

REPORT

together with

ADDITIONAL AND MINORITY VIEWS

[To accompany S.J. Res. 21]

The Committee on the Judiciary, to which was referred the joint resolution (S.J. Res. 21), proposing a constitutional amendment to limit congressional terms, having considered the same, reports favorably thereon, and recommends that the joint resolution, as amended in the Subcommittee on Constitution, Federalism, and Property Rights, do pass.

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I. PURPOSE

The purpose of Senate Joint Resolution 21 is to limit the number of terms a Member of Congress may serve. Senate Joint Resolution 21, if approved by two-thirds of the Members of both the Senate and the House of Representatives, and if ratified by three-fourths of the States, will limit Senators to two terms and Members of the House of Representatives to six terms.

II. LEGISLATIVE HISTORY

In 1789, Representative Thomas Tucker offered the first term limits proposal: a 1-year Senate term limited to 5 years in any 6-year period and a 2-year House term limited to 6 years in any 8-year period. Tucker's motion to refer the proposal to the Committee of the Whole was defeated August 18, 1789.

A subcommittee of the Senate Judiciary Committee held the first term limits hearings on September 27, 1945, regarding S.J. Res. 21, a resolution to limit service of the President, Vice-President, and Members of Congress to 6 years.

The first Senate vote on term limits occurred on March 12, 1947. Senator W. Lee O'Daniel of Texas introduced an amendment to limit congressional terms to the proposed constitutional amendment in H.J. Res. 27, which limited the President to two terms. The O'Daniel amendment failed by a vote of 82 to 1.

Term limits were revisited by the Senate Subcommittee on the Constitution at hearings on March 14 and 16, 1978. The subcommittee considered S.J. Res. 27, and S.J. Res. 28, which limited Senators to two terms and House Members to seven terms and six terms, respectively.

The next Senate vote on term limits occurred May 22, 1991. Senator Hank Brown of Colorado offered an amendment to S. 3, a campaign finance reform bill, to limit the use of public funds by Representatives or Senators who serve an aggregate of more than 12 years in the House or Senate. The Brown amendment was tabled by a vote of 68 to 30. The following Senators supported term limits by voting against the motion to table:

Bond, Brown, Burns, Coats, Cochran, Craig, D'Amato, Dole, Domenici, Garn, Gorton, Gramm, Grassley, Hatch, Kasten, Lott, Mack, McCain, McConnell, Murkowski, Nickles, Pressler, Seymour, Simpson, Smith, Stevens, Symms, Thurmond, Wallop, Warner.

The last Senate vote on congressional term limits occurred on May 26, 1993. Senator Lauch Faircloth of North Carolina and Senator Brown again offered an amendment to a campaign finance reform measure that would restrict the use of public funds for those serving more than 12 years. The amendment was tabled by a vote of 57 to 39. Senators voting against the motion to table were as follows:

Bennett, Bond, Brown, Burns, Campbell, Coats, Cochran, Coverdell, Craig, D'Amato, Danforth, DeConcini, Dole, Domenici, Durenberger, Exon, Faircloth, Gorton, Gramm, Grassley, Gregg, Hatch, Hatfield, Kassebaum, Kempthorne, Lott, Mack, McCain, McConnell, Murkowski, Nickles, Packwood, Pressler, Simpson, Smith, Specter, Stevens, Thurmond, Wallop.

The House of Representatives held hearings on the subject of term limits during the 103d Congress. The House Subcommittee on Civil and Constitutional Rights held hearings on November 18, 1993, and June 29, 1994, to discuss the history of term limits, the Framers' view of rotation in office, and the arguments for and against term limitations.

On January 19, 1995, Senator Fred Thompson of Tennessee introduced Senate Joint Resolution 21 proposing a constitutional amendment to limit congressional terms to two terms for Senators and three terms for Representatives.

The Subcommittee on Constitution, Federalism, and Property Rights of the Senate Committee on the Judiciary held hearings on congressional term limits on January 25, 1995. The subcommittee took testimony on S.J. Res. 21 and S.J. Res. 19 as well as the statutory approaches to term limits embodied in S. 271 and S. 272.

Following the hearing, the subcommittee marked up S.J. Res. 21 on February 1, 1995. The three following amendments were adopted by voice vote:

- 1) Clarify that the amendment will apply prospectively;
- 2) change the ratification procedure from ratification by State constitutional conventions to ratification by State legislatures;
- 3) impose a term limit of six terms on Representatives.

The subcommittee passed S.J. Res. 21, as amended by rollcall vote, with five yeas and three nays.

Senate Joint Resolution 21, as amended, was marked up by the Senate Committee on the Judiciary on February 9, 1995. Senator Patrick Leahy of Vermont offered an amendment to apply term limits retroactively. The amendment was defeated by a vote of 11 nays to 5 yeas.

The committee then passed S.J. Res. 21 by a rollcall vote, with 11 yeas and 7 nays.

The first House vote on term limits occurred March 29, 1995, when one resolution and three amendments were considered. Representative Bill McCollum of Florida authored the underlying House Joint Resolution 73 proposing a constitutional amendment to limit congressional terms to two terms for Senators and six terms for Representatives.

The first amendment to H.J. Res. 73, offered by Representative Pete Peterson of Florida, would make term limits retroactive and limit Representatives to six terms and Senators to two terms. It would also protect State laws limiting congressional terms of service if the State laws are shorter. This amendment was rejected 135 to 297.

The second amendment, offered by Representative Bob Inglis of South Carolina, proposed to limit Members of the House to three terms and Members of the Senate to two terms and defines a full

term to be more than 50 percent of a term. This amendment failed by a vote of 114 to 316.

The third amendment, offered by Representative Van Hilleary of Tennessee, proposed to limit Representatives to six terms in office and Senators to two terms, while allowing State laws to preempt the legislation if State limits are shorter. This amendment also failed, by a vote of 164 to 265.

A final vote on H.J. Res. 73 failed to obtain the necessary two-thirds of those present, by a vote of 227 to 204.

III. TEXT OF S.J. RES. 21, AS AMENDED

[104th Cong., 1st sess.]

JOINT RESOLUTION proposing a constitutional amendment to limit congressional terms

Resolved by the Senate and the House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States:

“ARTICLE —

“SECTION 1. After this article becomes operative, no person shall be elected to a full term as a Senator more than twice, or to a full term as a Representative more than six times; no person who has been a Senator for more than three years of a term to which some other person was elected shall subsequently be elected as a Senator more than once; and no person who has been a Representative for more than a year of a term to which some other person was elected shall subsequently be elected as a Representative more than five times.

“SECTION 2. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.

“SECTION 3. No election or service occurring before ratification of this article shall be taken into account when determining eligibility for election under section 1.”.

IV. SECTION-BY-SECTION ANALYSIS

Section 1

This is the operative section that limits congressional terms to two terms in the Senate and to six terms in the House of Representatives.

This section also clarifies how the language applies to partial terms in both the House and the Senate. This section declares that 3 years of a Senate term and 1 year of a House term constitute a full term for purposes of calculating the limit on the number of terms that may be served.

Section 2

Article V of the U.S. Constitution describes the manner in which the Constitution may be amended. After a constitutional amendment is proposed by Congress or by a constitutional convention, ar-

title V sets forth two paths for ratification. One way is ratification by constitutional conventions in three-fourths of the States. Another way is ratification by three-fourths of the State legislatures.

All amendments to the U.S. Constitution have been ratified by State legislatures, with the one exception of the 21st amendment to the Constitution, which repealed the constitutional amendment imposing prohibition. It seems more reasonable to follow the ratification procedure that has been used almost every time the Constitution has been amended.

Originally, S.J. Res. 21 called for ratification by State constitutional conventions. In the Subcommittee on Constitution, Federalism, and Property Rights, section 2 was changed to call for ratification by State legislatures in order to employ a ratification procedure that has the benefit of experience.

Section 3

Most laws are applied prospectively to avoid the unfairness of changing the rules in the middle of the game. That same principle applies here. This proposed constitutional amendment is intended to apply prospectively only. That does not mean that sitting Members of Congress are “grandfathered;” they are not. Rather, sitting Members are term limited, and the clock starts running at the same time for all citizens—after ratification.

As originally drafted, S.J. Res. 21 was intended to be prospective only. In fact, it would reasonably be read to be prospective only. Nevertheless, it could be argued that the service of a sitting Member of Congress, prior to ratification, would be considered for purposes of the term limit imposed after ratification. To avoid the unfair result of retroactivity, the resolution was clarified to explicitly state that there would be no retroactive application.

Some opponents have characterized this language as providing special treatment for Members of Congress. Some have gone so far as to claim that this language exempts sitting Members of Congress. The plain language of the amendment reveals that there is no special treatment. Quite the opposite is true: the amendment applies to Members of Congress exactly the same as it applies to other citizens.

