

1998

An Analysis of the Principal Arguments in Support of a Congressional Term Limit

Paul William Cadero-Smith
Portland State University

Follow this and additional works at: https://pdxscholar.library.pdx.edu/open_access_etds



Part of the [Political Science Commons](#)

Let us know how access to this document benefits you.

Recommended Citation

Cadero-Smith, Paul William, "An Analysis of the Principal Arguments in Support of a Congressional Term Limit" (1998). *Dissertations and Theses*. Paper 6219.


<https://doi.org/10.15760/etd.8080>

This Thesis is brought to you for free and open access. It has been accepted for inclusion in Dissertations and Theses by an authorized administrator of PDXScholar. Please contact us if we can make this document more accessible: pdxscholar@pdx.edu.


THESIS APPROVAL

The abstract and thesis of Paul William Cadero-Smith for the Master of Science in Political Science were presented August 4, 1998, and accepted by the thesis committee and the department.

COMMITTEE APPROVALS:



David A. Smeltzer, Chair




Richard C. Clucas



Gordon B. Dodds
Representative of the Office of Graduate Studies

DEPARTMENTAL APPROVAL:



Gary L. Scott, Chair
Division of Political Science

ABSTRACT

An abstract of the thesis of Paul William Cadero-Smith for the Master of Science in Political Science presented August 4, 1998.

Title: An Analysis of the Principal Arguments in Support of a Congressional Term Limit.

This paper looks closely at the debate on congressional term limits. The objective of this paper is to examine critically the fundamental arguments made in support of term limits. Analysis of pro-term limits literature pinpoints incumbent behavior as the driving force behind term limits reform. In particular, supporters argue that legislators have become increasingly career-oriented over the past fifty years, allocating for themselves a myriad of perks of office (e.g., large staff, free mailing, and unlimited travel budgets) to achieve their reelection goals. In addition, incumbents are cited for focusing on the wishes of their constituencies instead of on the country's needs, creating critical problems in the operation of Congress and rendering congressional elections effectively uncontestable.

The framework of representation developed by the Framers is analyzed. This provides a basis for discussion to determine if legislators are too responsive to parochial interests at the expense of the national interest—as is contended by proponents. The nature of policy paralysis is reviewed to determine if it is the result of

incumbents' reelection behavior or is endemic to the Framers' system of representation. We suggest the latter is a more probable explanation.

This work will examine the charges that incumbents have prospered from generous perks of office and constituency service. Findings will show that while perquisites of office have grown sharply over the past fifty years, House incumbent reelection rates have remained fairly static. Likewise, in the Senate, no discernible pattern has emerged to show that its members have profited from the benefits of office. An alternative perspective on turnover will also be offered, indicating that turnover already occurs to a meaningful degree.

In conclusion, evidence has not supported proponents' beliefs about policy paralysis, incumbent behavior, and the nature of turnover. For this reason, questions are raised about the legitimacy of term limits as a reform movement.

AN ANALYSIS OF THE PRINCIPAL ARGUMENTS IN SUPPORT OF A
CONGRESSIONAL TERM LIMIT

by

PAUL WILLIAM CADERO-SMITH

A thesis submitted in partial fulfillment of the
requirements for the degree of

MASTER OF SCIENCE
in
POLITICAL SCIENCE

Portland State University
1998

DEDICATION

To Lisa

ACKNOWLEDGEMENTS

There are so many people who deserve my gratitude for their assistance and support during the writing of this paper. First let me thank Professor David Smeltzer. I first met Professor Smeltzer in 1990 when I arrived on the Portland State campus to begin graduate work. Over the years he has been a mentor and trusted advisor. He suffered through prolonged periods of procrastination on my part as I struggled with the task of putting words on paper. I thank him for not completely giving up on the idea that this thesis would eventually come to realization. I need to thank him also for invaluable critiques of earlier versions of this paper

I also need to thank Professor Richard A. Clucas for his editing of preliminary drafts of the paper. Without his and Professor Smeltzer's help, this paper would have remained in rough draft form.

On the subject of editing assistance, I would be remiss without extending a sincere amount of gratitude to my wife Lisa. She not only read and re-read the paper, applying her editor's pen carefully and constructively, but also managed to single-handedly keep the home fires burning. This task would have been impossible without all the support she provided over the past many months. I thank her and our children Gabriel, Peter, and Abby (who took her first steps during the writing of this paper) for

their patience during the late nights and weekends spent apart while I was busy writing. I can only say that I will make it up to you all somehow. I promise.

Lastly, I want to thank my father, Gary Smith, who early on recognized my interest in the study of American politics. I like to think he planted the seed that made this paper possible.

TABLE OF CONTENTS

DEDICATION.....	i
ACKNOWLEDGEMENTS.....	ii
LIST OF FIGURES AND TABLES.....	vii
Chapter	
1. INTRODUCTION.....	1
The Contemporary Term Limits Movement.....	3
Continuing the Term Limits Debate.....	4
Proponents' Believe That the Thornton Decision Did Not Spell the End for Term Limits The Substantial Base of Support for Term Limits The American Version of Representation	
A Basis for Discussion: The Pro Term Limits Argument.....	7
Objective of the Thesis.....	10
Limits of Inquiry.....	12
Structure of the Thesis.....	14
Notes.....	16
2. THE TERM LIMITS DEBATE: THE CASE AGAINST CONGRESS AND ITS MEMBERS.....	19

A Brief History of Term Limits.	20
The Federalists Respond.	24
Careerism: The Pursuit of a Goal and the Changing Congress.	26
Responsiveness and Policy Paralysis: The Bane of Professional Politics.	28
Incumbency Reelection and Turnover in Congress.	32
The Development of the Professional Legislator.	35
The Vanishing Marginals and The Source of the Invincible Incumbent.	39
Goal of the Paper: Where Do We Go From Here.	46
Notes.	48
3. RESPONSIVE REPRESENTATIVES AND RESPONSIBLE GOVERNMENT IN THE AMERICAN FRAMEWORK OF REPRESENTATION.	55
The Uniquely American Version of Representation.	59
The Contrast between the Senate and House in the Framework.	64
Did the Framers Expect or Want Abundant Turnover?.	68
Elections and Term Limits.	71
Responsible Government.	73
A Momentary Reflection on the American Framework of Representation.	76
A Look at Contemporary Research on the American Framework of Representation.	77
Concluding Remarks.	82
Notes.	84

4.	EXAMINING THE INCUMBENCY ADVANTAGE AND TURNOVER.	88
	Term Limits Proponents' Views on Perks, Constituency Service, Pork Barrel Politics and Turnover.	92
	The Reelection of Incumbents and the Role of Perks, Constituency Casework and Pork Barrel Politics.	100
	Constituency Casework and Pork Barrel Politics.	105
	The Importance of Challenger Quality in Congressional Elections.	108
	Turnover.	110
	Careerism.	118
	Concluding Remarks for Chapter 4.	119
	Notes.	121
5.	A FINAL WORD ON TERM LIMITS AS A VIABLE REFORM. ...	126
	The Potential Impact on a Term-Limited Congress.	128
	An Observation of Seniority.	134
	Final Remarks.	135
	Notes.	138
	SELECTED BIBLIOGRAPHY.	140

FIGURES AND TABLES

Figures

3.1 Staff Size – House	96
3.2 Number of Subcommittees – House.	96
3.3 Paid Trips to the District – House	97
3.4 Franking Privilege – Congress.	98
3.5 Staff Size – Senate	98
3.6 Number of Subcommittees – Senate.	99
3.7 Paid Trips to the State – Senate	100
3.8 Percentage of Victorious House Incumbents.	101
3.9 Percentage of Victorious Senate Incumbents	102

Tables

3.1 Turnover of House Membership.	113
3.2 Turnover of Senate Membership.	114

CHAPTER 1

INTRODUCTION

In the present decade the term limits movement has become enormously popular with American voters. A variety of interest groups, capitalizing on negative attitudes toward government and concerned with advancing their own political agendas, have pushed for term limits reform.¹ While the idea of limiting congressional terms is not new to the American political landscape, the 1990s have been a period of unrivaled success for the term limits movement.² Since 1990, twenty states have passed laws limiting the number of terms for state legislators.³ Other states have passed similar measures attempting to apply term limits to federal legislators.

Abuses of power by congressmen in the late 1980s and early 1990s (e.g., Abscam and the House banking scandal) have fueled the most recent term limits debate. Term limits proponents argue that Congress has failed to resolve long standing problems. This impasse, proponents claim, is the result of congressmen focusing more on maintaining prestigious positions in Congress, and less on law making and problem resolution. Proponents assert that wasteful spending and pandering to constituents and special interests are justifications for limiting terms.⁴ Opponents of term limits, however, argue that limiting terms would result in the loss of capable legislators and the deprivation of voters' rights to choose their representatives.

The central purpose of this paper is to analyze the arguments made in support of a term limit for members of Congress. Part of this analysis will be to critically examine the operation of the current Congress and ascertain how, or if, it is affected by incumbent legislators' reelection-oriented activities. This will also be the basis for a discussion of the proponents' assertions about the Framers' expectations with respect to the function/role of legislators and the operation of Congress. It will be shown that the Framers constructed Congress to function methodically and incrementally and developed a framework of representation that would elicit some level of responsiveness between representatives and their constituencies. In exploring these points, it will become evident that the behavior exhibited by contemporary legislators remains consistent with the original framework. However, term limits supporters contend times have changed dramatically since the drafting of the Constitution. So too have the attitudes and behavior of incumbent congressmen who have distorted representation by placing personal objectives over constitutional duties. The incumbent legislator is closely scrutinized in this paper to determine the validity of advocates' arguments made against them. In conclusion, our findings cast doubt about a term limits reform and suggest this is an unwarranted movement as the evidence offered in support is disputed.

The Contemporary Term Limits Movement

The most effective attempt at implementing congressional term limits within the past fifty years occurred in 1988 when the Republican Party placed a congressional term limit proposal on its national platform. By 1990, Republican operatives and conservative interest groups initiated a nationwide movement promoting congressional term limits. The movement, propelled by revelations of scandals and the public's negative attitudes toward Congress, first took hold in state legislatures with the passing of various laws and initiatives aimed at limiting legislative service.⁵

In the 1994 congressional elections, Republicans, critical of the Democratic stewardship of government, took advantage of the pervasive animosity toward Congress and vowed to restore trust in American government.⁶ The Republicans' "Contract with America" included a term limits proposal. The proposal, known as the "The Citizen Legislature Act," called for the replacement of career politicians with citizen legislators.⁷ This proposal called for a twelve-year tenure cap for senators and a six-year cap for House members—though the Contract included an alternate proposal for a twelve-term limit for House members. The idea behind a limited term was to put a time restraint on legislators to accomplish the agenda they had set for their legislative service.⁸ It was argued that a term limit would force congressmen to pursue their agenda over building a career. Some asserted that Republicans adopted the term limits plank in 1994, not because of a fundamental belief in its validity, but in

response to its wide public support.⁹ It was further argued that the Republicans' support waned once they came to power. Term limits advocacy groups, once allies of the Republican leadership, became vocal critics of House Speaker Newt Gingrich and other Republicans, citing their failure to aggressively push forward a congressional term limits amendment. Gingrich and other Republican leaders supported twelve-year limits for both House and Senate, while term limits advocacy groups favor a six-year term limit for House members and a twelve-year limit for senators.

