



Free markets. Real solutions.

R STREET SHORTS NO. 72
July 2019

THE CASE AGAINST CONGRESSIONAL TERM LIMITS'

Casey Burgat

INTRODUCTION

One of the most commonly advanced congressional reform ideas is to limit by constitutional amendment the number of terms members can serve. As evidence, term limits have been introduced in nearly every Congress going back to 1943. They are an evergreen reform, and supporters argue that imposing them would be the best way to minimize corruption and the influence of special interests in Washington.

Yet despite their popular support and seemingly clear logic, the implementation of term limits would do little to combat monied interests in Congress, and instead would hamper Congress's ability to do its job as a co-equal branch of government. In fact, term limits would exacerbate some of the very problems their adoption is intended to rectify. For example, decades of political science and public administration research shows that term limits do not increase the diversity or ambitions of elected officials serving in government, nor do they decrease reliance on special interest groups or big money donors. In light of this, term limits are a draconian measure that effectively force out supported and experienced legislators in an attempt to limit the corrosive impacts of separate political concerns, such as gerrymandered districts or the role of money in politics.

THE LOGIC OF TERM LIMITS

It is understandable that the idea of term limits is supported by a record-high 75 percent of the public.² Only 20 percent of Americans approve of the way Congress is handling its job.³ Voters feel unheard by the officials they chose to be their voice and drowned out by the monied special interests and 'swampy' ways of doing business that are common in Washington. Put simply, they feel unrepresented by their representatives.

It follows then that if we limit the number of terms a member can serve, perhaps we can stem the corruptive tendencies that are assumed to inevitably creep into even the most well-intentioned lawmakers. At the very least, we can kick out unpopular, possibly corrupt members who have made a career out of being elected. In short, term limit proponents suggest that adding such an amendment will force representatives to do their jobs more honestly. In summary, proponents of term limits argue that their implementation would accomplish two primary objectives:

Eliminate career politicians who, by virtue of their safe reelections, have little incentive to remain responsive to their constituents.⁴ Term limits, advocates suggest, would increase diversity in Congress and return it to the 'citizen legislature' envisioned by the framers rather than the current model dominated by rich elites.⁵

Decrease member reliance on special interest groups and big money donors, since lawmakers would feel less compelled to court their support to remain in office.

THE DOWNSIDES OF TERM LIMITS

Because term limits have never existed at the federal level, we must turn to state-level experiences in order to anticipate their consequences for Congress. And on this account, the past several decades of political science and public administration research are clear: The hypothetical upshots of term limits have not been realized. In fact, the measure has often worsened the very issues it intends to address.

In terms of the composition of candidates, multiple studies—including two that survey state legislators in all 50 states—dispel the prediction that term limits will increase the diversity of candidates or representatives.⁶ When comparing the makeup of legislatures in term-limited and non-term-limited states, researchers found no meaningful differences across a host of variables, including occupation, family income, age, race, ethnicity, religious affiliation or candidate ideology.⁷ In fact, the authors concluded that: "Despite all the speculation about term limits producing a new breed of legislator, our results show that not much change in the composition of legislatures can be attributed to the reform."⁸

While there is some support for the prediction that term-limited legislators spend less time on reelection-related activities like fundraising, these effects are typically found only during a legislator's last term. Prior to the final cycle, legislators in term-limited states spend similar amounts of time on reelection behaviors like dialing for dollars.⁹ Additionally, term-limited legislators reveal equally strong ambitions to remain in elected office in other capacities—a finding at odds with the assumption that term limits would produce lawmakers with greater willingness to return to private life after serving in Congress.¹⁰

The revolving door from Congress to lobbying shops is not likely to slow either. Many lawmakers forced out of the chamber will want to cash in on their experience and connections instead of letting them go to waste. A better return on the public's investment would be to allow that earned experience to stay in Congress, where the people have the final say in reelection, rather than to let it be used to peddle special interests with far less accountability.

More important, however, is the consistent finding that once the electoral connection is severed, term-limited legislators are actually less—not more—concerned with the needs of their constituents and individual districts.¹¹ In fact, term-limited lawmakers spend less time personally keeping in touch with their constituents, engage in less constituent casework and exert less energy to secure projects for their districts.¹²

Moreover, researchers have found that once lawmakers lose reelection motivation, they become more concerned with their personal policy positions and less concerned with the needs of those who elected them. This effect has been labeled a “Burkean shift,” where members turn away from the interests of their constituencies to favor their own personal beliefs.¹³

