

# The Case For Limiting Congressional Terms

By Mark B. Liedl

The 1990 congressional elections could not have demonstrated a more compelling case for term limits. With public outrage and disgust with Congress at all-time highs, voters reelected incumbents at a rate exceeding 96 percent. The result demonstrates that congressional elections no longer serve as a mechanism for voters to express their opinions about Congress. The choice offered in the election gave voters who disapproved of Congress no real option but to stay home — and 65 percent of them did just that.

The high incumbent reelection rate in 1990 certainly is consistent with recent election trends, but it seems surprising given the clear public displeasure with Congress. During the two years between the 1988 and 1990 elections Congress was subject to more scrutiny and public displeasure than at any time in recent history: the Jim Wright and Tony Coelho scandals, the savings and loan scandal, the pay raise that touched a raw nerve in voters, wide-scale reporting of franking abuses, the largest tax increase in history, and a complete collapse of the congressional budget process. Why were none of these debacles translated into a “throw the bums out” result?

The answer is suggested by the great disjuncture in American politics today: voters hate Congress but love their own congressman. A national survey two days before the election showed that while 69 percent of the public disapproved of Congress, 51 percent approved of their own congressman.

## THE 1990 CONGRESSIONAL ELECTIONS: SEND AN OMBUDSMAN TO WASHINGTON

The key to understanding the 1990 congressional elections is to understand the nature of government today and how members of Congress — largely since the Great Society — have successfully transformed their role from national legislators to narrowly focused constituent ombudsmen. Now you might say that congressmen quite properly should represent the narrow interests of their constituents. True enough, but before the advent of big government in Washington a congressman's representative role was to reflect the values of his constituents. Under our current centralized welfare-state system of government, serving constituents means securing federal aid or relief from inept or onerous government action. And while in the past conflicting constituent interests tended to create a balance in Congress, today all constituents are united by the single interest of securing the largest possible piece of the federal pie.

In his 1978 book *Congress: Keystone of the Washington Establishment*, Morris P. Fiorina, a liberal political scientist from Harvard University, identified the transformation of congressmen from national policy makers to ombudsmen. Fiorina examined the extraordinary increase since the 1960s in noncompetitive congressional districts. He found that if congressmen focused their activities on national policy their chances of reelection would be less likely. But if instead they concentrated on casework and other nonpartisan, nonideologi-

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Mark B. Liedl is Director of The Heritage Foundation's U.S. Congress Assessment Project.

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cal service-oriented activities their reelection was almost guaranteed. Not surprisingly, therefore, Fiorina found that more and more congressmen forsake policy-making for ombudsmanship, and are being rewarded with corresponding increases in incumbency reelection rates.

**Powerful Message.** Representative Newt Gingrich's election close call this year demonstrates this phenomenon. Here is a congressman who focusses on national policy-making, who takes stands on issues, and clearly represents a distinct set of values. His constituents said, "That's great, but what have you done for us lately?" And now Gingrich has told his constituents that he's gotten the message, which presumably means less national policy-making and more local casework. Close calls like Gingrich's are not lost on the other members of Congress. They send a powerful message: Why take the risk? Concentrate on casework and be safe.

Fiorina showed how the growth of big government in Washington has enabled congressmen to substitute casework for ideology. He described the "iron triangle" of congressmen, interest groups, and the federal bureaucracy, a symbiotic relationship that promotes congressmen's role as ombudsmen for constituents. Congress, for example, protects and preserves the bureaucracy, which in turn responds to congressional demands for constituent service. Fiorina explains that, because of this relationship, Congress has a perverse incentive to create a large, complex, and inefficient bureaucracy so that constituents will turn to congressmen as their saviors from the inept federal monstrosity. Congressmen take credit for creating a federal program to solve a perceived problem and then take credit for intervening on behalf of constituents when the program fails to produce as promised. As Fiorina put it, congressmen take credit coming and going, they are the alpha and the omega.

It is important to note that this system of governing creates a powerful dynamic for preserving the status quo. Innovative policy changes are impossible because Members of Congress eschew policy controversies in favor of casework. Wide-scale reform of failed government programs makes no sense when congressmen stand a much better chance of reelection simply by keeping the programs in place and responding to the complaints of beneficiaries who are not being served by the bureaucrats.