Continuing the Term Limits Debate

The term limits debate continues to be a viable discussion despite significant setbacks experienced by the movement. The 1995 Supreme Court case *U.S. Term Limits v. Thornton* rebuked efforts by states (namely Arkansas) to limit the number of terms served by members of Congress.¹⁰ Republicans, as well, have been unsuccessful in passing a constitutional amendment measure through the House of Representatives.¹¹ Despite these failures, proponents have successfully enacted legislation and passed initiatives on the state level, and have managed to extort promises from candidates to voluntarily limit their tenure if elected to the federal level (Congress).¹² Asserted in this paper are three principal reasons why the term limit debate is still worthy of continued discussion and analysis. These reasons are explained in more detail below.

Proponents' Believe That the Thornton Decision Did Not Spell the End for

Term Limits

Despite the court's ruling in Thornton, term limits proponents have pursued other avenues to further their cause. Supporters have promoted measures such as ballot advisories indicating whether or not a candidate has pledged to abide by term limits,¹³ and so far, ballot statements have passed constitutional litmus tests.¹⁴

Encouraged by term limits popularity and historical precedence (i.e., enactment of the Seventeenth Amendment), supporters of term limits believe in the viability of a constitutional amendment mandating term limits on legislators.¹⁵ David Mayhew and Rogan Kersh have noted striking similarities between the movement for term limits and the campaign for ratification of the Seventeenth Amendment. They observed that the movement toward direct election of Senators persevered despite initial resistance by the Congress. Also, the direct election movement enjoyed wide support among the electorate and in the states. Furthermore, calls for reform intensified over questionable campaign fund-raising by legislators.¹⁶

The Substantial Base of Support For Term Limits

With the substantial support of so many Americans, it appears that the term limits movement will continue and will be a topic of political debate in the near future. With the furor over campaign spending scandals after the 1996 elections and Congress's failed attempts to make meaningful inroads on finance reform, it appears

that term limits will continue to be part of the current political landscape and an issue in congressional elections. Most recently, the issue of term limits appears to have been a deciding factor in the outcome of two 1998 congressional elections.¹⁷

The American Version of Representation

Term limits continue to be an important topic of study because, as recent elections demonstrate, it remains on the political agenda. Another important reason to continue this analysis is that term limits affect the uniquely American version of representation; this is an important area within the term limits debate that has not received much attention and should be considered in the discussion.

A framework of representation clearly evolves from three central documents, including the Framers' writings in the *Federalist Papers*, Madison's notes at the Constitutional Convention, and the debates on ratification of the Constitution.¹⁸ This framework prescribes the representational roles of the legislator and insures a measure of responsiveness between the representative and his constituency. The nature of this connection is dependent, to a fair degree, upon the length of term of the legislator and his prospect for reelection. Elections serve to filter out less capable representatives from highly capable ones and serve as the constituency's check on the elected official.¹⁹ Clearly a term limit would have an impact on this process by mandating the length of time legislators remain in office.

The present framework of representation, though not expressly named such in the Framers' writings on the Constitution, demonstrates how legislative roles are malleable, allowing representatives to alter the degree of their connection between their district's interests and the national interests. This is predicated, somewhat, on the length of term of the legislator's tenure. The frequency of elections faced by members of the House warrants a closer fidelity to the interests of their constituency. Senators, on the other hand, have greater opportunities to exercise discretion. Disrupting the balance that exists between local and national interests should be done with some degree of caution before implementing a reform that will profoundly alter the framework of representation.

A Basis for Discussion: The Pro Term Limits Argument

The fundamental assertions of the pro-term limits position focus on the powers of incumbency. Arizona Senator Dennis DiConcini argued this point during a Senate Judiciary Committee hearing on a term limitation amendment proposed in 1978.

Senator DiConcini declared,

[T]he powers of incumbency are so great that the voter is really offered only the illusion of choice...The growth of the professional legislator...is frightening, for it is yet another step away from the democratic ideal, leading toward rigid, unrepresentative institutions. [T]here is always the danger that long service in Washington will desensitize us to the changing needs and views of our constituents. By limiting the terms of legislators...challengers [will] recognize that the incumbent's advantage is nullified...²⁰

This next section looks at the prominent arguments made by term limits supporters that will be the basis for analysis of the pro term limit argument throughout this paper. These assertions will be summarized here; though they will also be covered in greater detail in chapter 2.

Throughout the on-going term limits debate, there have been numerous reasons for supporting a cap on congressional tenure. The scope of this paper, however, does not warrant a discussion of each one. Through my research, I have concluded that there is a consistent set of assertions made by proponents of term limits and have listed them sequentially as follows: (a) There has been a gradual increase in the length of tenure of legislators, giving rise to careerism.²¹ (b) In order to maintain a career in Congress, legislators have made reelection their singular focus.²² (c) The means of assuring continual reelection is to ingratiate oneself to the constituency and special interests—namely through pork barrel legislation and constituency casework. (d) By generating “perpetual reelection machines” in which legislators take advantage of free mailing, huge staffs, and their powerful positions on committees, incumbents generate intimidating campaign war chests and ward off potential worthy challengers.”²³ (e) A lack of worthy challengers creates an absence of turnover among the rank and file in Congress. (f) The decline in turnover of congressmen results in policy paralysis as the same individuals attempt to address the same problems with the same answers. Legislators, afraid of angering the electorate or the fund source for their

reelection campaigns, become unwilling to make difficult decisions that may be contrary to the needs of a particular constituency, but in the best interest of the nation.

These assertions are not the only rationale used to support a term limit.

Supporters believe that mandatory resignation will stimulate competition in congressional races. Supporters also argue that women and minorities will likely have more opportunities for public service as a result of a term limit. There is evidence to suggest this may in fact occur.²⁴ While increased competition and enhanced representation are desirable outcomes, these are ancillary arguments made in support of a term limit. In the term limits debate all arguments eventually converge at the incumbent legislator—and how he/she is able to maintain being an incumbent.

Incumbents, and the incumbency mindset, are seen as a barrier to fairer elections, and to a better functioning, more democratic Congress. In this discussion we will go to the crux of the issue and analyze how and why the incumbent is successful, instead of contesting the validity of the possible benefits derived from a term limit. Accordingly, the set of assertions listed above will be the basis for further examination of term limits. The objective of this analysis will be to closely examine the evidence supporting these assertions and show the degree to which the proponents' assertions about incumbents and turnover are supported by the facts. Incumbents have consistently fared well in their reelection bids. The question we attempt to address is have congressmen been successful in pursuing their own ambitions at the expense of their legislative duties.

Objective of the Thesis

Are the arguments put forward by term limits advocates compelling enough to drastically alter the constitutional framework? Proponents believe that a limitation of terms would correct Congress's operational flaws and redirect the behavior of representatives from reelection seeking to policy making. This paper will examine the perceived problems (i.e., incumbency, turnover/careerism, responsiveness, and policy paralysis) identified by term limits supporters and discuss the propriety of targeting these "problems" to justify the reform (term limits). There will be some discussion on the effects of term limits, though forecasting every potential ripple effect will not be the objective of this paper.

For a reform to be worthwhile, it must resolve a clearly identified problem. An issue this paper seeks to address is if incumbents' career orientation has resulted in problems (e.g., unfair elections, unresolved national problems—policy paralysis) to warrant implementation of this reform. Are the problems so severe that this reform is needed despite the fact that a term limit could possibly result in negative unintended consequences?²⁵

The first objective of this paper is to propose an American framework of representation as elucidated earlier in this chapter. The objective here is to look at the Framers' beliefs about how they expected congressmen to interact with their constituencies and how issues would be resolved—in other words how Congress

would make policy. Examination of the framework of representation will allow for further analysis on a number of contentious issues within the term limits debate. For example, does the framework prescribe how responsive the legislator is to be to the constituency's interests versus the national interest (if they are at odds)? Is the policy paralysis that proponents claim beleaguers Congress a product of incumbents' election-oriented behavior or a direct result of the Framers' system of government? What role does elections (and the prospect for reelection) have in the American framework of representation? Finally, we question a whether term limit is consistent with the Framers' framework of representation, as some proponents.

Another objective of this paper is to examine the nature of incumbency and turnover of congressmen. The sources of incumbency advantage (e.g., increases in staff, travel budgets, free mailings, the number of subcommittees) are analyzed with the reelection rates of incumbents to determine if these benefits have had a direct impact on making incumbents less susceptible to defeat. Incumbency, by itself, confers upon the candidate some advantage. We seek to determine if and to what extent these benefits have bestowed upon the incumbent even more advantages—thereby rendering the incumbents undefeatable. This discussion will focus on elections and whether incumbent politicians deliberately manipulate election outcomes to serve their careerist goals.

The claim made by proponents is that little is resolved in Congress because the career-minded orientation of Congressmen does not produce much turnover among

congressional membership. Supporters endorse term limits expecting to create “a better Congress” replete with a “different kind of legislator” who will collectively infuse Congress with a better agenda and superior ideas.²⁶ Proponents assert that this “different kind of legislator” with an unfettered agenda will be able to address long-standing issues affecting the national interest. Infusing new people with fresh ideas into Congress is a notion that has merit. One objective addressed in chapter 4 is to determine extent to which turnover of congressional membership occurs and whether a term limit is needed to stimulate suitable levels of turnover.

Limits of Inquiry

The literature on term limits covers an array of elected offices, including state, federal, and municipal. The majority of the literature addresses congressional term limits, and my analysis will be limited almost exclusively to Congress.

There will be only a brief discussion about term limits as they relate to state legislatures. While some state legislatures are highly professionalized and serve as a springboard to higher offices, others are amateur-based and are considered “dead end” positions.²⁷ The sheer number and diversity of state legislatures precludes a detailed examination of them within the scope of this paper.

The Twenty-Second Amendment, limiting the number of terms served by the president, is the only successful campaign waged to limit the number of terms served

in a federal office. As such, it would be compelling to draw comparisons between the legislative and executive branches with respect to term limits. However, the composition of the respective constituencies, the disparity in job roles, duties, and expectations (not to mention the historical precedent for a voluntary rotation—with the notable exception of Franklin Roosevelt) makes a basis for comparison that is too troublesome for my purposes here. I will include some discussion by the Framers, specifically Hamilton, on the presidential term and election because it sheds light on the Framers' view of the importance of elections to maintain officials' dependence on the people.²⁸

The idea of limiting terms in office has been a hallmark of representative democracies since the time of the Renaissance city-states of Venice and Florence.²⁹ The principle of rotation was supported by such noted political theorists as James Harrington and John Locke.³⁰ George Will often refers to works by classical political theorists to validate his belief that term limits are needed to restore Congress to a deliberative democracy in the truest sense of classical republicanism.³¹ My purpose is not to flush out the theoretical underpinnings of term limits, or merely give an historical account of the evolution of the term limits movement today. I will discuss, as a matter of some importance, the connection between the people and their elected officials within a democratic republic and the vital nature of this relationship. As a democratic republic, the American system of government depends upon a link between the representative and the represented. My focus, however, will remain on the

framework of representation as devised by the Framers, and how contemporary congressmen's behaviors conform to this framework. I will not concentrate on the origins of the theoretical framework itself, and therefore, will not address the "intellectual origins of the constitution" as it pertains to representation.³² The time period addressed in this paper begins with the Constitutional Convention and continues to the present.