V. DISCUSSION

Term limitation is not a new or untried idea. Term limits were in place before our Constitution was drafted. The Virginia Plan, the model for our current Constitution, contained term limits for elected officials; and in 1951, the 22d amendment to the Constitution was ratified by three-fourths of the States, imposing term limits on the President. Following passage of this amendment, President Dwight D. Eisenhower added, “What is good for the President might very well be good for the Congress.”

An overwhelming majority of Americans agree with President Eisenhower’s statement. In a study conducted in January 1994, the Americans Talk Issues Foundation reported that even after hearing the strongest arguments for and against the issue, three out of every four citizens interviewed supported the idea of term limits. This support has translated into substantial action at the grass-

roots level and led to local campaigns, petitions, and voter initiatives.

Since 1951, 35 States have imposed term limits on their governors and State legislators. Twenty-three States have also enacted term limits on their Federal congressional delegations. Of these 23 States, 21 passed term limits by ballot initiatives, with average support exceeding 64 percent. The remaining States, Utah and New Hampshire, passed term limits laws through their State legislatures. The 23 States include:

Alaska, Arizona, Arkansas, California, Colorado, Florida, Idaho, Maine, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, New Hampshire, North Dakota, Ohio, Oklahoma, Oregon, South Dakota, Utah, Washington, and Wyoming.

Unfortunately, the gains made by grassroots efforts were recently reversed by the U.S. Supreme Court. On May 22, 1995, the Supreme Court declared all State term limit laws unconstitutional as they apply to Members of the U.S. Congress.

In *U.S. Term Limits, Inc. et al. v. Thornton*, an Arkansas taxpayer challenged the constitutionality of §3 of amendment 73 to the Arkansas Constitution. That section prohibits the name of an otherwise eligible candidate for Congress from appearing on the general election ballot if that candidate has already served three terms in the House of Representatives or two terms in the Senate. Both the circuit court and the Arkansas Supreme Court found the provision unconstitutional because the States have no authority "to change, add to, or diminish" the requirements for congressional service enumerated in the qualifications clauses.

In the U.S. Supreme Court, Justice Stevens, writing for the five member majority, affirmed the decision of the Arkansas Supreme Court and held that:

- 1) The power granted to each House of Congress to judge the "Qualifications of its own Members," art. I, §5, cl. 1, does not include the power to alter or add to the qualifications set forth in the Constitution's text;
- 2) the 10th amendment to the Constitution does not authorize States to add to the qualifications listed in the Constitution;
- 3) denying access to the ballot does not constitute a permissible exercise of State power under the elections clause of art. I, §4, cl. 1, to regulate the "Times, Places and Manner of holding Elections;" and
- 4) term limits for congressional service "must come through a constitutional amendment properly passed under the procedures set forth in Article V."

The dissent, written by Justice Thomas and joined by Justices Rehnquist, O'Connor, and Scalia, argued that nothing in the Constitution deprives the people of each State the power to proscribe eligibility requirements for the candidates who seek to represent them in Congress. The Constitution is silent on this issue, and where it is silent, the 10th amendment reserves the power to the States or to the people.

The Court's unequivocal finding that term limits may only be imposed through a constitutional amendment effectively renders unconstitutional the statutes of the 23 States that passed congressional term limits.

The only avenue left by the Court is for term limit supporters to pursue passage of a constitutional amendment. Article V of the Constitution prescribes two means of amending the Constitution:

- 1) Through a constitutional convention called for by Congress upon the application of 34 States; or
- 2) through the recommendation of two-thirds of the Members of both the House and Senate.

Both methods are subject to ratification by either three-fourths of the State legislatures or by ratifying conventions in three-fourths of the States.

Although grassroots efforts are underway to organize the States and call for a constitutional convention, a more immediate answer for term limit supporters is embodied in securing the passage of S.J. Res. 21.

VI. SUBCOMMITTEE ACTION

The Senate Subcommittee on Constitution, Federalism, and Property Rights of the Committee on the Judiciary, with a quorum present, met on Wednesday, February 1, 1995, at 10 a.m. to mark up S.J. Res. 21.

Three amendments were adopted by voice vote. Senator Brown offered two amendments which were accepted by voice vote: one to clarify that the amendment will apply prospectively and another to change the ratification procedure from ratification by State constitutional conventions to State legislatures. Senator Kyl offered an amendment to impose a limit of six terms on Representatives, instead of three terms as the bill originally specified, which was accepted by voice vote.

The subcommittee then passed S.J. Res. 21, as amended, by rollcall vote, with five yeas and three nays. Senators Brown, Hatch, Kyl, DeWine, and Abraham voted in favor of the measure. Senators Simon, Kennedy, and Feingold voted against the measure.

VII. COMMITTEE ACTION

The Senate Committee on the Judiciary, with a quorum present, met on Thursday, February 9, 1995, at 9 a.m. to mark up S.J. Res. 21, as reported by the Subcommittee on Constitution, Federalism, and Property Rights.

Senator Leahy offered an amendment to apply term limits retroactively. The amendment was defeated by a vote of 11 nays to 5 yeas. Senators Leahy, Simon, Kohl, Feinstein, and Feingold voted for the measure. Senators Hatch, Thurmond, Simpson, Grassley, Brown, Thompson, DeWine, Abraham, Kyl, Biden, and Kennedy voted against the measure.

The Committee on the Judiciary then passed S.J. Res. 21 by a rollcall vote, with 11 yeas and 7 nays. Senators Hatch, Thurmond, Simpson, Grassley, Brown, Thompson, DeWine, Abraham, Kyl, Kohl, and Feinstein voted in favor of the measure. Senators Biden,

Kennedy, Leahy, Specter, Heflin, Simon, and Feingold voted against the measure.

VIII. REGULATORY IMPACT STATEMENT

Pursuant to paragraph 11(b), rule XXVI of the Standing Rules of the Senate, the subcommittee, after due consideration, concludes that Senate Joint Resolution 21 will not have direct regulatory impact.

IX. COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, February 9, 1995.

Hon. ORRIN G. HATCH,
Chairman, Committee on the Judiciary,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed S.J. Res. 21, a joint resolution proposing a constitutional amendment to limit congressional terms, as ordered reported by the Senate Committee on the Judiciary on February 9, 1995. We expect that enactment of this resolution will result in no significant cost or savings to the federal government, and no significant cost to State and local governments.

The joint resolution would propose amending the constitution to limit congressional terms to twelve years. The legislatures of three-fourths of the States would be required to ratify the proposed amendment within seven years for the amendment to become effective.

Enactment of S.J. Res. 21 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

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

Sincerely,

ROBERT D. REISCHAUER,
Director.

X. CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the committee finds no changes in existing law caused by passage of Senate Joint Resolution 21.

XI. ADDITIONAL VIEWS OF MR. HATCH

I believe that the proposed constitutional amendment on term limits for Members of Congress is an important issue that ought to be fully and carefully debated by the full Senate. For this reason, despite my own strong reservations about the merits of such an amendment, I have supported proponents of S.J. Res. 21 by ensuring its full and timely consideration by the Judiciary Committee and by voting to report it out to the Senate.

My strong reservations about the merits of a constitutional amendment on term limits prevent me from joining the committee report. Before outlining these reservations, let me emphasize two points. First, I have no personal interest in the prospects of such an amendment. Even were it to be passed by Congress and ratified by the States in relatively short order, it likely would not bar me from running for reelection until the year 2012, when I would hope to be a spry 78 years of age. There are many things that I hope to be doing in the year 2012. Running for reelection is not on the list. So I am offering here my own disinterested observations, based on my years of experience in serving the people of Utah in the U.S. Senate.

Second, I have not used my power as chairman of the Judiciary Committee to stymie consideration of the term limits amendment merely because I have strong reservations about the merits of that amendment. Instead, I have sought to facilitate its timely and full consideration by the committee.

Let me identify some of my major concerns about term limits. First, term limits would indiscriminately operate against both good legislators and bad legislators. I would rather place my confidence in the good judgment of voting Americans, who have shown time and time again that they can distinguish between those legislators who are working effectively to serve their interests and those who are not. I have far more trust in the wisdom of the voters than in an arbitrary rule that prevents voters from reelecting legislators whom they believe have been serving them well.

Second, term limits threaten a massive and dangerous shift in power to an unaccountable Federal bureaucracy. In an increasingly complicated society, unelected, nameless, faceless bureaucrats wield extraordinary influence on matters that affect the daily lives, freedoms, and property of Americans. There is no question in my mind that my experience in Congress has made me better able to fight these bureaucrats. I fear that term limits would have the unintended consequence of further enhancing the power of an arrogant and heavyhanded bureaucracy.

Third, term limits would make Senators and Representatives far more dependent on Capitol Hill staffers and special interest lobbyists. By shifting power from the legislators to the staffers and lobbyists, term limits might not only dilute the power of voters but also produce a Congress less responsive to their concerns.