**Magic Formula.** This current approach to governing is a panacea for incumbents because it is a system in which, if both congressmen and voters act rationally, incumbents will be reelected. Congressmen pursuing their rational interest of getting reelected naturally will focus on casework and preserving the welfare state system that allows them to do so. Voters who pay taxes and, therefore, expect service and benefits from government rationally will reelect incumbents who, after all, are better able to work the Washington system to constituent's benefit.

The magic of this formula is not lost on liberals, who generally are more inclined and skilled than conservatives in playing the ombudsman role. This is why Michael Dukakis, in his 1988 acceptance speech at the Democratic Convention announced that the election would be about "competence, not ideology." He attempted to inject into the presidential race the incumbent's winning formula in congressional races. But since Presidents don't do casework, presidential elections remain referendums on ideology.

## **HOW TERM LIMITS CAN REFORM CONGRESS**

Congressional elections never will be competitive if Members focus on casework instead of policy-making. As long as broad policy questions fail to play a major role in congressional elections, incumbents will continue to be reelected.

But we saw during the 1980s how difficult it is to break the current dynamic. Ronald Reagan, despite his immense electoral mandates, was unable to do it. In eight years, he barely made a dent in the iron triangle. That's why Reagan dedicated his last speech as President to the subject of Washington's iron triangle and its power to thwart policy change. Since the Great Society, the Washington establishment has remained virtually unchallenged by congressional elections. And it is no coincidence that the growth of big government in Washington has resulted in Democrat dominance of Congress. Liberals thrive as ombudsmen, although obviously not as policy makers.

Term limitations can break the current dynamic in two ways. First, term limits, unlike other congressional reforms, will make it rational for congressmen to focus on national policy rather than casework. The overriding force that drives the congressional focus on casework is reelection. If terms are limited, Members no longer will have the incentive to build the casework operations that guarantee a lifetime career in Congress. Congressmen serving only a limited time will have more of a motive to concentrate on policy-making in order to make their mark on Washington. Some Members may still concentrate on casework, but term limits will introduce a new dynamic affecting their behavioral decisions that does not exist now.

Critics of term limits warn that Members facing a set term in office will be induced to "make hay while the sun shines," which invariably means doing all of the bad things they do now, but with more intensity. I disagree. There certainly will be an incentive for Members to make hay, but it is more likely than now to be in the form of policy-making, since the value of casework will be significantly diminished. True, a legislature of liberals bent on making policy changes may not be a delight for conservatives. But making laws is what the Constitution says Congress is supposed to do. And congressional elections are supposed to be referendums on those policies. So if the voters decide they support liberal policies, conservatives may not be elected to Congress. But at least conservatives will have the opportunity to make their case in congressional elections that focus on policy rather than casework.

**Breaking the Iron Triangle.** The second way in which term limits can dramatically reform Congress is by creating a rational interest among congressmen to limit the size and complexity of the federal bureaucracy. Term limit critics claim that limits would increase the power of the bureaucracy. Without seasoned veterans in Congress, they argue, bureaucrats will run roughshod over Capitol Hill. True enough, but newly elected members of Congress, facing a complex and unresponsive bureaucracy, also will have an incentive that doesn't now exist to limit the power of bureaucracy. They will have a rational interest and the constitutional power to pass laws that reign in and simplify the bureaucracy. Congressmen now have an incentive to keep the bureaucracy large and complex. With term limits, the interests of the bureaucracy and congressmen no longer will be compatible. The iron triangle could finally be broken.

So term limits is the only reform that addresses the core of the problem — the rational self-interest of voters and congressmen.

## **OBJECTIONS TO TERM LIMITS**

**1) Constitutional.** A common objection to term limits is that the Founding Fathers considered, but rejected writing it into the Constitution. But certainly, if Washington, Jefferson, and Madison saw Congress today they would favor term limits. The framers thought that elections would reflect the political values of citizens and check the power of government. But government has been totally transformed from the days of the founding. Our centralized Washington government has polluted the original system of limited federalist government established by the Constitution. In the founders' framework there was a 10th Amendment that said all powers not expressly granted in the Constitution to the federal government are reserved to the states and to the people. There was also a commerce clause that was just that — a clause giving Congress power over commerce between the states, and not the blank check it has become for the government to regulate nearly every aspect of economic life.