Structure of the Thesis

This thesis will consist of five chapters. The first chapter is comprised of the introduction of the paper. Chapter 2 will review the literature relevant to term limits. The intent is to introduce the reader to the prevailing arguments in support of term limits—with respect, primarily, to incumbency advantage (through the use of perquisites and constituency service) and representation. Works written by prominent term limits supporters such as George Will, John Fund, and Mark Petracca will be closely examined. In particular, the arguments made by Will in his book *Restoration* will receive close scrutiny. David Mayhew's and Morris Fiorina's research on career-minded legislators will be closely evaluated too, as they are frequently cited in corroboration of proponents' arguments.

Chapter 3 will look at the development of a framework of representation devised by the Framers, focusing primarily on the consistency between contemporary legislators' behaviors and the Framers' intentions. Chapter 3 questions supporters'

claims that term limits are consistent with the Framers' framework of representation.

This chapter examines how Madison and the other Framers were able to create a system of government that provided stability, yet maintained close dependence on the people.

Chapter 4 will delve into the issue of incumbency. The reelection rates of incumbent legislators will be evaluated to determine what impact perks of office, constituency casework, and pork barrel legislation have on making incumbents less vulnerable to defeat. Chapter 4 also includes a discussion of turnover in congressional membership. The quality of candidates challenging the incumbent is significant to the deliberation of turnover as well and will be discussed in chapter 4.

Chapter V is the conclusion of this paper. General comments will be made on the possible effects of term limits, and a summary provided on the validity of term limits reform for Congress and the American political system.

NOTES

¹ For a review of the various interest groups initially involved in exploiting the anti-incumbent backlash to support term limits see, Stuart Rothenberg, "Transplanting Term Limits: Political Mobilization and Grass-Roots Politics," in Gerald Benjamin and Michael J. Malbin eds., *Limiting Legislative Terms* (Washington D.C.: Congressional Quarterly Inc., 1992): 97-113; Kenneth Jost, "Term Limits: Will a Recent Setback Derail the Term-Limit Movement," *CQ Researcher*, 2 (January 10, 1992) 13-16; Ronald D. Elving, "National Drive to Limit Terms Cases Shadow Over Congress," *Congressional Quarterly Weekly Report*, 49 (October 26, 1991): 3101-3105.

² For a good overview of the history of the term limitation idea, see, e.g., Mark P. Petracca, "Rotation in Office: The History of an Idea," in Gerald Benjamin and Michael J. Malbin eds., *Limiting Legislative Terms* (Washington D.C.: Congressional Quarterly Inc., 1992): 19-43.

³ This information was taken from, and a brief synopsis of the twenty states adopting term limits can be found in, Dana Milbank, "As Term Limits Take Effect in Maine's Capitol, Government Seems to Be Doing Just Fine, Thanks," *The Wall Street Journal*, April 2, 1997.

⁴ Jost, *CQ Researcher*, 3.

⁵ Jost, *CQ Researcher*, 13.

⁶ Gary Jacobson, *The Politics of Congressional Elections*, 4th ed., (New York: Longman Press, 1997): 215.

⁷ "Republicans' Initial Promise: 100 Day Debate on 'Contract'," *Congressional Quarterly Weekly Report*, November 12, 1994, 3216-3219.

⁸ Jacobson, *The Politics of Congressional Elections*, 217.

⁹ *Ibid.*, 215.

¹⁰ The Court ruled in a 5-4 decision that placing a limit on the number of terms a congressman can serve is tantamount to creating a new qualification on congressmen. Justice Steven's majority opinion expresses that the Constitution is very clear that neither Congress nor the states can change the qualifications for candidates or members of Congress.

¹¹ The most recent defeat of term limits legislation came on February 12, 1996 on HJ Res. 2 sponsored by Representative Bill McCollum R-Fla.

¹² Term limits advocacy groups have become so focused on their insistence that candidates promise to limit their term that they have gone so far as to support candidates who openly claim opposition to term limits in general though are willing to sign "loyalty oaths" promising to self limit their term. In a recent special election to fill the seat of Rep. Walter Capps D-CA, U.S. Term Limits supported the candidacy of Lois Capps over her Republican opponent Tom Bordonaro. Bordonaro, a term limits supporter, refused to sign the U.S.T.L. statement pledging to limit his tenure in Congress citing it would possibly put his district at a disadvantage if he alone were forced to retire when other MCs were gaining more power as a result of their seniority. See John J. Miller, "Terminally Inept," *National Review*, March 9, 1998, 3.

¹³ Roland D. Rotunda, "The Aftermath of Thornton," *Constitutional Commentary*, no. 2 (Summer 1996). Available [Online]: <<http://www.termlimits.org/aftermath.shtml>> [December 2, 1997].

¹⁴ Ibid.

¹⁵ Ibid. Rotunda also suggested that term limits supporters should not believe the movement is mortally wounded by initial setbacks. He noted it took many years after the first proposal for direct election of senators before the enactment of the Seventeenth Amendment occurred.

¹⁶ David Mayhew & Rogan Kersh, "Term Limits Aren't Dead," *The New York Times*, (April 2, 1995) A21.

¹⁷ In a March 1998 Washington Post editorial, Robert Novak reported that Lois Capps D-CA and Illinois State Representative Judy Biggert each won their congressional seat and primary due in part because of their open support for term limits. Novak noted that polls showed Capps and her opponent Bordonaro (who refused to sign a pledge voluntarily limiting his term) in a dead heat. Capps, described as a liberal Democrat, comfortably won the seat in a largely Republican district based on her support from voters who supported term limits. For more details see note 12 and, Robert Novak, "Term Limits Hypocrites," *Washington Post*, (March 26, 1998). Available [Online]: <<http://209.8.243.100/research/overview/tlhypocrites.htm>>[August 8, 1998].

¹⁸ The "Framers" referenced here are those who figured prominently in support of the Constitution at, and following, the Convention, namely: Madison, Hamilton, Gouverneur Morris, James Wilson, and Roger Sherman. Though Madison comes to the forefront because of his extensive writings in the *Federalist* on the subject of representation and the form and function of Congress.

¹⁹ For a discussion of elections serving to sift higher quality representatives, see, Jeffery J. Mondak, "Elections as Filters: Term Limits and the Composition of the U.S. House," *Political Research Quarterly*, 48 (December 1995).

²⁰ *Congressional Tenure: Hearing before the Subcommittee on the Constitution of the Senate Committee on the Judiciary*, 95th Congress, 2d Session. (1978) (Statement by Sen. D. DiConcini, D-Arizona).

²¹ George Will devotes much of his book, *Restoration*, to this notion. See the number of citations of "legislative careerism" in the index on page 254 as an example. See, George F. Will, *Restoration: Congress, Term Limits and the Recovery of Deliberative Democracy* (New York: The Free Press, 1992).

²² David Mayhew's work comes to mind here. See, David Mayhew, *Congress: The Electoral Connection* (New Haven: The Yale University Press, 1974)

²³ The ideas contained here and quotations are from: Jost, *CQ Researcher*, 4.

²⁴ See, Doug Bandow, "Real Term Limits: Now More Than Ever," *Cato Policy Analysis No. 221*, (March 28, 1995):20. Available [Online]: <http://www.cato.org/pubs/pas/pa-221.html> [January 26, 1998]; Mark P. Petracca, "A Comment on 'Elections as Filters'," *Political Research Quarterly*, 48 (December, 1995): 730; Richard Clucas, "The First Post-Term Limits Election in California," in *Extension of Remarks: Term Limits? Early Assessments*, ed., Lawrence C. Dodd, July, 1994, Center for the Study of American Politics, University of Colorado –Boulder: 4.

²⁵ For a discussion of possible unintended consequences emanating from term limits, see, Linda Fowler, "A Comment on Competition and Careers," in Gerald Benjamin and Michael J. Malbin eds., *Limiting Legislative Terms* (Washington D.C.: Congressional Quarterly Inc., 1992): 182-183.

²⁶ Petracca, "A Comment on 'Elections as Filters'," 730.

²⁷ For a good description of the different types of state legislatures and the career opportunities they spawn see: Peverill Squire, "Career Opportunities and Membership Stability in Legislatures," *Legislative Studies Quarterly*, 23 (February, 1988).

²⁸ The specific *Federalist Papers* noted here are numbers 68, 69, and 71. See *The Federalist Papers*, ed. Garry Wills, (New York: Bantam Books: 1982).

²⁹ Petracca, , "Rotation in Office: The History of an Idea," 20-22.

³⁰ *Ibid.*, 22-23.

³¹ See Will, *Restoration*.

³² Phrase borrowed from Forrest McDonald from his work: Forrest McDonald, *Novus, Ordo, Seclorum: The Intellectual Origins of the Constitution* (Lawrence, KS: The University Press of Kansas, 1985). This is a recommended book for anyone wanting the history of ideas instrumental in crafting the Constitution.

CHAPTER 2

THE TERM LIMITS DEBATE: THE CASE AGAINST CONGRESS AND ITS MEMBERS

It is a basic fact in American politics that incumbents have an advantage in elections.¹ This is true at any level of government, and will not be disputed in this paper. The success of the term limits movement in contemporary American politics is based on this fact. The above average showing by House incumbents in the 1986, 1988, and 1990 congressional elections; a poorly-performing economy in the late 1980s and early 1990s; and the acceptance of term limits by the Republican Party have together ignited the latest term limits movement. While there is no disputing the incumbency advantage, the basis for this advantage does warrant some discussion.

Does the framework of representation put forth by the Framers contribute to an incumbency advantage? And have modern day legislators become so far removed from the original framework that a term limit has become necessary to re-instill original beliefs about service in Congress? The literature written by term limits supporters asserts, with remarkable consistency, that incumbents have carefully crafted Congress to operate in a manner that benefits their careers. Proponents argue that the actions of legislators are orchestrated almost exclusively to place them in an optimum

position for the next election. The purpose of this chapter is to set a foundation for further examination of these and other prevalent arguments in support of term limits.

Term limits reform clearly targets the incumbent legislator. Thus, it is necessary to outline proponents' arguments and the supporting research to examine the reasons incumbents are so successful at achieving reelection. Term limits supporters identify the self-imposed advantages of congressmen as the source of incumbent invincibility. Proponents admonish contemporary legislators for micro-managing their reelection campaigns at the expense of tackling larger problems of national importance.² The net result is unfortunate, but safe—incumbents who collectively do not accomplish a great deal. Infusing new people with fresh ideas into Congress is viewed as the remedy needed to break this cycle.

First, this chapter will provide a brief discussion about the Framers as they grappled with the idea of a term limit for members of Congress. It will also review proponents' concerns about the absence of turnover and the focus on career-oriented behavior by legislators. Last, some of the history of term limits (or rotation) will be covered.