Fourth, there is justifiable concern that term limits would, in the words of one political scientist, "skew the membership of Congress even further in the direction of a social and economic elite." How many potential citizen-legislators would sell a family business or cut short a promising career in the private sector in order to run

for Congress if they knew that term limits would prevent or impede the possibility of devoting a career to public service? Some, perhaps. But under a system of term limits, it is all the more likely that candidates would be independently wealthy persons who could afford the luxury of dabbling in politics for a while.

Fifth, insofar as term limits are designed to respond to a perceived problem of legislators who are primarily concerned with advancing their own self-interest, term limits would not eliminate the problem but would only change its form—and for the worse. Under term limits, venal legislators would occupy themselves disproportionately with setting up a “soft landing” upon departing from public office. It seems to me that the public interest is far better served by having legislators worried about representing well their constituents’ interests—which is very much what the prospect of seeking reelection operates to do.

Sixth, a term-limits constitutional amendment would destroy the seniority system. By providing a clear basis for leadership selection, the seniority system helps keep Congress from splintering into a multitude of factions. As importantly, the seniority system has given small States, like my home State of Utah, a means of protecting their interests from being trampled. Simple mathematics makes terms limits a big risk for small States with small delegations.

Seventh, it seems to me that support for term limits sometimes rests on a false picture of the composition of Congress. Congress experiences considerable turnover. In the 104th Congress, for example, in the House of Representatives, there are some 250 or so Members—around 60 percent of the body—who have served three or fewer previous consecutive terms. In the Senate, nearly a third of all Senators are in their first term. More than half of all Senators have completed only one full term. And only one-fourth of all Senators have completed two terms. In short, the American people, through the ballot box, have achieved in Congress a valuable combination of experience and new blood.

The fact that a proposed constitutional amendment—rather than a statute—is at issue aggravates all these concerns. I certainly believe that there are instances where decades of misrule make constitutional amendments necessary or appropriate to restore the balance struck by the Constitution. That is why I am the lead sponsor of the balanced-budget amendment and of an amendment to bar the Federal Government from imposing unfunded mandates on States and localities. But I believe that we must be wary of restructuring something as fundamental as the freedom of citizens to select their own representatives, especially where the wisdom of the Framers considered and rejected term limits.

It is worth noting that term limits have been imposed by constitutional amendment before, and with dubious effect: the 22d amendment, ratified in 1951, imposes on the President a limit of two terms in office. The 22d amendment shortchanged the wisdom of the American people: American voters have shown that they are quite capable of defeating incumbent Presidents whom they view as ineffective. At best, the term limits imposed by the 22d amendment have been unnecessary. Worse than that, they have been destructive in that they have weakened Presidents during their second

terms. This experience with the 22d amendment should provide an object lesson as we consider the merits of constitutionally imposed term limits on Members of Congress.

Let me close by observing that I am certainly not one to question the ability of everyday citizens to serve effectively as Members of Congress. On the contrary: I myself was an everyday citizen, without any previous legislative experience, when the people of Utah first gave me the honor of representing them in the U.S. Senate. But the experience that I have gained in the interim has, I believe, made me ever more effective in representing them.

I must also note that when I first ran, I defeated a seemingly entrenched incumbent, a Senator who had been in office for 18 years. As that election showed, while an incumbent has obvious advantages in name recognition, he also has vulnerabilities in his record if he has not been as effective as he should have been in representing his constituents. What that election taught me above all is to have faith in the voters. At bottom, it is because a term-limits constitutional amendment betrays a fundamental lack of faith in the common sense and sound judgment of the voters that I am distrustful of it as a remedy for the ills that have ailed our system.

XII. ADDITIONAL VIEWS OF MESSRS. BROWN, THOMPSON, KYL, AND DEWINE

Term limits are founded on the conviction that self-government is to be preferred to government by professional politicians. Self-government means government by citizens who temporarily step out of their private lives to carry the people's voices to the councils of government. Self-government is preferred because temporary representatives know that they will soon return to live as private citizens, under the laws they pass.

Our constitutional architects believed in self-government and placed their trust in citizen representatives. Seeing clearly that power tends to corrupt and that absolute power corrupts absolutely, the framers turned away from a reliance on noble birth or high office to place extraordinary decisions in ordinary hands. Private citizens are asked by our Constitution to take their turn representing their neighbors and communities and to decide what laws are essential for the common good.

Unfortunately, today's politicians are too often careerists who find themselves firmly ensconced in the trappings of power. Surrounded by professional staffs and lobbyists, sheltered from the electorate by a 91 percent reelection rate, and disconnected from the laws they impose on ordinary citizens, incumbents lose touch with the constituents they serve. These career politicians, who relocate to Washington, D.C., who are separated from their neighbors, communities and districts, and who do not return home to live under the laws they pass, are not the type of legislators our founding fathers envisioned when they fashioned our republic.

More than two hundred years ago, Thomas Jefferson wrote a friend suggesting ways that our newly drafted Constitution could be improved. Jefferson said three things were missing: a Bill of Rights, limits on the tenure of the Chief Executive, and term limits on Congress. Since then, we have seen Jefferson's first two ideas implemented; this joint resolution embraces his last.

HISTORICAL FOUNDATION FOR TERM LIMITS

Term limits accompanied the emergence of democracy in ancient Greece and Rome in the form of rotation in office. Aristotle recommended short terms for officeholders, a restriction on holding the same office twice, and the rule of "all over each and each in turn over all." Aristotle argued that the principle of rotation would increase participation and educate citizens in the responsibilities of public life. He added that term limits would restrict the amount of power that any one person could have, thus forcing government to work for the good of the majority instead of the powerful few.

Rotation was practiced in ancient Athens where people were selected by lot to participate in the 500-member governing council. In order to participate, the people of Athens agreed never to serve on the council for more than two years in their lifetime. In the Roman system, rotation in office was used to ensure equitable service among all qualified candidates. Rotation was guaranteed because no Roman was allowed to hold the same office more than once.

A legendary example of rotation in office occurred when Cincinnatus was appointed Dictator of Rome in order to rescue a

consular army that was surrounded by the Aequi on Mt. Algidus. At the time of his appointment he was working a small farm. He is said to have defeated the enemy in a single day and celebrated the triumph in Rome. Yet, Cincinnatus maintained his authority only long enough to bring Rome through the emergency. He then resigned and returned to his farm.

These historical examples of rotation in office had a profound effect on revolutionary America. When the Founders began crafting our democracy they included term limits in the Articles of Confederation and incorporated it into the original Virginia Plan for the Constitution. Despite its popularity, mandatory rotation was dropped from the Constitution, a fact often misconstrued by term limits opponents as a repudiation of the principle of rotation. Examination of the debate at the Constitutional Convention, however, suggests that the framers did not include term limits in the final draft of the Constitution because it was widely assumed that Members would rotate out of office voluntarily and frequently. It was commonly believed that under Article I, Section 3 of the Constitution, one-third of the Senate would "go out" every two years. Alexander Hamilton, an opponent of mandatory rotation, described the workings of the Senate as follows: "One third of them are to go out at the end of two years, two thirds at four years, and the whole at six years." In other words, term limits were viewed as unnecessary because the whole Senate would be changed every six years.

The Founders' actions following ratification of the Constitution confirm their commitment to term limits. Offered a position paramount to king following the defeat of England, General George Washington felt morally obligated to return to his life as a private citizen. Even after serving as the nation's first President, Washington still believed that rotation in office was a moral obligation consistent with the ideals of a republican government. While in office, Washington wrote, "The spirit of the government may render a rotation in the elected officers * * * most congenial with the ideas of liberty and safety."

The Senate responded in a similar manner. In the 36 years following ratification of the Constitution, the average length of service for Senators was approximately 4.8 years. During that same period, the turnover rate in the Senate was nearly 47 percent—greater than the one-third turnover rate predicted by Hamilton.

Some politicians remained concerned that term limits were not explicitly included in the Constitution. Thomas Jefferson frequently argued that term limitation was a way "to prevent every danger which might arise to American freedom by continuing too long in office." When the Constitution was finalized, Jefferson stated, "One thing I dislike, and greatly dislike, is the abandonment in every instance of the necessity of rotation in office."

Unfortunately Jefferson's words proved prophetic. The Founders' adherence to the principles of rotation has given way to a political culture marred by stagnation, continuous campaigns and disproportionately influential special interests.

DEMISE OF ROTATION

In the century following the ratification of the Constitution, the republican philosophy of rotation in office was respected and prac-

ticed. At its peak, rotation in office was so widely accepted in American politics that, without mandated term limits, Congress experienced a 76 percent turnover in 1842. On average, nearly one-third of the Members of Congress voluntarily retired from office between 1789 and 1900. Among those adhering to the principle of rotation was a young Illinois Congressman, Abraham Lincoln. After serving one term in Congress, Lincoln returned to Illinois. As President, Lincoln chastised those resisting rotation in office when he stated: "If our American society and United States Government are overthrown, it will come from the voracious desire for office, this wriggle to live without toil, work, and labor—from which I am not free myself."