To suggest that term limits today are inconsistent with the Constitution is to ignore what the Constitution says — not what the Supreme Court since FDR has said it says, but what it actually says.

**2) Choice.** Another objection to term limits is that it limits voters' ability to support candidates of their choice. The first response to this claim is that voters currently have no choice. That is what the 1990 congressional elections demonstrated. It is why only 36 percent of the voters participated. Only 7 percent of the congressional races this year were financially competitive. And a record 74 House members and 4 Senators ran unopposed. The only choice voters have now is more of the same, or don't vote.

The second response to the choice argument is, what is choice? Is it the ability to vote for a particular person or the ability to vote for a set of ideas and values? The heart of voting is really the latter — to vote for someone who shares your beliefs. Limiting terms does not restrict that fundamental choice. It limits voters' ability to pick a particular person, but not their ability to elect congressmen who share their policy views.

**3) Separation of Powers.** Some critics of term limits argue that such a reform would tilt powers to the President at the expense of Congress. This argument fails to account for the fact that the balance already has been tilted toward Congress by the 22nd Amendment. By limiting the terms of the President, the amendment enhanced congressional power, and particularly its control over the bureaucracy. Bureaucrats are far more responsive to congressmen, who likely will remain in office long after the President and his team have left town. Congress and the President are coequal powers under the Constitution. If the terms of one are limited, the terms of the other should be also.

**4) Experience.** Another objection to term limitation is that it will deplete from government the valuable experience of long-time members of Congress. It is difficult to take this argument seriously. What kind of experience will be lacking? The ability to raise taxes? The ability to increase federal spending while convincing the public that spending is being cut? The ability to get reelected in the face of wide-scale public hostility? The most important thing we need is congressmen inexperienced in the ways of government — people who don't understand how the federal government works so they can radically reform it so it makes sense to ordinary people. The whole notion of the "experience" argument is an elitist one resting on the premise that the definition of good government is one which is totally incomprehensible to normal people. It is just the opposite.

Another element of the experience argument is that term limits would force good Members of Congress out of office. Yet a lifetime of government service in elective office still would be possible if congressional terms were limited. Members who reach their term limit in one house of Congress could then run for a seat in the other house, for President, or return home to run for state or local office. History is full of examples of prominent legislators who served long careers but no more than two terms in one house of Congress.

**5) Staff.** Critics of term limits also claim that unelected congressional staff will become too powerful if terms are limited. A study this year by the Congressional Management Foundation showed that staff turnover on Capitol Hill is quite high. There is nothing to suggest that this will change if terms are limited. Even so, such an effect could be prevented by limiting the number of congressional staff and their pay. A provision to that effect was included in the term limit law approved in California last Tuesday.

**6) Symptoms, not disease.** Another criticism of term limits is that it is a cure only for symptoms and not the disease that has beset Congress. According to this line of reasoning, the disease is congressional perks, the frank, campaign finance laws, the budget process, Congress exempting itself from laws, and so forth. But it is just the opposite. These congressional weaknesses and abuse of power are symptoms of an underlying disease. The disease is that Congress is unaccountable to the voters. And the reason Congress is unaccountable is that elections no longer serve as an effective check of congressional power. And the reason elections no longer check Congress is that congressmen have transformed their role from legislators to ombudsmen. That is the disease, and it can only be combatted by term limits.

It may help to think of congressmen as addicts — they are addicted to power, to preserving the system that keeps them in office. Now, rarely does an alcoholic voluntarily check himself into a rehabilitation center. Alcoholics don't admit that they have a problem. It takes someone who loves them to grab them by the arm throw them in a gunny sack and take them into treatment. In dependency treatment language this is called "intervention" — when the loved ones of an addict force him into receiving treatment.

Term limitation is the equivalent to intervention. It is those of us who love Congress — who love the institution created by the Constitution, the world's most representative legislature uniquely constructed within a system of separated powers — stepping in to save that institution. Term limitation is the intervention that will put Congress on the road to recovery.