A Brief History of Term Limits

The only experiment applying term limits to the federal legislature in the United States occurred under the Articles of Confederation. The Continental Congress adopted a proposal by John Dickinson of Delaware that limited a delegate to three

years of service in any six-year period.³ Typical of the feeble nature of government under the Articles, five members who had reached their tenure limit refused to retire and remained in Congress. Their impudence went unchallenged.⁴ Mark Petracca points out that the “revolutionary zeal for rotation in office started to wane” just a few years following the drafting of the Articles.⁵ The forced retirement of several popular governors of states with rotations and the apparent weakness of the Confederation contributed to this loss of enthusiasm.⁶

Still, both the New Jersey and Virginia Plans included a term limit for representatives when the Constitutional Convention convened in 1787. Several contemporary term limits advocates assert that the Framers generally favored the idea of including a cap on legislative tenure, though avoided crafting this into the Constitution because it “entered into too much in detail” for such a relatively short document.⁷ Reading Madison’s notes on the Convention, one has the sense that term limits (rotation) was not an issue of major significance. All motions that involved codifying rotation into the Constitution were flatly rejected, though the idea continued to arise in discussions of House, Senate, and presidential elections. Edmund Randolph, architect of the Virginia Plan, recommended a limit on the number of terms for each branch of Congress and the presidency.⁸ Petracca states that much of the discussion around the idea of rotation was focused on the presidency. He writes that the Framers quickly dismissed the necessity for a prohibition on the president’s re-eligibility once a relatively short term of four years was agreed upon.⁹ Hamilton, writes Petracca,

swayed the argument away from rotation of office by stating that it would be “a diminution of the inducements to good behavior.”¹⁰

A favored assertion of contemporary term limits proponents is that it was unnecessary for the Framers to adopt term limits into the original text of the Constitution. Legislators were defeated at regular intervals, since representatives during the first century after the Founding viewed representation as an obligation to public service, not a full time job.¹¹

There was a fair amount of support for a term limit on legislators at the Founding. Many arguments made in opposition to the Constitution by the Antifederalists (specifically their arguments for a rotation) are similar to those made by contemporary term limits advocates. Antifederalists contended, as does George Will and other term limits advocates, that without a mandatory rotation in office, congressmen would probably serve as long as they pleased, essentially securing a lifetime appointment to office upon initial election.¹² A prominent Antifederalist writing under the pseudonym “Brutus” stated, “everybody acquainted with public affairs knows how difficult it is to remove from office a person who [has] long been in it.”¹³ Melancton Smith contended that rotation would bring forth many diverse talents from among the people who may otherwise be denied the opportunity to serve by those who are “perpetually confined” to the office.¹⁴

Richard Henry Lee of Virginia cautioned that without a term limit, “even good men ... will lose sight of the people and gradually fall into measures prejudicial to

them.”¹⁵ John Lansing, a convention delegate from New York, and an Antifederalist, stated his support for the inclusion of a mandatory rotation for senators. Lansing argued:

[T]o oblige them to return, at certain periods, to their fellow-citizens, that, by mingling with the people, they may recover that knowledge of their interests, and revive that sympathy with their feelings, which power and an exalted station are too apt to efface from the minds of the rulers.¹⁶

The continuity of the leading arguments made in the term limits debate over the past two centuries is striking. However, there are some notable distinctions. The basis for the Antifederalists’ assertion that representatives needed to return home to reside among private citizens differs from the similar view of contemporary term limits proponents. The Antifederalists’ concern was that congressmen (namely senators) would go to Washington and simply never return to their constituency. Consider the following:

Their attention to their various business will probably require their constant attendance. In this Eden [Washington] will they reside with their families, distant from the observation of the people. In such a situation, men are apt to forget their dependence.... They should not only return, and be obliged to live with the people, but return to their former rank of citizenship both to revive their sense of dependence and to gain knowledge of the country.¹⁷

Transportation, being incredibly cumbersome at the end of the eighteenth century, made travel to Washington from the various districts a consequential hardship. The concern among the Antifederalists was that senators in particular would

not be attuned to the constituencies' needs or opinions because they would not be around enough to know what these were. Thus senators would lose their dependence on those they represented.

A principal assertion in Will's book is that congressmen, always focusing on reelection, do not maintain enough distance from their constituents to make objective judgments, particularly when those judgments are diametrically opposed to the constituency's desires. Unlike Will, however, eighteenth century supporters of term limits, namely Antifederalists, were concerned that there would be too much distance between a legislator and their constituency unless the legislator was forced back to their district. Antifederalists wanted a much closer dependence on the people and advocated for term limits primarily for this reason.¹⁸

The Federalists Respond

A general mistrust of government led to continuing support for term limits. At several state ratifying conventions, proposals were designed to include a rotation for federally elected officials.¹⁹ The Federalists, including Robert Livingston, Roger Sherman, and Alexander Hamilton strongly rebuked the efforts of Antifederalists to include a rotation in the new Constitution. Today, Antifederalist arguments are cited to support assertions made by term limits proponents as are Sherman, Livingston, and Hamilton's arguments cited by opponents of term limits.

Sherman argued that government is deprived of the service of experienced officers under a tenure cap.²⁰ Livingston called rotation “an absurd species of ostracism” that eroded the potency of reelection thereby diminishing the incentives for accountability to the people.²¹ Livingston added that the people are the best judges for deciding who should represent them. The principle of rotation deprives the people of this right. Hamilton referred to rotation as a “feeble principle” that jeopardized the long-term prosperity of the country.²²

Contained within the *Federalist Papers* is a consistent argument against term limits—some of which is expressly stated, though much is implied. Most of the discussion related to rotation (term limits) was centered on the presidency. The relatively short terms of offices for elected officials (ensuring a close dependence on the people) and the prospect for reelection made a term limit largely unnecessary. Madison in *Federalist 10* acknowledges that a representative could be tempted by personal ambitions that may affect his or her duties.²³ The Constitution attempted to harness personal ambitions through staggered terms, shared power among office holders, and rewards for public service so that legislators would serve the long-term interests of their constituents and country, not just the immediate interests of their constituents.²⁴ In *Federalist 52*, Madison states that frequent elections are the *only* policy by which dependence and sympathy with the people can be maintained.²⁵

A hallmark of the Federalist’s view of representation is the use of reward (reelection) as a means of curbing the personal ambitions of the representative.²⁶ As

long as a representative behaved appropriately and represented the constituency well (as judged by the constituents), he would continue to remain in office. Constituencies constantly assess the performance of their representative through frequent elections, and this insures that the people only reelect those who have earned their trust.

Madison, in *Federalist 53*, acknowledges that “a few of the members [of Congress] ...will possess superior talents [and] will, by winning frequent elections, become members in long standing.”²⁷ Clearly the Federalists were not alarmed at the prospect of legislators staying in Congress for extended periods of time.

Careerism: The Pursuit of a Goal and the Changing Congress

Proponents of term limits assert that a mandatory term limit was left out of the final draft of the Constitution because most delegates believed a voluntary term limit would be the norm.²⁸ John Fund states, “it was never thought that serving in Congress would become a career.”²⁹ Will concurs, stating that the Framers were wise to leave a term limit measure out of the final draft of the Constitution because it was not needed at that time; it is, however, needed now.³⁰ The changing tenor of Congress from a deliberative body to a highly professionalized assembly designed to serve the career aspirations of its members is the reason, in Will's view, a change has become necessary.

Term limits proponents are united in their contempt for the incumbent legislator. The incumbent legislators—and their reelection-oriented attitudes—are

viewed as the nexus for most of the problems attributed to the present-day Congress.

Supporters of term limits want to disable the reelection mindset that is responsible for the professionalization of Congress. Proponents desire a new outlook for both representatives and Congress:

The political energy behind the term limits movement is predicated on the need for a citizen legislature. Americans believe that career legislators and professional politicians have created a gaping chasm between themselves and their government. For democracy to work, it must be representative democracy—a government of, by, and for the people. That means a citizen legislature.³¹

The professionalization of politics—individuals making a career of public service—is likened to a “poison” that is incompatible with the essence of representation.³² “The culture of professionalism disconnects and distances the professional from those whom she or he intends to serve.”³³ Proponents argue that a hallmark of representative government is to maintain a closeness of “sympathy and interests” between representative and represented; professionalism creates authority and autonomy resulting in distance between representative and the constituency.³⁴ Term limits proponents believe government has moved away from being a servant of the people to a master “in some grand public adventure.”³⁵ Proponents contend that individuals who enjoy running other people’s lives, and take pleasure in running for reelection dominate politics today. Furthermore, many congressmen do not realize the impact of the laws they enact on “real people.”³⁶ Mark Petracca asserts that proponents of term limits want a different kind of legislator, one who is more committed to problem-

solving than to career maintenance.³⁷ A term limit would insure that representatives are mindful of the laws they pass, for they too, would soon have to live in accordance with them.³⁸ Edward Crane, a term limits advocate and President of the Cato Institute, adds that a citizen legislature will bring common sense and practical experience to law making; decisions will be made by Congress that are truly in the public interest.³⁹ Experienced legislators, states Crane, have foisted upon the American people enormous burdens, such as the \$300 billion savings and loan bailout.⁴⁰ Crane concludes that an inexperienced citizen legislature, imbued with common sense, would be less susceptible to engage in such economic malfeasance.⁴¹ Crane and other proponents see the growth of the professional legislator as leading to an irresponsible and immobilized Congress.

Responsiveness and Policy Paralysis: The Bane of Professional Politics

Proponents universally agree that Congress is not fulfilling its responsibility to resolve serious problems that plague the country (e.g., chronic crime, poverty, etc.). Fiorina notes there is a norm of congressional reciprocity among legislators today.⁴² Congressmen have a mutual understanding that they will assist each other (through approval of pork barrel legislation) in attaining each other's reelection goals.

[T]he observance of reciprocity is not very costly in terms of lost opportunities, and is very profitable in term of unfettered influence in an area vital to their continued reelection.⁴³

Proponents often attribute the failure to resolve the country's problems and the perceived policy paralysis in Congress to the unwillingness of self-serving legislators to eschew their career aspirations. "The different kind of legislators" Petracca states term limits advocates want are those willing to place policy objectives ahead of personal career goals. Proponents envision a Congress where principles and issues dominate elections rather than the favors bestowed upon a district.⁴⁴ As it stands now, the key to a successful incumbent bid for reelection is not his/her voting record, but rather the casework carried out on behalf of the constituency.⁴⁵

Proponents believe a term limit would change the attitude of congressmen from reelection-seekers to problem-solvers and policy-makers. Supporters express concern that the policy paralysis they observe in Congress is a result of legislators' efforts focused primarily on the reelection campaign. George Will and others cite a one-word explanation for this paralysis: Responsiveness. Politicians take pains to be responsive to voters, and voters have come to demand this of politicians.⁴⁶ The offshoot of growing professionalism and the shaping of Congress to fit this goal is that Congress is no longer a deliberative body where things get accomplished.⁴⁷ Congress has become a place where reciprocity is the norm and incumbents aggressively defend the status quo.

The term limits debate discusses at length how the dynamics of the relationship between the representative and the constituency has changed in the wake of the burgeoning professionalization of Congress. There is some disagreement among

proponents about whether reelection-oriented activities (constituency casework and pork barrel legislation) cause legislators to be overly responsive to the district's needs, or actually create too much distance between the representative and the constituency.