Unfortunately, rotation in office and the voluntary return to private life fell out of favor in the twentieth century. Instead of leaving office to return to live under the laws they made, Members became more likely to remain ensconced in their sheltered public lives. Enticed to stay by a system that distributes power based on seniority rather than merit, and bolstered financially by special interests and PAC's, incumbents have come to enjoy a seven or eight point advantage over their opponents. As a result, since the early 1900's the average number of Members voluntarily leaving office dipped below 10 percent, and the average number of incumbent election victories soared above 90 percent. Even in 1994, a supposedly revolutionary year, over 91 percent of all incumbents won their bids for reelection.

DANGERS OF STAGNATION

Without turnover, politicians become entrenched and stagnant. That stagnation is antithetical to the ideals of a republican government and a representative citizen legislature. Fresh ideas give way to reliance on lobbyists and special interests. Allegiance to the district or the State gives way to allegiance to campaign donors. Understanding the difficulty of living under burdensome regulations gives way to the belief that more regulations are needed. Fiscal responsibility and good public policy give way to a commerce of special projects.

Studies have shown that the longer Members remain in office, the more resources they spend. A study conducted by the non-partisan National Taxpayers Union found that if term limits were in place during the 103rd Congress, Republican Senators would have voted for 21.3 percent more spending cuts. Likewise, term limited Democrats would have voted for fewer spending increases.

The vote on the Balanced Budget Amendment shows a similar trend. Despite its popularity with the American public, the amendment failed to pass the Senate. The voting record reveals that among Members serving more than twelve years in office, 42.2 percent voted against the measure. In contrast, only 27.3 percent of those serving less than twelve years opposed the amendment.

The ability of long-term incumbents to defeat responsible legislation is not a recent phenomenon. After the turn of the century, perpetual incumbents secured their seats by disenfranchising voters and gerrymandering districts. The resulting sparse turnover allowed groups of politicians to form cohesive voting blocks which defeated race related legislation until the mid-1960's. Protected from

competitive elections, incumbents stopped anti-lynching legislation (1935, 1937), anti-poll tax measures (1942, 1944, 1946), nondiscriminatory educational funding (1943), appropriations for the Committee on Fair Employment Practice (1945, 1950), civil rights provisions (1960), and literacy tests (1962). Not until the civil rights movement exploded in the 1960's, culminating in the passage of the 1964 Civil Rights Act and the 1965 Voting Rights Act, were these entrenched incumbents defeated on the issue of race.

What these votes demonstrate is that entrenched incumbents who spend too much time in Washington eventually lose touch with the will of the people. Rotation in office prevents the alienation of Members of Congress by involving more of the citizenry in the legislative process, both as legislators and voters, and by bringing new ideas, forged with the experience of living a private life, to the government.

Without term limits, there is less opportunity for common citizens to participate in the government of this country. Without term limits, there remains a fear that Members of Congress will become so safe in their seats that they will resemble a ruling class rather than a citizen legislature. It is essential to liberty and participatory democracy that our legislators be rotated out of office regularly to live under their own commands.

ADVANCING DEMOCRACY

Opponents of term limits argue that term limits threaten democracy by limiting voter choice. This is a hollow argument. Term limits promote democracy by opening up the system to participation from all segments of the population, which in turn creates a truly representative and democratic government.

To take just one example, Congress remains largely the domain of white males. Although women account for 51 percent of the population, only 11 percent of House seats and 8 percent of Senate seats are held by women. Similarly, racial minorities make up over 25 percent of the general population but only 14 percent of the House seats and 5 percent of the Senate seats.

Term limits might be especially useful in enhancing the opportunities of women and minorities to win elections by increasing the number of competitive congressional seats. Statistics show that more women and racial minorities are elected to Congress through open seat races than by challenging incumbents. Over 87 percent of African-Americans in the House, and 83 percent of Hispanics, were elected in open seat races. Among female Members of Congress, 79 percent were elected in open seat races. These numbers demonstrate that the turnover created by term limits will help generate a more representative and democratic federal government.

Term limits will promote democracy by opening the governing process to all genders and races, and create more competitive races by guaranteeing more open seats. With term limits come greater opportunities for a truly participatory and representative government.

GIVING THE PEOPLE A CHOICE

Currently, thirty-five States impose limits on the number of terms their governors and State legislators may serve. Twenty-three States have also applied term limits to their representatives in the U.S. House and Senate. In twenty-one of these States, ballot initiatives imposing term limits passed with average support exceeding 64 percent. Polling suggests that as many as 75 percent of Americans nation-wide support term limits. Already, 24 million Americans have cast their votes for term limits, and Mississippi voters are scheduled to consider a ballot initiative to limit congressional terms in November of 1995.

Contrary to the desire of millions of Americans, however, federal term limit laws were struck down by the United States Supreme Court earlier this year in *U.S. Term Limits, Inc. et al. v. Thornton*. In one fell swoop, the Supreme Court denied the people and the States the right to determine their own government and limit congressional terms. The only hope that remains for term limits is a constitutional amendment. We owe it to the people to pass S.J. Res. 21 and give them a chance to support or reject term limits.

Every argument against term limits and in favor of business-as-usual has one thing in common: Arrogance. To oppose term limits is to decide what is best for the people without letting them decide for themselves. To oppose term limits is to assume that the people are not capable of making their own decisions about their government. Opponents of term limits argue that it will harm the political process or turn away outstanding Members of Congress or deny voter choice. These arguments founder on the most basic point: it is the people's choice, and they will make it. Our government is a democratic one in which the will of the people is what matters most. To protect the people or decide what is best for them undermines this basic principle of self-government.

We are not now deciding to amend the Constitution. Congress does not have the power to amend the Constitution. Congress does have the power to propose the amendment to the people and the States. The vote on term limits is simply that: a vote to allow the people, through their representatives, to decide on term limits. Casting a vote against term limits denies the people the right to determine their own government. All S.J. Res. 21 asks Senators to do is send this measure to the States where the people can decide for themselves.

POLITICAL COURAGE

One reason the people seek term limits is they perceive a stunning lack of political courage in Washington. In their eyes, Congress cannot even vote to balance the government checkbook. There is the feeling that time and time again, Congress is faced with basic problems and Congress cannot solve those basic problems.

Americans faithfully pay their taxes, fall victim to crime, and lose jobs as needless regulations strangle American businesses. It is inconceivable to many Americans that Congress allows these things to continue. To many Americans, the system is broken. The difficult vote to end wasteful programs is not cast because reelection depends on helping some special interest. Without term limits,

there may never be the political courage to solve the nation's most difficult problems.

Term limits offer that political courage. Term limits would enable Members of Congress to make the right decision, as opposed to the decision that brings in more PAC money. Term limits do not threaten good government decision-making. In fact, term limits would improve the willingness of Members of Congress to perform their tasks and attend to important business.

In testimony before the Senate Subcommittee on Constitution, Federalism and Property Rights, former Tennessee Governor Lamar Alexander stated that during his second of two terms he was:

* * * a little braver, a little more concerned about whether at the end of eight years I would have been able to accomplish something useful for my State rather than to worry about whether what I was trying to accomplish might have helped me get reelected yet to a third term.

Asked at the same January 25, 1995, Subcommittee hearing whether he believed term limits would encourage legislators to ignore their more tedious responsibilities, Senator John Ashcroft, former Governor of Missouri, answered:

I lived under term limits as governor * * * and I do not think the reality suggests that individuals fail substantially in their service to their States at such times. * * * I do not think the facts reflect that individuals who are in their last terms abandon their responsibilities.

As President John F. Kennedy said, "[t]he desire to be re-elected exercises a strong brake on independent courage." In our Governors mansions and State legislatures, term limits are proving that they can help restore the courage needed to cast the difficult vote and govern this nation effectively.

CONCLUSION

When Senators and Representatives come to Washington they vow to represent the people of their State or district. The time has come to support the will of the people and deliver a term limits constitutional amendment to the States. With over 24 million people voting for term limits in local ballot initiatives, and national polls showing strong and continuous support for the issue, it is Congress' duty to represent the people and restore the principle of a citizen legislature.

History has shown that term limits are consistent with the basic principles of democracy. For over a century, our Founders understood the virtue of limiting government service and leaving public life to live under the laws they passed. That is no longer the case. Today's politicians are too often motivated by power rather than public service, influenced by special interests rather than constituents, and more concerned with pleasing the right people rather than casting the tough vote.

If we believe in the foundation of our democracy, if we believe in the concept of a citizen legislature, and if we believe that Senators and Representatives are the servants of the people, we must

pass S.J. Res. 21, send it to the people, and give them the choice of whether to impose term limits on Congress.

XIII. ADDITIONAL VIEWS OF MR. ABRAHAM

I agree that the Congress should propose an amendment to the Constitution on term limits. I support the joint resolution that the Committee has reported out. But I would prefer a different resolution.

In my view it is within the States' powers right now to limit the terms of Members of Congress. I believe that is what our present Constitution, properly understood, provides. Moreover, many States have exercised that power. My own State, Michigan, for example, has adopted a limit of two terms for the Senate and three terms for the House of Representatives.