Term limits have also been shown to decrease lawmakers' efforts to develop and advance policies, reduce their willingness to show up for roll-call votes,¹⁴ and discourage creation of the bipartisan coalitions and relationships within the chamber that are often desired by term limit supporters.¹⁵ Contrary to public opinion, maintaining a strong election incentive encourages lawmakers to act on their constituents' behalf. When that incentive is eliminated, lawmakers are less motivated to keep the needs and wants of their constituents at the forefront of their minds, and tend to increase spending and borrowing levels since they cannot be punished electorally for their actions.¹⁶

Furthermore, using qualitative and quantitative data, studies consistently show that once term limits are adopted at the state level, lawmakers are *more* likely to defer to actors outside of the chamber, including lobbyists, bureaucrats and governors or state executives. One study, for example, inter-

viewed lobbyists specifically and ultimately found a “strong consensus among these lobbyists that term limits have caused the state political influence structure to shift away from the legislature and toward the governor, administrative agencies, and interest groups.”¹⁷

This turning outward is understandable. Legislators are incredibly time constrained and are responsible for resolving an endless catalog of pressing problems. Because they are pulled in so many different directions, lawmakers and their staffs do not have the informational capacity to maintain expertise on all of the proposals on which they will vote.¹⁸ Thus, they turn to sources such as well-resourced lobbying shops and executive agencies staffed with long-serving bureaucrats who maintain in-house expertise through specialized experience. In either case, the legislature and individual lawmakers thereby become dependent on outsiders for information and policy alternatives that often come with partisan agendas.

In addition to increased deference, mandating lawmakers to vacate their positions has been strongly linked to decreases in legislatures' capacities to execute their primary functions. States with term limits—whether because of a dearth of experience or willingness on behalf of their lawmakers—have been shown to conduct less effective oversight,¹⁹ accept governor initiatives more willingly and less frequently construct complex policy solutions within the legislature.²⁰

THE PRESIDENTIAL DIFFERENCE

As support for the necessity of congressional term limits, proponents often point to the ratification of the Constitution's 22nd amendment, which limits the president of the United States to two terms. But there are several vital differences between the president and members of Congress that make the comparison faulty. Most notably, the president is the single most powerful figure in government and holds immense military, legislative and economic unitary power.

Presidents, particularly when acting as Commander-in-Chief, issue military directives that are legally required to be followed; they have sweeping authority to fill thousands of positions in government, including lifetime service on federal courts; federal agency heads are expected to serve at the pleasure of the president and work to implement his or her preferred policies; and presidents are able to issue executive orders that effectively implement or change federal policies without congressional input or involvement. As only one of 435 members in the House of Representatives or 100 members in the Senate, no individual member of Congress holds equivalent authority.

CONCLUSION

Put simply, term limits have proven to be a brain drain on legislatures. Policymaking is a hard job and an often thankless one at that. There are very few easy, clear-cut decisions in Congress, and policy alternatives are often fraught with unintended consequences that surface long after initial votes. Experience and effectiveness are entwined, a correlation scholars have labeled the ‘competency effect.’²¹ Experienced legislators therefore should be welcomed rather than ushered away from the institution where they can do the most good.

Moreover, new members of Congress face an unbelievably steep learning curve. The institution operates under a complex set of procedures, rules and precedents. These are learned on the job. When legislatures are full of inexperienced lawmakers, special interests and executives fill the informational void and overpower elected representatives. Ultimately, the public suffers.

Finally, term limits deprive voters of the fundamental right to choose their representatives. The measure automatically kicks out lawmakers without regard for their effectiveness or constituent support. If voters feel unheard or poorly represented by their elected officials, the mechanism is there to remove them. Neither Congress’s job performance nor the public’s dissatisfaction with its work will be improved by automatically forcing out duly elected, experienced members. In fact, the effects of term limits are more likely to harm the institution than help it.

We live in an increasingly complex world, one in which our lawmakers are responsible for developing solutions to intricate societal problems while appropriating and overseeing a federal budget of \$4.1 trillion. Even the most seasoned, experienced lawmakers struggle to craft effective policies and often cannot fully anticipate the unintended consequences of each vote they take. Still, we need our most effective lawmakers to stay in Congress or we run the risk of actually decreasing the legislature’s capacity to do its job in our system of government. Ultimately, voters hold the power to elect or remove their representatives, and that power should remain in their hands.

ENDNOTES

1. An adapted version of this policy brief was delivered on June 8, 2019, as testimony to the Senate Committee on the Judiciary, Subcommittee on the Constitution. <https://www.rstreet.org/2019/06/20/testimony-before-u-s-senate-on-congressional-term-limits>.
2. “More Voters Than Ever Want Term Limits for Congress,” *Rasmussen Reports*, Oct. 26, 2016. http://www.rasmussenreports.com/public_content/politics/general_politics/october_2016/more_voters_than_ever_want_term_limits_for_congress.
3. “Congress and the Public: Congressional Job Approval,” Gallup, 2019. <https://news.gallup.com/poll/1600/congress-public.aspx>.