George Will contends that a more "Burkean" style of leadership is needed from today's legislators. Will finds that contemporary congressmen are too inhibited to exercise personal judgment out of fear they might disturb vital portions of the constituency and jeopardize their career. According to Will, the Burkean legislator is one who, through his/her judgment, makes deliberative decisions in the best interest of the constituency, even though the decision may be at odds with the wishes of the constituency. For Will, it is a question of leadership: legislators are leaders who should decide what is needed and in what direction to go, not relying on the people to dictate what they want.⁴⁸ Certainly George Will would argue that less dependence on and more independence from their constituents is needed from representatives. The objective of Will's book is to offer a blueprint for returning Congress to a deliberative democracy that truly addresses the problems it has not yet resolved.⁴⁹ For Will, the goal of a deliberative democracy is for representatives to serve at a "constitutional distance" from the people.⁵⁰

Mark Petracca expresses concern that the growth of professionalism creates distance between the representative and the represented. Professionalism, in effect, establishes an expert/client relationship between the representative and the constituency.⁵¹ In such a relationship, the professional is executing something for, not

acting on behalf of, the client. Professionalism creates authority and autonomy between the legislator and constituency. It also “encourages an independence of ambition, judgement, and behavior that is at odds with the inherently dependent nature of representative government.”⁵² Representative government requires people and government to connect through representatives.⁵³ Thus legislative careerism, states Petracca, is antithetical to the operational demands of a representative democracy.⁵⁴ Additionally, careerism encourages legislators to defend government and the status quo, rather than solving serious public problems.⁵⁵ Doug Bandow concurs with Petracca; he claims that Congress is now dominated by incumbents who have as much loyalty to the system as they do have for their constituents.⁵⁶

Both Will and Petracca are troubled by what they perceive as representatives who are hyper-responsive to the needs, wishes, and desires of their constituencies. Both view constituency service as having taken on too much importance in legislators’ activities. However, they differ in their perception of the legislative roles taken on by current representatives with respect to constituency service. Petracca believes that constituency service has created too much distance between the representative and the constituency. The congressman should have close sympathy and common interests with his/her constituency that is lost in a professional legislature ruled by constituency service. Will believes careerism causes legislators to be too indulgent with the constituency. Will argues that congressmen are constantly appeasing their constituency, and this determines their roll call voting as well. Will states that

legislators use public opinion polls to decide how they should vote on a particular piece of legislation or amendment. He likens government to a sensitive instrument always ready to react to the slightest whims of the public whims.⁵⁷

Proponents state that Congress today—filled with experienced representatives—is not a place where bold and innovative public policy is generated.⁵⁸ John Fund sees Congress as a place wrought with “endemic compromise, institutional paralysis, and the Beltway mentality—a narrow, self-contained culture with addictive qualities.”⁵⁹ Proponents believe a term limit is essential to break the policy paralysis that burdens Congress. Congressmen will be more willing to make hard decisions necessary to resolve difficult problems if they refrain from focusing on how the “wrong” vote may affect their career. “It may be that the readiness to leave office mutes ambition and amplifies honesty. Risk-taking may come most easily to those who are willing, if necessary, to leave.”⁶⁰

Incumbency Reelection and Turnover in Congress

A consistent topic of discussion in the term limits debate—particularly by term limits advocates—is the steady rise in the tenure of congressmen. In much of the literature, proponents of term limits argue that representatives constitute a “permanent government of career politicians” due to the “near-impossibility of defeating an incumbent today.”⁶¹ Proponents are skeptical that legislators would be willing to modify or even discard some of the reelection advantages they have awarded

themselves since political careerism has become such an accepted norm. “Today the entire political system is biased toward long-term legislative service. The only way to counteract that systematic bias is by limiting terms.”⁶²

Often, proponents of term limits like John Fund, Mark Petracca, and most notably, George Will, harken back to a time early in the American Republic when they claim the ideal citizen legislator existed. In particular, Will states that “perpetual incumbency was not the normal career aspirations” for early congressmen.⁶³ He argues that people came to Washington, and didn’t stay long because they chose to do “other things” or were defeated.⁶⁴

James Sterling Young’s book, *The Washington Community*, provides a different account of why turnover among representatives was so robust immediately following the Founding. He describes early Washington as a place that was bleak and inhospitable.⁶⁵ The turnover rate among congressmen was high, not because of a prevailing belief that politics was not meant to be a career (as suggested by Will and others), but because Washington was a place no one wanted to stay for any length of time.

Times have changed. Legislative service in Washington has become a lucrative and prestigious career choice. The salaries and pensions offered are substantial. Liberal travel budgets allow for frequent (almost weekly) trips home. Washington has become a place where individuals are willing to stay for long periods of time. It has been argued that “nowadays it is nearly impossible to topple a House incumbent, short

of a major scandal or a misstep.”⁶⁶ Research by Bauer and Hibbing concluded that the low point of incumbent security comes after a scandal or redistricting, and without these events, incumbent defeat would be practically nonexistent.⁶⁷ Petracca’s states that a term limit is the only way to negate the advantages of incumbency, increase turnover, and encourage electoral competition.⁶⁸ The only way to break the stranglehold incumbents have on their seats in Congress is to mandate turnover through term limits. Former congressman Bill Frenzel writes that Congress has become immortal as evidenced by incumbent reelection rates which steadily increased to 97% by the mid 1980’s.⁶⁹ Turnover, says Frenzel, supplies Congress with needed vitality and inhibits rigidity.⁷⁰ Fiorina argues that turnover of congressional membership is the only means to affect different policy outcomes.⁷¹

Neil Gorsuch and Michael Guzman, in their article asserting the constitutionality of term limits, assert that the Framers intended for elections to serve as the agents of turnover. Specific to the House of Representatives, the Framers adopted relatively short terms assuring continuous elections that resulted in frequent defeat for incumbents.⁷² Shorter terms and other institutional controls (i.e., bicameralism, staggered terms, and shared powers with the presidency) were implemented to curb legislative power and ensure a responsible yet responsive legislature. Gorsuch and Guzman deduced that term limits are consistent with the Framers’ intent because a term limit is yet another control aimed at achieving responsible and responsive government.⁷³

Bandow asserts that competitive elections are necessary for representative democracy. Another proponent of term limits adds, “[t]erm limits is not only the sole reform with popular political clout behind it, but it also provides a comprehensive solution by guaranteeing turnover, ensuring periodic competitive open-seat races, and undermining the craving for perpetual reelections.”⁷⁴

The Development of the Professional Legislator

Proponents, like Doug Bandow, see a term limit as a necessary reform to abolish the professionalization of Congress. The professionalization of Congress is a twentieth century phenomenon.⁷⁵ Several factors have contributed to its development; these include: the decline of political parties’ influence, the seniority system in the House, and the increasing livability of Washington D.C.⁷⁶ Political service has continued to become a more attractive career option, and Congress has been redesigned, over time, to accommodate the growing career goals of its members. This trend was particularly noticeable during the decades following the implementation of New Deal legislation and World War II.

During the New Deal and World War II, Congress enacted legislation that dramatically increased the size and scope of the federal government.⁷⁷ As the bureaucracy grew due to the increasing size and scope of the federal government, so too did the means for legislators to enhance their standing with their constituency, thus

furthering their career opportunities. “The growth of an activist federal government stimulated a change in the mix of congressional activities.”⁷⁸ As a result, representatives—once dedicated to addressing parochial and national problems—now serve their career aspirations by attending to the constituents’ needs, both created and solved within Washington’s bureaucratic establishment.⁷⁹ In essence, congressmen have created a need that they were able to benefit (electorally) by catering to it.⁸⁰ With the decline in party strength and its influence as a voting cue among the voters, incumbents, who had helped the constituency, won political support for their ombudsman efforts instead of for their party label or policy positions. Thus representatives had the means to better control the course of their political careers. A political career was no longer tenuous, given to the whims of party bosses or susceptible to the defeat of the party nationwide. Members of Congress now had the means to control their destiny, so their focus shifted from programmatic matters to their careers—carefully maintained by continual campaigning. The effect was to shift the collective mindset of Congressmen to career-oriented, single-minded seekers of reelection.⁸¹

In his classic work, *Congress: The Electoral Connection*, David Mayhew puts forth the assumption that congressmen are interested in nothing other than reelection.⁸² According to Mayhew, to understand the operation of Congress and how it churns out public policy, one must understand the individual goals of congressmen. Mayhew addressed the issue of proximate versus indirect goals of reelection. He writes:

[t]he electoral goal has an attractive universality to it. It has to be the proximate goal of everyone, the goal that must be achieved over and over if other ends are to be entertained. One former congressman writes, 'all members of Congress have a primary interest in getting reelected. Some members have no other interest.' Reelection underlies everything else...⁸³

To support his theory of congressmen as single-minded seekers of reelection, Mayhew provides analysis of the activities necessary to repeatedly win reelection.⁸⁴

Mayhew defines these reelection activities as: credit-claiming (often cited as constituency casework for which legislators can claim individual responsibility); position-taking (which entails taking a stand on an issue with no follow-up action required); and advertising (promoting a positive image to the constituents with minimal issue content, thereby eliminating the opportunity for offending any portion of the constituency).⁸⁵

Fiorina's findings on congressional behavior suggest, as did Mayhew's, that proponents of term limits are correct in their assumptions about congressmen's self-serving behavior and its effect on policy outcomes. Fiorina contends that representative's issue positions remain incredibly static over time, and for this reason other issues are not addressed. To Fiorina, representatives maintain the same issue position (those collectively held by the district) because it has proven to be successful in furthering their reelection bid.⁸⁶ Fiorina makes the assumption that as each legislator adheres to the same issue position—coupled with little or no turnover among them—Congress becomes unable to resolve long-standing issues.⁸⁷ Changing congressmen, then, is the only way to achieve reliable policy changes.⁸⁸ Fiorina adds that as truly

competitive seats decline (as the marginals continue to vanish) there is a possibility that Congress will be comprised of professional officeholders who are oblivious to the sentiments of the country as a whole.⁸⁹ Such arguments are entirely consistent with those put forth by George Will.

Fiorina's and Mayhew's works are significant in the term limits debate. Both view members of Congress as primarily motivated by reelection, and having shaped Congress to reflect that goal.⁹⁰ Fiorina asserts that the desire for reelection has likely remained constant over the years.⁹¹ What has changed, however, is that representatives now possess the resources to pursue their reelection efforts and continue their careers.⁹² Will adds that careerism has become a career in itself—"an endless season of running for reelection."⁹³ Petracca suggests that longevity in Congress tends to dissuade one's goals away from addressing serious public policy issues to defending government itself, thus maintaining the status quo.⁹⁴ Similarly, Will views the perpetual reelection campaign of the incumbent as having negative consequences for the operation of Congress:

Government paralysis, which is partly produced by legislative careerism and is conducive to such careerism, produces, over time, a larger and larger class of office holders who are content to be holders of an office. For such a person, happiness, and even a sense of identity, depend on retaining an iron hold on office. Defeat means not just oblivion but a kind of annihilation. Thus such a person will bring to the business of seeking reelection the energy that desperation generates.⁹⁵ ✓

The reconstructing of Congress to fit the reelection goals of its members happened most dramatically in the 1960s and 1970s. At that time, Congress voted

itself an extraordinary host of resources to be used in the pursuit of reelection.⁹⁶ These resources were the perquisites of office, including: franked mail, travel budgets, and staff increases. Mayhew states:

If a group of planners sat down and tried to design a pair of American national assemblies with the goal of serving the members' reelection needs year in and year out, they would be hard pressed to improve on what currently exists.⁹⁷

Mayhew contends that the development of congressional offices, committees, and subcommittees have provided congressmen with the personnel and resources to continually win reelection.⁹⁸ Fiorina extends Mayhew's argument about the case of the vanishing marginals, contending that congressmen have shaped Congress to avoid appearing vulnerable to defeat and therefore stifling competition. Fiorina, too, cites the increasing number of perks and the proliferation of staff and subcommittees as the means by which incumbents have furthered their congressional careers.⁹⁹ Incumbents, states Thomas Mann, constantly view reelection with uncertainty, knowing that scandal, redistricting, population shifts, and most importantly, the "the unpredictability of a challenger" can quickly erode a previously solid base of support.¹⁰⁰ Therefore, incumbents aggressively use perks of office and constituency service to minimize the threat of a failed reelection and an end to their career.