Unfortunately, my view that the States presently have this power is shared only by four Justices of the Supreme Court. The other five recently concluded otherwise. See *U.S. Term Limits v. Thornton*, 115 S. Ct. 1842 (1995). Accordingly, some corrective action by Congress is necessary to restore term limits as a viable political option. The only action we can take that we can be confident the Court will not strike down is the adoption of some form of constitutional amendment.

My preference would be for a constitutional amendment that simply returns the power to set term limits for Members of Congress to the States. Because Congressional term limits are an innovation, I would prefer to allow the States to experiment with them rather than freezing them, or freezing them in a particular form, into our federal Constitution. I also believe that if Michigan prefers one formula for limiting terms and other States prefer a different formula, we should not preclude any State from picking its preferred version. Accordingly, my first choice would be for a resolution along the lines of S.J. Res. 36, proposed by Senator Ashcroft, of which I am an original cosponsor along with several other Members of this Committee.

The joint resolution approved by the Committee is to me a less preferable but acceptable choice. I have no objection to the limits in the joint resolution (although if we in Congress must pick specific limits, I would prefer that they be consistent with the ones adopted by my home State, which is why I voted against Senator Kyl's amendment to substitute the limits presently in the bill for those in Senator Thompson's original proposal). But I would prefer to see the States remain free to select others. Therefore while I will support final passage of this measure if it remains the only vehicle for addressing term limits, on the floor I will seek to have other approaches considered that will leave the States with more authority to establish their own limits.¹

¹ In addition, while I agree with the arguments against the Leahy amendment set out in the report, I also opposed it for the additional reason that the question it seeks to resolve, whether current terms should count for purposes of the limits, is a matter that I would also prefer to leave to the States.

XIV. ADDITIONAL VIEWS OF MR. BIDEN

In Philadelphia in 1787, the delegates to the Constitutional Convention rejected term limits on Members of Congress. As was noted in the Minority Report, the Founding Fathers viewed term limits as “pernicious” and “ill-founded” in and of themselves. But, more than that, the Framers also crafted a legislative branch of government to which term limits were not conducive. Indeed, term limits would have undermined the work of the Framers and would have been contrary to one of the basic premises of their product: the protection of the rights of small States.

When the Constitutional Convention was deadlocked over the issue of representation in Congress—with large States supporting proportional representation and small States supporting equal representation—Benjamin Franklin and the delegates from Connecticut crafted the “Connecticut Compromise.” Under this proposal, membership in the House of Representatives would be based on population, thus protecting the interests of the large States, and membership in the Senate would be based on strict equality, thus protecting the rights of small States. Without this compromise, the Convention would probably have disbanded after it had barely begun.

What is significant to this debate, however, is not only what happened—but what it meant. Explicit in the Connecticut Compromise is an equal vote for small States. But, implicit in the Connecticut Compromise is equal power for small States.

An equal vote in the Senate does not ipso facto translate into equal power in Congress. Even though all States have two votes in the Senate regardless of size, large States can still exercise tremendous control. Today, a majority of the American people live in and a majority of Members of Congress come from just nine States. Two of those nine States border on my own State of Delaware. I admire my friends from New Jersey and Pennsylvania, but when it comes to the interests of the State of Delaware, I heed the words of Gunning Bedford, one of Delaware’s delegates to the Constitutional Convention: “I do not, gentlemen, trust you.”

James Madison knew about trust; he acknowledged that average legislators pursued their own State’s interests. And, the Founders uniformly feared that a majority of people united by some passion or by their own interests could run roughshod over the rights and interests of a minority. So, the implicit check and balance created by the Founders to prevent the possible abuse of small States—the minority—by a few large States—the majority—was the ability of small States to wield power and influence through senior Members of Congress. In other words, by allowing States—at the discretion of the electorate—to reelect incumbents. Term limits would render that ability nugatory and would drive a stake through the heart of the Connecticut Compromise.

The people of the State of Delaware, just 700,000 of them—the fifth smallest State—have an interesting little tradition: if they do not like you, they throw you out. It may seem to some a novel concept, but it’s known as the power of the ballot box, and it is the ultimate limit on congressional terms. At the same time, however, the people of Delaware also have another tradition—one that comes

from a 200-year history as one of the smallest States in the Union. Long ago, Delawareans recognized that a small State gains equality with larger States by reelecting its incumbents and benefiting from their seniority. To deny that right—to impose artificial term limits—is to tell the people of Delaware that someone else knows better than them; that someone else can better decide what is in their interests; that their rights and interests will be at the whim of the larger States.

I join the Founding Fathers in categorically rejecting that proposition. Delawareans were entrusted by the Constitution to look out for the interests of Delaware. And, if they, in their infinite wisdom, decide that reelecting an incumbent is the best way to protect their rights and interests, they should continue to be allowed to do so.

XV. ADDITIONAL VIEWS OF MR. LEAHY

I oppose this constitutional amendment. The Constitution does not set congressional term limits, trusting to the people to decide who will best represent them. Indeed, this proposal is, in essence, a limitation on the rights of the electorate. I reject it as such.

I urge my colleagues not to be afraid to do the right thing, even if it does not appear from certain polls to be the currently popular thing, and stop demagoguing constitutional amendments as the cure to our ills. Our Constitution has served us well, over more than 200 years. It is the cornerstone of our vibrant democracy. It has been amended only 17 times since the adoption of the Bill of Rights in 1791—and two of those were prohibition and its repeal.

The Constitution is now under attack. The fundamental protections of separation of powers and the first amendment are under siege. In the opening days of this Congress almost 100 constitutional amendments have been introduced. The Judiciary Committee has already voted to report three. We risk making a mockery of Article V's requirement that we deem a constitutional amendment "necessary" before proposing it to the States.

One way to consider the impact of this proposed amendment is to look at who would not be here currently were this two-term limit already part of the Constitution. The two-term limit contained in S.J. Res. 21 would eliminate all of us who have been returned to the Senate by our constituents after standing for reelection more than once.

Think for a moment what imposing such a limitation would mean to the Senate. For example, are Senators Thurmond, Hatfield, Stevens, Roth, Domenici, Chafee, Lugar, Kassebaum, Cochran, Simpson and Hatch, and Senators Byrd, Pell, Kennedy, Inouye, Hollings, Nunn, Glenn, Ford, Bumpers, Moynihan, Sarbanes, Biden and others not possessed of judgment and experience on which we all rely and on which their constituents depend? What of the majority leader, Senator Dole, should he have had to retire in 1980 after serving only two terms?

Consider what this type of measure would have meant over our history. Those who have served beyond two terms include among their ranks some of our most distinguished predecessors. Each of our Senate Office Buildings, in fact, is named for a Senator whose service would have been cut short by the type of term limit being proposed as a constitutional amendment: Richard Russell, Philip Hart, Everett McKinley Dirksen. It is a loss when illness takes such leaders from us; it would be a tragedy to have denied the country and their constituents their service through an arbitrary rule limiting congressional terms.

Think about Kentucky's Henry Clay; South Carolina's John C. Calhoun; Missouri's Thomas Hart Benton; Ohio's Robert Taft; Iowa's William Allison; Michigan's Arthur Vandenberg; Arizona's Carl Hayden and Barry Goldwater; Maine's Margaret Chase Smith and George Mitchell; Vermont's Justin Morrill and George Aiken; Massachusetts' Daniel Webster and Charles Sumner; Montana's Mike Mansfield; Washington's Scoop Jackson; North Carolina's Sam Ervin; Arkansas's William Fulbright; New York's Jacob Javits; Wisconsin's William Proxmire and the LaFollettes; Minnesota's

Hubert H. Humphrey; Tennessee's Howard Baker, Jr. Such lists invariably leave out many who distinguished themselves through their service into a third Senate term.

Voters have not had any trouble electing challengers in the last several years. In 1978, 1980, and 1986, numbers of incumbents were defeated in primaries and general elections for the U.S. Senate. From the last election, one-third of those elected to the Senate are serving in their first terms. In the House of Representatives fully one-third of the Members are beginning their first or second terms. The electorate does not seem to have a problem deciding whom to elect and whom not to reelect.

Indeed, rather than debating a constitutional amendment to impose term limits, our time might be better spent thinking about why more and more of our respected colleagues are choosing to abandon this body. Our friend from Colorado, the chairman of the Constitution subcommittee, has already announced that he will not seek reelection in 1996, after five terms in the House but only one here in the Senate. The senior Senator from Illinois, the Ranking Democrat on the Constitution subcommittee, has also announced that he will not seek reelection after five terms in the House and two terms here in the Senate. A number of others have announced similar intentions.

Last year, George Mitchell and a total of nine of our colleagues in the 103d Congress chose not to seek reelection. The Congress has become less and less a place where Members choose to run for reelection.

I respect my colleagues for doing what they think is right for themselves and their families. I commend those who like Hank Brown and our freshman colleagues believe strongly in term limits and conform their own actions to that rule. I urge them, however, to stop short of seeking to impose their view on all others and upon all other States for all time by way of this constitutional amendment.