4. Amihai Glazer et al. eds., *Legislative term limits: Public choice perspectives* (Kluwer, 1996).
5. Mark P. Petracca, “The Poison of Professional Politics,” *Cato Institute Policy Analysis* No. 151, May 10, 1991. <https://www.cato.org/publications/policy-analysis/poison-professional-politics>.
6. See, e.g., John M. Carey et al., “The effects of term limits on state legislatures: a new survey of the 50 states,” *Legislative Studies Quarterly* 31:1 (2011), pp. 105-34. <https://onlinelibrary.wiley.com/doi/abs/10.3162/036298006X201742>; and John M. Carey, et al., “The effects of term limits on state legislatures,” *Legislative Studies Quarterly* (May 1998), pp. 271-300. http://www.ryandwilliamson.com/uploads/1/9/2/0/19201239/carey_et_al_1998.pdf.
7. “The effects of term limits on state legislatures: a new survey of the 50 states,” pp. 105-34. <https://onlinelibrary.wiley.com/doi/abs/10.3162/036298006X201742>.
8. “The effects of term limits on state legislatures,” p. 280. http://www.ryandwilliamson.com/uploads/1/9/2/0/19201239/carey_et_al_1998.pdf.
9. The effects of term limits on state legislatures: a new survey of the 50 states,” pp. 105-34. <https://onlinelibrary.wiley.com/doi/abs/10.3162/036298006X201742>.
10. See, e.g. *Ibid.*; and Jennifer A. Steen, “The impact of state legislative term limits on the supply of congressional candidates,” *State Politics and Policy Quarterly* 6:4 (Dec. 1, 2006), pp. 430-47. <https://journals.sagepub.com/doi/abs/10.1177/153244000600600404>.
11. See, e.g., “The effects of term limits on state legislatures: a new survey of the 50 states.” <https://onlinelibrary.wiley.com/doi/abs/10.3162/036298006X201742>.
12. *Ibid.*
13. *Ibid.*
14. Gerald C. Wright, “Do term limits affect legislative roll call voting? Representation, polarization, and participation,” *State Politics and Policy Quarterly* 7:3 (2006), pp. 256-80. <https://journals.sagepub.com/doi/abs/10.1177/153244000700700302>.
15. See, e.g., Marjorie Sarbaugh-Thompson et al., “Democracy among strangers: Term limits’ effects on relationships between state legislators in Michigan,” *State Politics and Policy Quarterly*, 6:4 (2006), pp. 384-409. <https://journals.sagepub.com/doi/abs/10.1177/153244000600600402>; and Karl T Kurtz et al. eds. *Institutional Change in American Politics: The case of term limits* (University of Michigan Press, 2009).
16. Abbie H. Erler, “Legislative term limits and state spending,” *Public Choice* 133:3-4 (2011), pp. 479-94. <https://link.springer.com/article/10.1007/s11127-007-9209-2>.
17. Gary Moncrief and Joel A. Thompson, “On the outside looking in: Lobbyists’ perspectives on the effects of state legislative term limits,” *State Politics and Policy Quarterly* 1:4 (2001), p. 394. <https://journals.sagepub.com/doi/abs/10.1177/15324400010100404>.
18. Susan M. Miller et al., “The consequences of legislative term limits for policy diffusion,” *Political Research Quarterly* 71:3 (2018), pp. 573-85. <https://journals.sagepub.com/doi/abs/10.1177/1065912917749891>.
19. See, e.g., David R. Berman, “Effects of legislative term limits in Arizona,” Joint Project on Term Limits, 2004. <http://www.ncsl.org/Portals/1/documents/jptl/casestudies/Arizonav2.pdf>; and John Straayer and Jennie Drage Bowser, “Colorado’s legislative term limits,” Joint Project on Term Limits, 2004. <http://www.ncsl.org/Portals/1/documents/jptl/casestudies/Coloradov2.pdf>.
20. Travis J. Baker and David M. Hedge, “Term limits and legislative-executive conflict in the American states,” *Legislative Studies Quarterly* 38:2 (2013), pp. 237-58. <https://onlinelibrary.wiley.com/doi/abs/10.1111/lsg.12012>.
21. James Alt et al., “Disentangling accountability and competence in elections: Evidence from US term limits,” *The Journal of Politics* 73:1 (2001), pp. 171-86. http://home.uchicago.edu/bdm/PDF/term_limits.pdf.