The Vanishing Marginals and the Source of the Invincible Incumbent

In 1974, David Mayhew found that House incumbents were more easily gaining reelection than in times past.¹⁰¹ Overall, the number of marginal seats—those

districts that are usually competitive during most election cycles—were beginning to vanish. Mayhew surmised that it was the ease with which incumbents secured reelection (even minus party influence), that caused marginals to vanish.¹⁰² In short, incumbents were now winning by healthier margins, appearing less vulnerable to defeat, and therefore discouraging future competition. Mayhew asserted five probable explanations for incumbents becoming safer at the polls. (1) Redistricting has generally favored the sitting incumbent.¹⁰³ (2) Incumbents are advertising their efforts, on behalf of the constituency, through franked mail; “the answer to the incumbency advantage question is a ...simple one: the more...messages congressmen rain down on constituents the more votes they get.”¹⁰⁴ (3) House members are getting more mileage out of federal programs (pork barrel legislation) and claiming credit for grant-in-aid programs that have benefited the district.¹⁰⁵ (4) House members are more skilled at polling the public to find “the correct position” to take on particular issues. (5) Voters are dissatisfied with party cues and are using other cues to decide how to cast their vote; “the incumbency cue is readily at hand.”¹⁰⁶

The marginals vanished (incumbents became less vulnerable to defeat) because of incumbents’ skill in changing the political climate, according to Fiorina.¹⁰⁷ Their attention shifted from law making to securing reelection. Term limits proponents take umbrage with what they perceive as diligent overuse of perks that incumbents have allocated for themselves to achieve their reelection goals. With incumbents

concentrating their efforts on reelection, elections themselves have become “ratification of the status quo” and are essentially meaningless.¹⁰⁸

There are several benefits that have been mentioned in the literature as contributing to the overall incumbency advantage. Franking privileges, large staffs, and unlimited travel budgets have all provided incumbents with a grossly unfair advantage.¹⁰⁹ It is now estimated that a House member’s perks are worth in excess of one million dollars per year, and a senator’s yearly perk allotment is considerably more.¹¹⁰ All of these “incumbent-oriented” perks increased significantly between the 1950s and 1970s.

There is some disagreement about which perk has the most electoral value. It has been argued that the franking privilege—the means by which incumbents announce to the constituency the hard work they have done—is the most important of all the incumbency advantages.¹¹¹ Proponents view the purpose of the franking privilege is to win votes, not for public-spirited communications.¹¹² Will maintains that the franking privilege is one benefit, “but hardly the most important of the many incumbent advantages.”¹¹³ The mailing perk has been generously allocated to incumbents from laws written by incumbents with incumbents’ advantages in mind.¹¹⁴ The franking privilege creates an unfair advantage at election time, as incumbents are able to flood voters with information (free of charge) leaving challengers to struggle for recognition.¹¹⁵

Taking trips to the district is another method for incumbents to connect with their constituency; this is made possible by liberal travel allowances. After 1978, the travel budgets for congressmen were limitless. Members chose the number of trips they would take back to their districts to “press the flesh” with voters.¹¹⁶ This perk dovetails nicely with the legislators’ constituency casework by allowing members to meet directly with voters, find out how they can help with particular problems, win votes and support, and thus enlarge their overall base of support for the next election.¹¹⁷ Fiorina notes that increased travel budgets demonstrates that constituency casework, as opposed to law making, is the primary interaction between legislator and constituency.

In order to maximize contacts with the constituency, representatives have required a congressional system that allows them to serve their local interests. Mayhew and Fiorina described how power has become decentralized from full committee to subcommittee, giving each member “a solid piece of legislative turf.” This diffusion of power has given each member additional opportunities to enhance their reelection efforts. Congressmen have sought out subcommittee assignments (and chairmanships) that would be relevant to a large and influential block of constituents within their respective districts. Seeking out committee assignments was a way to effectively work on behalf of the constituency, and thus curry its favor. Naturally, congressmen gravitate toward committees best suited to accomplish their reelection goal.¹¹⁸

[T]he decentralization of congressional power has created numerous subgovernments that enable individual members to control policy decisions and influence elements of the bureaucracy which are of particular concern to the districts. Increased electoral security is the natural result.¹¹⁹

The subcommittee is not only a piece of turf from which to defend the district, but also a site from which a representative can craft legislation that provides federal money for projects in the district. Some term limits proponents believe pork barrel spending is the most important of the incumbent advantages.¹²⁰ In 1974, Mayhew noted that congressmen were beginning to reap electoral benefits from the awarding of federal projects.¹²¹ Fiorina further explained that the expansion of the federal government by Congress has produced a large pork barrel from which electoral security flows.¹²² He adds that incumbents focus on the less exciting portions of their job such as casework and pork barrel legislation because they help to attain the primary goal of reelection. “Both are safe and profitable.”¹²³ For the reelection-oriented congressmen, the choice between programmatic activities (law making) and constituency service “is obvious.”¹²⁴ Will reasons that congressmen operating under a term limit would have less incentive to shovel out pork to the district. “Pork’s primary function is to buy gratitude and dependency among clients—qualities that the career legislator can translate into votes and a long career.”¹²⁵

Often cited as a complement to the other incumbency advantages, is the increase in personal staff. Doug Bandow, a Senior Fellow at the Cato Institute, refers to staff as a “de facto reelection apparatus.”¹²⁶ The increase in staff means more

people who are committed to securing reelection through the various perks and benefits of office. The size of the personal staffs has more than tripled between the 1960s to the 1980s. Fiorina contends that this increase in staff has allowed congressmen to further focus their efforts on the electorally positive exercise of constituency casework.¹²⁷ Fiorina estimates that staff members spend up to one-half of their time on matters related to constituency casework—as opposed to law making activities. He also states that “over the past fifteen years” there had been a corresponding increase in the size of personal staffs and the number of marginal districts disappearing.¹²⁸ The implication, of course, is that staffs have had a direct impact on incumbents' security in office.

The key to conducting constituency casework is to have a well-organized personal staff.¹²⁹ The importance of constituency casework to the congressmen is demonstrated by the growth, over the past sixty years, in the number of representatives who operate full-time district offices. The district office allows members of the representative's staff to have personal and immediate contact with the constituency in the district. In 1964, only four percent of legislators operated full-time district offices. Today, however, it is the norm for each congressman to have multiple offices in his/her district.¹³⁰ The bulk of the district office attention is directed toward casework. Proponents argue that incumbents win elections through their casework activities instead of their positions on issues or their roll call voting record.¹³¹

Petracca asserts the professional legislators know the rules, routines, and procedures that are essential for surviving in today's Congress.¹³² Moreover, representatives use their expertise in procedural matters to serve their constituents as ombudsman rather than as problem-solvers of local and national issues. Fiorina states that representatives have learned that pork barrel politicking and casework are far more productive reelection strategies than are taking on local and national issues.¹³³ The latter is risky and likely to put off some voters who disagree with the congressman's policy position. The former two are pure profit—and thus the logical choice for the career-minded legislator. It is logical to conclude, as one term limits proponent has, that casework is the most important advantage incumbents have to further their careers.¹³⁴

Fiorina viewed casework as vital to the incumbents' ability to increase their electoral security. He argued, "to explain the vanishing marginals one need only argue that over the past thirty years expanded constituency casework opportunities have given the marginal congressman the ability to capture five to ten percent of his/her district's voters who might otherwise oppose him on policy or party grounds."¹³⁵ This sends a clear message to potential challengers; the incumbent is appreciated by the constituency and is unlikely to be voted out of office. The end result, proponents contend, is that quality challengers recognize the futility of opposing a popular incumbent and choose not to run for office. This impairs the potential for truly competitive elections that are decided by issues and ideas.

Fiorina points out a general distinction between the methods used by House members and senators to avoid defeat. Senate elections, which are more visible, tend to attract higher quality challengers. Issues and ideology factor more prominently into voters' choices.¹³⁶ Senators devote significantly less time to constituency casework, which Fiorina argues is the primary means by which incumbents propel their reelection campaigns.¹³⁷ Consequently, Senate campaigns are based less on the services a senator has procured for the district, and more on the issues and qualifications of the candidates themselves. This suggests that Senate campaigns are consistently more competitive.

Goal of the Paper: Where Do We Go From Here?

In this chapter I have offered no argument to the advantage incumbents have in elections. I did, however, question why or how have they achieved this phenomenal success. The earlier case made for term limits attributes the crafting of Congress and the focus on constituency service as directly responsible for the invincible incumbent. I propose that incumbents have not benefited as significantly as term limits proponents claim from the use of perks and constituency-based benefits. This assertion holds implications for the causes and degree of turnover in congressional membership. I will show that turnover is more substantial than is stated in term limits literature. I will also advance the argument that contemporary legislators' behavior has not deviated from the Framers' original framework of representation. I will offer a counter argument to

Gorsuch and Guzman's claims that a term limit is consistent with the American framework of representation, arguing that policy paralysis is more likely a product of the Framers' system than of the actions of current legislators.

NOTES

¹ For a good illustration of this fact examine the reelection rates of House members and senators from 1790 to 1990 as found in, ¹ See, Gerald Benjamin and Michael Malbin eds., *Limiting Legislative Terms* (Washington D.C.: CQ Press, 1992): 291-292.

² George Will, *Restoration: Congress, Term Limits and the Recovery of Deliberative Democracy*, (New York: The Free Press, 1992): 16.

³ Sula P. Richardson, "Limiting Congressional Tenure: A History and Analysis," *Congressional Tenure: Hearing Before The Subcommittee on the Constitution of the Senate Committee on the Judiciary*, 95th Congress, 2nd Session. (1978): 123.

⁴ Kenneth Jost, "Term Limits: Will a Recent Setback Derail the Term-Limit Movement," *CQ Researcher*, 2 (January 24, 1992): 11.

⁵ Mark P. Petracca, "Rotation in Office: The History of an Idea," in *Limiting Legislative Terms*, eds., Gerald Benjamin and Michael Malbin, (Washington D.C.: CQ Press, 1992): 29.

⁶ Jost, *CQ Researcher*, 11.

⁷ See John H. Fund. "Term Limitation: An Idea Whose Time Has Come" *Cato Policy Analysis* 141, (October 30, 1990):1. Available [Online]: <<http://www.cato.org/pas/pa-141.html>> [January 26, 1998]; See also Will, *Restoration*, 4.