The reality is that this is an institution that is called upon to deal with many important and complex matters, where judgment and experience do count for something. Some sense of history and some expertise can, from time to time, be helpful in confronting our tasks and fulfilling our responsibilities to our constituents and the country. Thus, I do not believe that a one-size-fits-all limit on congressional service makes sense.

Further, as the representative of a small State, I am acutely aware that we fulfill the purposes of the Senate and sometimes best represent our States when we have a bit of seniority and a track record on the issues. I believe, as did our Founders, that it is up to the people to let us know if we seek to overstay our term of service.

Before we embark on this course to rewrite the work of the Founders and impose an artificial limit on the length of congressional service, we should know what evil this constitutional amendment is intended to reach. On this the proponents speak in conflicting voices—some urging that term limits will make us more responsive to the electorate and others arguing that it will give us greater distance and independence from them. Which is it?

It is remarkable that while the majority has taken eight months to report the Judiciary Committee's February 9 action, it nowhere discusses—let alone justifies—the specific congressional term limits it seeks to impose. The sole hearing into this matter was focussed in large part on proponents arguing that a six-term limit for the House was “no limit at all” and that to include such a provision in this measure amounted to “phony term limits,” since 12 years is longer than the average term of service in the House. Nowhere in its long-delayed report does the majority hint at the controversy surrounding this key, substantive amendment to this measure that doubled the House term limits from three to six terms. Nor does it indicate that it would invalidate limits adopted in over 20 states.

Further, the majority gives no consideration to the effectiveness of limiting terms of only one group of actors in our political democracy. Will we also limit the tenure of professional staff? Will we limit the number of years someone may lobby the Congress? Why not limit the years that someone can serve as a political consultant, a pollster, or an adviser? Are we prepared to venture into campaign reform and limit the number of times a person may contribute to Senate races over time? If not, term limits on candidates will only serve to increase the influence of these other groups at the expense of the people.

Do we expect first-term Senators intent on reelection to be less responsive to lobbyists and political consultants? For those who succeed in being reelected to a second and final term, will they be oblivious of the need to earn a living in succeeding years? With no prospect for a career in public service, Members of Congress may become *more* solicitous of “special interests” as they look beyond their lame-duck status to new career opportunities.

Despite good intentions, this proposed constitutional amendment would not give us a citizen-legislature but, instead, a legislature made up of those independently wealthy and capable of taking 12 years from building a career outside this body to serve for a time.

I must oppose what I perceive to be a growing fascination with laying waste to our Constitution and the protections that have served us well for over 200 years. The first amendment, separation of powers, the power of the purse, the right of the people to elect their representatives should be supported and defended. That is the oath that we all swore when we entered this public service. That is our duty to those who forged this great document, our commitment to our constituents and our legacy to those who will succeed us.

The Constitution should not be amended by sound bite. This proposed limitation evidences a distrust not just of congressional representatives but of those who sent us here, the people. Term limits would restrict the freedom of the electorate to choose and are based on disdain for their unfettered judgment. These are not so much term limits as limits on the electorate to choose their representatives.

To those who argue that this proposal will embolden us or provide us added independence because we will not be concerned about reelection, I would argue that you are turning our democracy on its head. This proposal has the effect of *eliminating accountability*, not increasing it.

It is precisely when we stand for reelection that the people, our constituents, have the opportunity to hold us accountable. This proposal would eliminate that accountability by removing opportunities for the people to reaffirm or reject our representation of them. It would make each of us a lame duck immediately upon reelection.

Thus, my fundamental objection to the proposed constitutional amendment is this: It is, at base, distrustful of the electorate. It does not limit candidates so much as it limits the rights of the people to choose whoever they want to represent them. We should be acting to legislate more responsively and responsibly, not to close off elections by making some candidates off limits to voters. I will put my faith in the people of Vermont and keep faith with them to uphold the Constitution.

LEAHY AMENDMENT

When this matter reaches the Senate for debate, I intend to offer an amendment, along the lines of the one that I offered during the course of the Judiciary Committee's deliberations. I will try to move us toward an honest discussion of what this amendment would mean and what impact it would have on Congress. When politicians talk about imposing term limits, they tend to support proposals that, on examination, will not affect them. Thus, I have pointed out that S.J. Res. 21 is drafted so as not to affect adversely any of us.

This proposal is designed to become effective after the ratification process, which may itself take 7 years. Thereafter, and only thereafter, are we to start counting terms in office for purposes of these constitutional term limits. Thus, this proposal is drafted so that some of us can get in two more successful reelection campaigns before we have even to start counting terms toward the two-term limit. I suspect that all of us expect to be "former" Senators in 2020 after as many as four more terms, anyway. That is all that this amendment contemplates.

By contrast, my amendment will have the effect of making these constitutionally mandated congressional term limits apply to each of us immediately upon ratification. Thus, the two-term limit would apply to each of us then currently serving. Those of us serving in our second term, or greater, would be able to serve out the remainder of that term. Those in their first term in the Senate at the time of ratification would be able to run for reelection, once.

As I noted in the course of the Judiciary Committee's deliberations, my amendment would conform the congressional term-limits amendment to the transition rule adopted in the 22d amendment, which imposed term limits on the President. The 22d amendment provides that it would "not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President *during the remainder of such term.*" The 22d amendment did not say that the President serving at the time of ratification could be elected to two more, 4-year terms. It is noteworthy that this precedent continues to be ignored by the majority.

As reported, S.J. Res. 21 includes language in section 3 intended to provide special privileges to those Members who are serving at

the time of ratification. Thus, all prior and current service is to be disregarded and Members serving at the time of ratification are to be accorded the prospect of two *additional* 6-year Senate terms and six additional 2-year House terms, regardless of the number of prior terms in the Senate or House. Rather than have the constitutional amendment eligibility limitations apply to everyone, S.J. Res. 21 is drafted so that Members serving at the time of ratification would be accorded the special privilege of being able to complete their current terms and then start over, counting from zero, with respect to elections and service toward term limits. This is, in the words of a member of the committee who voted in favor of the constitutional amendment, “transparent hypocrisy.”

A few examples indicate the unfairness of these special privileges:

- Senators elected after ratification would be locked into inferior status in terms of seniority, chairmanships, committee assignments and staff allocations. By contrast, Senators serving now and at the time of ratification would have their seniority preserved and protected.
- A Senator elected 1 day before ratification would be able to serve three full 6-year terms before the limits took effect.
- A Senator first elected in 1990 could run for reelection to a second term in 1996, run successfully for a third term in 2002, see the ratification process subsequently completed in 2003, finish out the third term in 2008 and still be reelected to two more full terms through 2020 before being affected by any term limits. At the same time a new Senator first elected in 2004 would be restricted to two terms and be barred from serving past 2016. Thus, the older Senator would be able to serve 4 years past the forced retirement of the newer and for a total of 18 years more than the newer Senator.

Senators voting for the amendment ought to be willing to bind *themselves* to its terms and not just to bind others who follow in their footsteps.

The amendment I will propose to the Senate will strike section 3 and its language excluding elections and service occurring before final ratification from the calculation of the term limits being imposed. Instead, the amendment will expressly provide that *the term limits being imposed by the constitutional amendment would apply to Members serving at ratification*.

In order to avoid a retroactive effect or canceling the results of a completed election, the amendment will allow Members serving at the time of ratification to complete their current term. The prohibition in the proposed constitutional amendment would then operate *prospectively* to forbid any Member serving a term at or beyond the term limit being imposed from seeking reelection.

The amendment will also be intended to remove the ambiguity created by language included in section 1, which begins: “After this article becomes operative, no person * * *.” Unless stricken, this language might be interpreted to *exempt Members of Congress serving before ratification from the effect of the constitutional amendment entirely*. At the least, the language implies that the eligibility of those Members of Congress serving at ratification is intended to

be determined by consciously disregarding their current and past elections and service.

Unless stricken, this language could create a special class of Members and grant them special privilege from the full effect of the constitutional amendment at the moment that it is ratified. The irony is that many of the very Members who vote to impose term limits on others elected in the future would secure for themselves special dispensation so that they may serve either an unlimited number of terms or as many terms as can be begun before final ratification *plus* an additional two terms in the Senate and an additional six terms in the House.

The effect on my amendment will be that upon ratification of this constitutional amendment to impose congressional term limits, our current terms of service will be considered. This is in keeping with the substance of the amendment and would give it full effect upon ratification, rather than waiting for another 12 to as many as 20 years before it takes effect. If constitutionally mandated congressional term limits are necessary to solve an important problem, then why should the amendment to the Constitution exclude the *very* situation that it is being proposed to correct? We should not provide ourselves with special privileges and adopt rules for the next generation of Members. Exempting ourselves from the full effects of this amendment is not any way to proceed, if it is the will of the Congress and the States that we should proceed.

XVI. ADDITIONAL VIEWS OF MESSRS. SIMON AND KENNEDY

Our opposition to S.J. Res. 21 stems in large part from our belief that a constitutional term-limits amendment is totally contrary to our democratic system of government.

We already have term limits—they're called elections. We agree with House Judiciary Committee Chairman Henry Hyde, who has indicated that any proposal to take away the right the voters now have to elect whom they choose for Congress betrays a basic mistrust of the electorate, and cannot be reconciled with our most basic notions of representative democracy. We have a fundamental objection to any proposal that would lump together artificially those public servants that deserve continued reelection by the people, and those that do not. We have faith that the public will not permit this latter category of representative to survive too long in Congress.

At the same time, we are aware of the disillusionment and frustration that citizens sometimes feel toward the electoral process, and are the first to admit that this process needs to be fixed. We believe the answer to the failings of the political process lies in meaningful campaign finance reform—in legislation that eliminates the advantages held by incumbents in our current system of campaign financing, not in a constitutional term-limits amendment.

Not only do we believe that term limits are contrary to democracy; we also believe that they would be harmful to Congress as an institution.

First, a limitation on the number of years a representative can serve would deprive Congress and the Nation of much insight and knowledge. This country has been enriched by the continued efforts and extended service of such men as Henry Clay, Daniel Webster, Everett Dirksen, Henry Jackson, Jake Pickle, Morris Udall, Howard Baker, Sam Ervin, and Sam Rayburn. Our Nation would not have been as great had these men been forced to leave Congress prematurely. The Founding Fathers recognized this very point. In *The Federalist* #62, attributed to James Madison, they *warned against—and did not*, as the proponents of term limits suggest, endorse—rapid rotation in office, deeming “mutability in the public councils arising from a rapid succession of new Members” to be “inconsistent with every rule of prudence and every prospect of success.”

Second, term limits would result in a fundamental shift in the balance of power from the Congress to the President. A Congress of citizen legislators, deprived of the expertise and service of veteran members, would by its nature be more pliable and deferential to the President, and would suffer a decrease in stature and effectiveness. Ironically, the cynicism that now motivates the call for term limits would simply lead to even greater cynicism as the institution of Congress faded relative to the other political branch of government.

Third, contrary to the arguments of term-limits advocates, we do not believe that term limits would lead to the emergence of a “disinterested” and more representative—that is, a “better”—legislature. Rather, a Congress made up of term-limited Members would

be: (a) inexperienced; (b) heavily reliant on Washington “insiders” such as congressional staff and lobbyists; and (c) either more concerned about seeking job opportunities for their post-congressional years than about serving the country *or* sufficiently wealthy to be able, in the words of Congressman Hyde, “to devote their most productive and creative years to a vocation with no tenure and whose only prospect is enforced retirement.” The greatest incentive to good behavior and honorable service in the U.S. Congress is one’s regular accountability to the voters, not one’s freedom from that accountability. As Alexander Hamilton stated in *The Federalist* #72 (emphasis in original):

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 station with which it was connected must be relinquished at a determinate period, than when they were permitted to entertain a hope of *obtaining*, by *meriting*, a continuance of them.

In support of a term-limits amendment, the majority cites the old adage that “power corrupts and absolute power corrupts absolutely.” While the adage is no doubt true, it can hardly support a measure to limit the service of individuals who (1) stand for reelection once every 6 years and once every 2 years, respectively; (2) belong to bodies that number 100 and 435, respectively; and (3) belong to one of three coordinate branches of government in a constitutional system founded on the principle of separation of powers. As noted before, if anything, congressional term limits *increase* the power of one individual—the Chief Executive—and create an even greater possibility of abuse of power than exists under the current system.

Clearly, the Founding Fathers were intimately familiar with arguments in favor of term limits—however, they rejected the idea, the advantages of which they determined to be “at best speculative and equivocal” and “overbalanced by disadvantages far more certain and decisive.” Alexander Hamilton, *The Federalist* #72. This assessment of term limits rings as true today as it did over 200 years ago, and the Committee Report on S.J. Res. 21 provides not one single compelling reason why we should reject the wisdom of the Founders in this area. Indeed, the best argument the proponents of S.J. Res. 21 can muster is that a term limits amendment has popular support. But as Senator McConnell, an ardent opponent of term limits, has written, “[t]hat [argument] begs the question: What other constitutional amendments would be popular? The abolition of all federal taxes comes to mind. How about suspension of all civil rights for violent criminals?” McConnell, “Representation Without Limitation,” *The Washington Post*, March 23, 1995, page A27. As Senator McConnell rightly concludes, “term limits should be judged on the merits, not popularity,” *ibid*, and on the merits S.J. Res. 21 fails.

We already have significant turnover in both Houses of Congress: over 50 percent of the House of Representatives has been elected since 1990, and 55 Senators have been elected since 1984. In the last 15 years, we have also witnessed a change in control of one or another House of Congress no less than four times. Clearly, con-

sistent with the Framers' intent, and with our most cherished notions of representative democracy, the voters have spoken and will continue to speak, if we let them. We *must* let them, and must not add to the cynicism toward government that is all too rampant today.

XVII. ADDITIONAL VIEWS OF MR. KOHL

I write to express my support for congressional term limits and to express my disappointment that the committee rejected Senator Leahy's critical amendment, which would have eliminated the "grandfather clause" that exempts sitting Members of Congress from the limits contemplated by S.J. Res. 21. Indeed, by defeating the Leahy amendment while maintaining an exemption for ourselves, we sent precisely the wrong message to the American people: that Congress is still engaging in politics as usual. This is not a message that any member of the Judiciary Committee should wish to endorse.

In my opinion, the effort to limit congressional terms, embodied in S.J. Res. 21, has been prompted by a continuing decline in the public's trust in its governing institutions. This trust has been replaced by a deep and abiding cynicism. The prevailing view is that elected representatives are motivated all too often by a desire to ensure reelection, rather than by the sense of virtue and deliberative spirit that I know most of us share.

S.J. Res. 21 has been offered to address—at least in part—these unfortunate sentiments. I count myself among the supporters of S.J. Res. 21. But we are unlikely to succeed in convincing the public of our good intentions when we exempt sitting Members of Congress from the scope of a constitutional term limitation. Indeed, I question how a sitting member can both support term limitations and claim that he ought to be above such a law. Yet a majority of the committee did just that when they defeated Senator Leahy's amendment to apply S.J. Res. 21 to sitting Members.

I fear that the committee's defeat of the Leahy amendment will be perceived as an act of hypocrisy. I have yet to hear or read an adequate explanation for the exemption of sitting Members of Congress from S.J. Res. 21, and I doubt whether a reasonable justification could ever be crafted. No representative of the people should hold himself above, or beyond the reach of, the very Constitution he was sworn to uphold. If the Constitution should be amended to limit congressional terms, as I believe it should, then congressional supporters of such an effort should muster the humility to accept that this principle ought to bind them, too. I deeply regret the defeat of the Leahy amendment.

XVIII. MINORITY VIEWS OF MESSRS. BIDEN, KENNEDY,
LEAHY, HEFLIN, SIMON, AND FEINGOLD

We live in a time when Congress is more representative than ever before of the rich heritage that has been the source of America's strength and greatness. Congress today is comprised of citizens with widely varied educational backgrounds, vocations, and economic circumstances, including automobile assembly workers, a jewelry maker, funeral directors, law enforcement officers, lawyers, a taxi-driver, ambassadors, a winemaker, a riverboat captain, judges, a florist, doctors, journalists, and teachers. Quite recently, we have also seen the willingness of voters to send new representatives to Congress in place of incumbents. In light of these facts, we see no reason to deny voters the right to elect an individual to Congress simply because of that person's previous service.

We do not doubt that more than one modern-day Cincinnatus exists. We do question whether most working people can drop their jobs, take the time and obtain the money to run for office, and then easily return to their former jobs after government service, as the proponents of term limits seem to envision. We want to ensure the opportunity for the voters to continue to send a cross-section of American society to serve in Congress. If people of such varied life experiences commit themselves to public service in Congress and are willing to seek reelection after 12 years in office, the voters should not be denied that choice.

The notion of term limits for Members of Congress is antidemocratic in the most fundamental sense. Term limits denies voters the opportunity to send to Congress those persons the voters believe to be representative, hard-working, and effective. The United States was founded as a representative democracy in which the voters retained the right and the responsibility to choose their representatives. Instead of strengthening the democratic system, term limits will undermine the democratic process by limiting the right to choose representatives.

In their wisdom, the Founders chose not to incorporate into the Constitution term limits for Members of Congress. Alexander Hamilton called term limits "ill-founded," "pernicious," and "a diminution of the inducements to good behavior." In asking "Who are to be the objects of popular choice?" James Madison responded, "Every citizen whose merit may recommend him to the esteem and confidence of his country. No qualification * * * is permitted to fetter the judgement or disappoint the inclination of the people."