⁸ Upon Randolph's submission of the Virginia Plan, which was a starting point to begin discussion about scrapping the Articles, he left blank the number of years a former MC had to wait before he could serve again. Randolph's plan was submitted on May 29, 1787. Two weeks later the full convention voted on the proposed term limit and was soundly rejected. See Max Farrand, ed., *The Records of the Federal Convention of 1787*, (New Haven: Yale University Press, 1966): Vol 1, pp. 213.

⁹ See, Petracca in, *Limiting Legislative Terms*, 30.

¹⁰ *Ibid.*,

¹¹ *Ibid.*, 31; Richardson, "Limiting Congressional Tenure: A History and Analysis," 124.

¹² Will, *Restoration*, 287.

¹³ Petracca in, *Limiting Legislative Terms*, 32.

¹⁴ Ralph Ketcham, ed., *The Antifederalist Papers*, (New York: Mentor Books, 1986): 350.

¹⁵ Quote taken from, Jost, *CQ Researcher*, 11.

¹⁶ Jonathon Elliot, ed., *Debates on the Adoption of the Federal Constitution*, 2 (New York: Burt Franklin, 1970): 293.

- ¹⁷ Ibid., 287-288
- ¹⁸ Michael Malbin, "Federalists v. Antifederalists: The Term-Limitation Debate At The Founding," in, *Limiting Legislative Terms*, eds., Gerald Benjamin and Michael Malbin, (Washington D.C.: CQ Press, 1992): 53.
- ¹⁹ Jost, *CQ Researcher*, 11.
- ²⁰ Petracca in, *Limiting Legislative Terms*, 32.
- ²¹ Ibid.
- ²² Ibid.
- ²³ Ibid.
- ²⁴ Ibid.
- ²⁵ James Madison, *The Federalist Papers No. 52*, (New York: Bantam Books, 1982): 267. Emphasis mine. Note hereafter citation will include author, paper cited, and page found in Bantam edition.
- ²⁶ Malbin, *Limiting Legislative Terms*, 54.
- ²⁷ Madison, *Federalist 53*, 274.
- ²⁸ Fund, "Term Limitation: An Idea Whose Time Has Come," 3.
- ²⁹ Ibid.,
- ³⁰ Will, *Restoration*, 4.
- ³¹ Edward Crane, "Term Limits and the Need for a Citizen Legislature," *Cato Handbook for the 105th Congress*, no date: 3. Available [Online]: <<http://www.cato.org/pubs/handbook/hb105-5.html>> [May 15, 1998].
- ³² Mark P. Petracca, "The Poison of Professional Politics," *Cato Policy Analysis 151* (May 10, 1991): 1. Available [Online]: <<http://www.cato.org/pas/pa-151.html>> [May 15, 1998].
- ³³ Ibid., 5.
- ³⁴ Crane, "Term Limits and the Need for a Citizen Legislature," 5.
- ³⁵ Ibid.
- ³⁶ Doug Bandow, "Real Term Limits: Now More Than Ever," *Cato Policy Analysis 221* (March 28, 1995): 9. Available [Online]: <<http://www.cato.org/pas/pa-221.html>> [January 26, 1998].
- ³⁷ Mark P. Petracca, "A Comment on 'Elections as Filters'," *Political Research Quarterly*, 48 (December, 1995): 730.
- ³⁸ Will, *Restoration*, 200-201.

³⁹ Crane, "Term Limits and the Need for a Citizen Legislature," 5.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Morris P. Fiorina, *Congress: Keystone of the Washington Establishment*, 2nd ed., (New Haven: Yale University Press, 1989): 62

⁴³ Ibid.

⁴⁴ Eric O'Keefe and Aaron Steelman, "The End of Representation: How Congress Stifles Electoral Competition," *Cato Policy Analysis* 279 (August 20, 1997): 8. Available [Online]: <<http://www.cato.org/pas/pa-279.html>> [January 28, 1998].

⁴⁵ Ibid.

⁴⁶ Ibid., 7.

⁴⁷ Will, *Restoration*, 9-10, 180.

⁴⁸ For more discussion on Will's notion of a "Burkean" legislator see, Will, *Restoration*, 115.

⁴⁹ For a list of these big policy failures that Will speaks of see, Ibid., 17.

⁵⁰ Ibid., 110.

⁵¹ Petracca, "The Poison of Professional Politics," 8.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid., 8-9.

⁵⁵ From, Fund, "Term Limitation: An Idea Whose Time Has Come," 18.

⁵⁶ Doug Bandow, "The Political Revolution That Wasn't: Why Term Limits Are Needed More Than Ever," *Cato Policy Analysis* 259 (September 5, 1996): 29. Available [Online]: <<http://www.cato.org/pas/pa-259.html>> [January 28, 1998].

⁵⁷ Will, *Restoration*, 108.

⁵⁸ Fund, "Term Limitation: An Idea Whose Time Has Come," 15.

⁵⁹ Ibid.

⁶⁰ Quote by columnist Ellen Goodman found in, Ibid., 126.

⁶¹ Fund, "Term Limitation: An Idea Whose Time Has Come," 3, 12.

- ⁶² Bandow, "The Political Revolution That Wasn't," 6.
- ⁶³ See Will, *Restoration*, 12.
- ⁶⁴ *Ibid.*
- ⁶⁵ James Sterling Young, *The Washington Community*, (New York: Columbia University Press, 1966): 49.
- ⁶⁶ Sandra Stencel, ed. "Term Limits: Will a Recent Setback Derail the Term-Limit Movement?" *CQ Researcher*, 2 (January, 1992): 4.
- ⁶⁷ Monica Bauer and John R. Hibbing, "Which Incumbents Lose in House Elections: A Response to Jacobson's 'The Marginals Never Vanished'," *American Journal of Political Science*, 33 (February 1989): 230.
- ⁶⁸ Petracca, "A Comment on 'Elections as Filters'," 730.
- ⁶⁹ Bill Frenzel, "Term Limits and the Immortal Congress," *Brookings Review*, 10 (Spring, 1992): 19. Frenzel is not alone among term limits proponents who cite the high reelection rates among incumbents as evidence of an absence of turnover. See, Bandow, "The Political Revolution That Wasn't," 2-3; Fund, "Term Limitation: An Idea Whose Time Has Come," 14.
- ⁷⁰ *Ibid.*
- ⁷¹ See note 89.
- ⁷² Neil Gorsuch and Michael Guzman, "Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations," *Cato Policy Analysis 178* (September 24, 1992): 5. Available [Online]: <<http://www.cato.org/pas/pa-178.html>> [January 28, 1998].
- ⁷³ *Ibid.*, 2. I will have more to say about this argument in chapter 3. What I argue in this chapter is that term limits are inconsistent with the Framers' intent.
- ⁷⁴ Quote of Stephen Erickson taken from, Bandow, "The Political Revolution That Wasn't," 6.
- ⁷⁵ Fiorina, *Congress: Keystone of the Washington Establishment*, 7.
- ⁷⁶ *Ibid.*, 8.
- ⁷⁷ Gary Jacobson, *The Politics of Congressional Elections*, 4th ed., (New York: Longman Press, 1997): 31.
- ⁷⁸ *Ibid.*, 44.
- ⁷⁹ Petracca, "The Poison of Professional Politics," 5.
- ⁸⁰ Jacobson, *The Politics of Congressional Elections*, 31.

⁸¹ David R. Mayhew, *Congress: The Electoral Connection*, (New Haven: Yale University Press, 1974): 17

⁸² *Ibid.*, 13.

⁸³ *Ibid.*, 16-17.

⁸⁴ *Ibid.*, 5-6.

⁸⁵ This analysis of Mayhew's book was borrowed from: Elaine K. Swift, "The Electoral Connection Meets the Past: Lesson from Congressional History, 1789-1899." *Political Science Quarterly*, 102 (Winter, 1987-88): 626.

⁸⁶ Fiorina, *Congress: The Keystone of the Washington Establishment*, 14.

⁸⁷ *Ibid.*, 14-15.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*, 14, 129. For an alternate explanation as to the reasons why national issues don't get addressed see, E.J. Dionne Jr., *Why Americans Hate Politics*, (New York: Simon & Schuster: 1991). In this work, Dionne faults, not incumbent politicians, but the dominant political ideologies as the reasons why the issues never change. Dionne argues that the country would like to move on to other issues to debate, however conservatism and liberalism make it impossible for consensus to occur, thus the issues are never resolved.

⁹⁰ Mayhew, *Congress: The Electoral Connection*, 16-17; Fiorina, *Congress: Keystone of the Washington Establishment*, 36.

⁹¹ Fiorina, *Congress: Keystone of the Washington Establishment*, 35.

⁹² *Ibid.*

⁹³ Will, *Restoration*, 203.

⁹⁴ Quote by Petracca from, Fund, "Term Limitation: An Idea Whose Time Has Come," 19.

⁹⁵ Will, *Restoration*, 203.

⁹⁶ Jacobson, *The Politics of Congressional Elections*, 29.

⁹⁷ Mayhew, *Congress: The Electoral Connection*, 81-82.

⁹⁸ *Ibid.*

⁹⁹ See, Fiorina, *Congress: Keystone of the Washington Establishment*, chapter 12.

¹⁰⁰ *Ibid.*, 24.

¹⁰¹ David R. Mayhew, "Congressional Elections: The Case of the Vanishing Marginals," *Polity*, 6 (1974): 304.

¹⁰² Ibid., 310.

¹⁰³ Ibid., 304.

¹⁰⁴ Ibid., 308.

¹⁰⁵ Ibid.

¹⁰⁶ Ibid., 310.

¹⁰⁷ Morris P. Fiorina, "The Case of the Vanishing Marginals: The Bureaucracy Did It," *American Political Science Review*, 71 (March 1977): 180.

¹⁰⁸ Fund, "Term Limitation: An Idea Whose Time Has Come," 22.

¹⁰⁹ Ibid.

¹¹⁰ Jacobson, *The Politics of Congressional Elections*, 29.

¹¹¹ Ibid.

¹¹² Will, *Restoration* 94.

¹¹³ Ibid., 96.

¹¹⁴ Ibid., 94-95.

¹¹⁵ O'Keefe and Steelman, "The End of Representation: How Congress Stifles Electoral Competition," 3.

¹¹⁶ Fiorina, *Congress: Keystone of the Washington Establishment*, 57.

¹¹⁷ Morris P. Fiorina, "The Case of the Vanishing Marginals," 177.

¹¹⁸ Fiorina, *Congress: Keystone of the Washington Establishment*, 62.

¹¹⁹ Ibid.

¹²⁰ O'Keefe and Steelman, "The End of Representation: How Congress Stifles Electoral Competition," 2.

¹²¹ Mayhew, "Congressional Elections: The Case of the Vanishing Marginals," 308.

¹²² Fiorina, *Congress: Keystone of the Washington Establishment*, 43-45; Fiorina, "The Case of the Vanishing Marginals," 182.

¹²³ Fiorina, *Congress: Keystone of the Washington Establishment*, 43.

¹²⁴ Ibid.

¹²⁵ Will, *Restoration*, 36.

¹²⁶ Bandow, "Real Term Limits: Now More Than Ever," 3.

¹²⁷ Fiorina, *Congress: Keystone of the Washington Establishment*, 55.

¹²⁸ *Ibid.*, 54.