We share the majority's assertion "that power tends to corrupt, and that absolute power corrupts absolutely." Those tenets, however, do not apply to a periodically elected representative legislature like the U.S. Congress. Unlike dictators, kings, queens, emperors, czarinas, tyrants, and despots, Members of Congress are not appointed, anointed, or even elected for life. The Constitution provides a "check" on the power of Members of Congress by requiring each member of the House and one-third of the Members of the Senate to stand for reelection every 2 years. Some term limits advocates argue that the prospects of reelection leave Members unwilling to cast politically unpopular votes. By their logic, Members

of Congress should be limited to only one term so as to avoid the “temptations” that term limits advocates ascribe to reelection.

But we question whether the advocates of term limits want Members to be *more* accountable, or actually less so. The frustration on the part of term limits advocates with voters who choose their Members of Congress on criteria other than length of service is difficult to understand. The proponents of term limits claim that Members of Congress have lost touch with the needs of their constituents at the same time these proponents complain that Members of Congress need to be insulated from the voters in order to cast “politically unpopular” votes.

We wonder what form of accountability is left if the incentives of reelection are removed. The danger that particular Members of Congress will be “captured” by single-issue special interest groups to the detriment of other issues is that much greater if representatives do not have to justify *all* their work to their constituents at election time. We agree with Alexander Hamilton that the ability of individuals to be re-elected would give them “the inclination and the resolution to act [their] part well.”

The single vote each Member is allotted to exercise on each bill before Congress hardly can be equated to the “absolute” authority of a dictator—the single vote of a Member of Congress does not approach the power vested in the President. We are unaware of any Senator or Representative who wields “absolute” power over the administrative or legislative functions of the U.S. Government; we doubt term-limits proponents can find such a Member.

Indeed, if anything, term limits would threaten the balance of power between the legislative and executive branches of government. The President has at his disposal many levers of power. The one constant bulwark to the abuse of power by the Executive has been Congress. Out of fear and concern for the concentration of that power in the executive branch, the Nation adopted the 22d amendment to the Constitution limiting a President to two terms.

Advocates of term limits should heed James Madison’s warning, “[t]he greater the proportion of new members * * *, the more apt will they be to fall into the snares that may be laid for them.” By denying voters the choice to send experienced Members to Congress, terms limits will certainly create the opportunity for the executive branch to overreach and set snares for new and unwary Members of Congress. Ironically, term limits will tend to shift the decisionmaking power for complicated and controversial fiscal and social issues to unelected and unaccountable *career* bureaucrats within the executive branch.

Prior service in Congress is only one of the many criteria under the category of “experience” that individual voters may apply when casting a ballot. Each Member of Congress arrives with a unique background and ideas about particular problems and their solutions; after arrival, we sometimes find the problems more complicated and the solutions more difficult to obtain than previously expected. The realization that “bumper sticker” solutions are not feasible means that each Member of Congress, with the acquiescence of constituents, must become a better student of the issues. Often, that process takes time. Voters may prefer the long distance runner over the sprinter, a representative for the long haul not just

for the short term. Voters should have the option of sending a person who will work in the long run to accomplish their goals.

Members of Congress who do not engage their constituents in discussions about the issues of the day can hardly be considered representatives. We, however, have confidence that voters can draw their own conclusions about the effectiveness and worthiness of a candidate regardless of the length of service. Indeed, there is no more effective or dependable exercise for applying term limits than election day, the second Tuesday of November every 2 years.

XIX. MINORITY VIEWS OF MR. FEINGOLD

Judging by the spirited and ardent efforts of those who are seeking to propose a constitutional amendment to limit congressional terms, one would assume that new faces in the House and Senate are few and far between. But in fact, nearly 70 percent of the Members of the House have served less than the 12-year House limit prescribed by S.J. Res. 21. In the Senate, that figure is over 50 percent. In my view, we have a well-balanced bicameral legislature where each Chamber is divided between newly elected Members who bring energy and fresh ideas to Washington, and more experienced Members, many of whom bring expertise and sound judgment to what can be a tedious and complex legislative process.

Those who support term limits should take a close look at the election results of the past 14 years. In 1980, dissatisfied yet anxious voters gave control of the White House and the U.S. Senate to the Republican Party. Six years later, voters returned control of the Senate to the Democrats. In 1992, the electorate transferred control of the Executive and both Houses of Congress to the Democratic party. Then, just a few short months ago, those same voters returned control of not only the Senate to the Republicans, but also, for the first time in over 40 years, gave us a Republican Speaker of the House.

The public may be angry, they may be cynical and they may be unsure of exactly what they want from their government. But our recent election history points out the fallacies in what is essentially the bottom line of this proposed legislation—that term limits are necessary to bring about change.

Term limits supporters claim that the powers of incumbency discourage and handicap challengers that do not have the fundraising ability, name recognition, or the political clout that sitting Members of Congress enjoy. First, it should be noted that though difficult, it is far from impossible to unseat an incumbent. In my 1992 campaign, though outspent by a nearly 5-to-1 margin, I was able to upset an incumbent Republican Senator. Not because he didn't have incumbent advantages—he did. But the people of Wisconsin decided for themselves that after 12 years, this particular incumbent (a term-limits supporter running for his third term) no longer represented their viewpoint. This is how the democratic process should operate.

When the issue of term limits is debated on the floor of the Senate in the coming weeks, I will be urging my colleagues to reflect on the irreparable damage that such an amendment might do to this institution. We have had some truly outstanding individuals serve in the U.S. Senate. Republican or Democratic, Conservative or Liberal—these individuals, whether you agreed with them or not, were defined not only by their legislative accomplishments but also by their character and the principles for which they often stood and fought for. Had we had term limits, many of these individuals would have been forced prematurely out of office, and I am convinced that this would have had a detrimental effect on the extraordinary progress that this Nation has made on a wide range of issues over the last 200 years.

In 1955, the Senate established a commission led by Senator John F. Kennedy, charging that commission with the responsibility of naming the five greatest U.S. Senators in our Nation's history. After substantial input from other Members and the academic community, the commission chose Henry Clay, Daniel Webster, John C. Calhoun, Robert M. LaFollette, Sr., and Robert A. Taft, Sr. Portraits of these five Senators are hanging today in the Senate's reception room. Of Clay, Webster, and Calhoun, Senator Kennedy said:

No other Senators have ever rivaled the unparalleled leadership and statesmanship which they gave to a growing and anxious nation during a critical era when the Senate was the nation's most important body.

Of "Fighting Bob" LaFollette from the Great State of Wisconsin, Senator Kennedy wrote:

[LaFollette's] impressive legislative accomplishments * * * his tireless battles to make Government serve all the people, and his deeply felt insight into social and economic forces, all combined to shape a career we rightfully honor today.

Clearly, the considerable legislative skills exercised by these great figures were affected by their extended years of service in the U.S. Senate. Calhoun served 19 years, LaFollette served 22 years, and Clay and Webster each served 24 years. Taft was the novice, having served only 14 years. His service was cut short by his death in office during his third term. One can only wonder how these historical figures would have turned out if their service in the Senate would have been limited to just 12 years.

And these five Senators are not alone. The history books are full of names such as Hubert Humphrey, Everett Dirksen, Barry Goldwater, and Phil Hart. Barry Goldwater, an icon of the Conservative movement in this country, served in the Senate for 30 years. He came here during Eisenhower, took a break during LBJ, came back during Nixon, and retired under Reagan. I can say that as a progressive Democratic Senator from Wisconsin, that this Nation, and this institution, are better today because of Senator Goldwater's long service.

Finally, I would like to express my very serious concern about the great enthusiasm in the 104th Congress for making major alterations to the most fundamental parts of the United States Constitution. Excluding the Bill of Rights which were ratified together in 1791, this Nation has approved just 17 constitutional amendments in the past 200 years. That is an average of about one amendment every 13 years. And yet here we are about a month and a half into the 104th Congress and the Senate Judiciary Committee has already reported out two proposals to amend the Constitution. Besides the term-limits and balanced-budget amendments, the committee has already completed hearings on a line-item veto constitutional amendment. School prayer and flag burning amendments have already been introduced. I find it troubling and dangerous that so many of my colleagues believe that the very important fiscal, social, and political problems that we face today

can be so easily solved by making dramatic changes to a document that was so carefully crafted and that has guided our Nation for well over 200 years.

Interestingly enough, Mexico has a system of term limits even more stringent than those contained in S.J. Res. 21. There is no reelection for either the Mexican President or the Mexican federal legislature. And since 1917, the Mexican Constitution has been amended over 400 times.

If the powers of incumbency lend an unfair advantage to sitting Members of Congress, we should roll up our sleeves and pass campaign-finance-reform legislation so that challengers have a reasonable chance of running a competitive campaign. Term limits are no doubt a popular idea—but so is comprehensive campaign finance reform. If we can solve a problem that most parties seem to agree exists—that is, the unfair advantages held by incumbents—by means other than a constitutional amendment, we should aggressively pursue that avenue before considering such a fundamental change to our Constitution.