¹²⁹ O'Keefe and Steelman, "The End of Representation: How Congress Stifles Electoral Competition," 4.

¹³⁰ *Ibid.*

¹³¹ Bandow, "Real Term Limits: Now More Than Ever," 3.

¹³² Petracca, "The Poison of Professional Politics," 5.

¹³³ Fiorina, "The Case of the Vanishing Marginals," 180.

¹³⁴ O'Keefe and Steelman, "The End of Representation: How Congress Stifles Electoral Competition," 8.

¹³⁵ Fiorina, "The Case of the Vanishing Marginals," 180.

¹³⁶ Fiorina, *Congress: Keystone of the Washington Establishment*, 116.

¹³⁷ *Ibid.*

CHAPTER 3

RESPONSIVE REPRESENTATIVES AND RESPONSIBLE GOVERNMENT IN THE AMERICAN FRAMEWORK OF REPRESENTATION

In the Federalist Papers, Madison and Hamilton discuss the relationship between representative and constituency and the manner in which term length and prospect for reelection influences this relationship. The primary goal of this chapter is to inquire into the Framers' concept of representation. By doing so, an understanding is gained about the expected behaviors of representatives and how the two legislative assemblies interact with each other to make laws. The analysis of the American framework of representation provides us with a plan from which to assess the actions of legislators.

We will look at the issue of responsiveness as the primary means to examine the framework of representation. Specifically, we will discuss the *responsiveness* of legislators to their constituencies, evaluating the manner in which they advance the dual interests of nation and constituency. George Will addresses the issue of responsiveness rather pointedly in his book, *Restoration*. Will asserts that it is the tendency of contemporary legislators to be overly responsive to their constituency's

needs at the expense of addressing pressing national issues.¹ The act of being responsive is the representative's way of favorably influencing the constituency, who will, in turn, support their reelection and satisfy their career goals.

The pattern of expenditure produced by legislative careerism... leads directly to large deficits. They are the incumbent's best friend because they buy present benefits—and votes—by burdening future voters... The budget becomes increasingly swallowed by entitlement programs, interest payments, and pork... The paralysis of government means that the pleasure serious people can derive from government services—pleasure of getting things done—is less and less attainable. So the people who continue to be interested in serving in Congress are apt to be the unserious.² ...my hunch is that a Congress reformed by term limits would be more inclined than today's Congress to spend the large sums necessary for long-term national vigor. A reformed Congress would be less inclined to fund so many projects because they are conducive to legislators' electoral successes in the short-term political cycle.³

Will argues that “the core of the case for term limits” is to revive some of the fundamental values of the Founders' generation that have been lost in a wholly different political setting.⁴ A central question of this chapter is: Have legislators become so far removed from the Framers' framework of representation that it would take a drastic reform such as term limits to restore some of these core values?

The intent of this paper is not to compare the values (pertaining to public service) of eighteenth century and contemporary representatives, but rather, to examine whether contemporary legislators have strayed from the original framework of representation as term limits proponents have claimed. Is there enough incongruity between contemporary legislators' actions and the Framers' concept of representation

that term limits must be implemented in order to bring representatives back into the fold?

To answer this question, we will examine how the framework of representation holds representatives responsive to their constituents and responsible to the national interests as well. Our discussion will show that the Framers thought it was important for legislators to remain connected to their constituencies. There will also be a discussion of potential impacts to the framework of representation as a result of a term limits reform.

The framework of representation does not rigidly prescribe normative mandates on the representative. Oliver Wendell Holmes once commented that the Constitution “has play in the joints.” Holmes’s comment was meant to describe the Constitution as a flexible document that loosely lays out ideas about how government should operate within certain parameters. So, too, does the framework of representation. It allows for fluid, flexible variations within the roles of representation. The system allows legislators to be responsive to their constituency, while still addressing the national interests. The confines of these roles are different for the House and Senate, and depending upon the policy issue, are different for each legislator as well. We shall see that contemporary legislators have, in fact, maintained this representational flexibility.

Elections are the key to this scheme of representation; for they insure accountability by creating dependence of the congressmen on the constituency. It will

be shown that elections dictate varying levels of responsiveness from representatives or senators. Analysis of current research will demonstrate that the amount of latitude given to representatives and senators to make their own judgments is often considerable and remains consistent with this framework.

Finally, we will review, through the framework of representation, whether Congress acts responsibly. Term limits supporters are concerned by the policy paralysis that encumbers Congress. A term limit, claim supporters, would infuse Congress with needed vitality by providing new individuals with fresh ideas to deal with issues of national importance. Supporters claim that policy paralysis is, in large measure, the direct result of representatives focusing on their careers rather than dealing with pressing national issues. The quote by Will earlier illustrates supporters' belief that term limits will be a cure for the policy paralysis that plagues Congress.

Consequently, we will inquire further into the nature of policy paralysis by looking at how the Framers devised a government and a framework of representation that directly influences the formulation of policy. The Framers crafted a system that produces policy under the constraint of compromise. Speed is not the essence of compromise. Consensus is the primary means by which things are accomplished in a system with so many competing interests and constituencies. The Framers took advantage of this fact and left future generations a framework of representation that values compromise and slow deliberative decision-making over speed and efficiency.

The Uniquely American Version of Representation

When the Framers gathered in Philadelphia in 1787 they intended to fashion a government that would fix some of the fundamental flaws inherent in the Articles of Confederation. What the country most needed at that time was stability. Internal squabbling among states left America disregarded by foreign governments and vulnerable to invasion. Competing economic interests among states threatened America's economic security and growth. Internal dissension jeopardized liberty and the protection of liberty in the form of property ownership. A consolidated confederate republic was deemed essential to unite the independent states under one federal government and remedy the threats to individual liberty and national security.⁵ The Framers sought to arrange a scheme of representation that would maintain the legitimacy of the government and introduce stability. The ideal federal government would not have dominion over, but rather a connection to, the people. In a fundamental manner, the government would be dependent upon the people.

Representation was to be the pivot upon which the American republic revolved; it would provide a connectedness to the people, while maintaining much needed stability as well.⁶ The means to achieve these two objectives was to fashion a republic out of a large country like the United States. Hamilton commented that such a concept was new to the science of politics.⁷ The principles of representation would come complete with legislative checks and balances, having the people's interests served by deputies chosen at elections.⁸ The size of the republic would contain the

potential abuses of local factions from spreading to the national government. Factions would have difficulty mobilizing and controlling the national government, as they would be competing against many other factions or rival interest groups.⁹ Madison believed that the views of a faction (probably focused on property issues) would be tempered through a representative who has multiple interest groups within his/her constituency to represent. Thus the different and often competing issue positions within the constituency would be refined through the representative who mingles with other congressmen in the legislative chamber where competing issues are further refined. Presumably the people would select representatives with the ability to set aside temporary prejudices in order to satisfy the national interest.¹⁰ The conglomeration of so many representatives spanning a wide geographical and ideological spectrum would deter malicious ideas from taking root.

A legislative branch with suitable checks and balances was created to counteract the instability that rises from factions. A bicameral legislature ensures a continued dependence on the people, and yet provides adequate checks upon “intemperate and pernicious resolutions.”¹¹ Any law emanating from Congress would need the consent of both chambers, each representing a multitude of competing constituencies and interests. Refining the immediate desires of the public through this filter of representation would result in moderate and reasoned legislation. This is the core of the Framers’ scheme of representation. Madison speaks to this in *Federalist* 10:

The Federal Constitution forms a happy combination in this respect, the great and aggregate interests being referred to the national, the local and particular to the State legislatures. The other point of difference is, the greater number of citizens and extent of territory which may be brought within the compass of republican than of democratic government; and it is this circumstance principally which renders factious combinations less to be dreaded in the former than in the latter. The smaller the society, the fewer probably will be the distinct parties and interests composing it; the fewer the distinct parties and interests, the more frequently will a majority be found of the same party; and the smaller the number of individuals composing a majority, and the smaller the compass within which they are placed, the more easily will they concert and execute their plans of oppression. Extend the sphere, and you take in a greater variety of parties and interests; you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens; or if such a common motive exists, it will be more difficult for all who feel it to discover their own strength, and to act in unison with each other.¹²

The Framers maintained that the legislative branch in a republican form of government should be the locus of power. However this accumulation of power—derived directly from the people—was a cause for concern. Thus, the check on legislative power was designed to pit rival or opposing interests against one another. This was partially accomplished by dividing the legislative branch into two separate branches, each with different modes of election and different foci of interest.¹³ Representatives, coming from smaller constituencies, would be closely connected to the people through direct election and shorter terms. Senators, whose responsibilities were to the states as a whole, would be elected through state legislatures, and given substantial terms.

The representatives in the House were expected, by design, to be closely aligned with the people. Frequent elections would ensure that members of the House had a necessary dependence on, and deep sympathy with the people.¹⁴ The tenure of office provides for a further check within the scheme of representation. A short term (two years) keeps the representative responsive to the constituency. It could be argued that the constituency provides a check on its representative as much as the Senate provides a check on the House.

Federalist 57 nicely summarizes the Framers' concept of how a representative should respond to the constituency's commands and how the scheme of representation would influence this response. Madison believed the two year term for members of the House "couldn't fail" to mandate a close dependence on the constituents.¹⁵ Frequent elections would ensure that representatives always considered their constituency in their legislative efforts.¹⁶ Congressmen earned the trust of their constituency through "duty and gratitude" and were rewarded with reelection; "their trust shall have established their title to a renewal of it."¹⁷

It could be argued that the Framers did not intend for a short term and direct election to necessarily compel the representative to act upon all the constituency's whims or demands. A republican form of government, said Hamilton, demands close contact between the constituency and the representatives. Though this does not bind them to rigid obedience, or "require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse."¹⁸ Also, it would be impossible to

harmonize the many different viewpoints that would come from heterogeneous populations covering considerable sections of geography. This is part of Madison's (as is often named for) scheme of representation contained in *Federalist Papers 10* and *51*. In *Federalist 10* Madison writes:

The effect of [a republic] is...to refine and enlarge the public views, by passing them through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country, and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations...The representatives must be raised to a certain number, in order to guard against the cabals of a few; and that however large it may be, they must be limited to a certain number, in order to guard against the confusion of multitude.¹⁹

Thus, Madison's framework of representation was to have several overlapping layers. Legislators represent their constituencies, as well as interest groups and district interests in both state and federal legislatures. For a movement emanating from a faction to take hold, it must first have broad support at the state and local level. If a representative supports this idea, it then must pass through the filter of congress, with infinitely more competing agendas of several hundred legislators. Ideas (bills) must also pass through further filter of a bicameral legislature. Madison's theory held that any measure produced after passing through these filters would be the result of considerable consensus. This amount of support would likely result in sound and reasoned laws.

The Contrast between the Senate and House in the Framework

Representatives elected to the House were, by design, closely connected to those who sent them to Congress. While this connection was deemed to be largely positive, it did raise some concerns. Republican principles dictate a check on the government through direct election of representatives by the people, creating a necessary level of dependence. The Framers questioned the best way to provide a check on the people (acting through their representatives) who may be led into “transient impressions.”²⁰ Madison stated that, “a numerous body of representatives were liable to err from fickleness and passion. [The means to] guard against this danger was to select a portion of enlightened citizens whose limited number and firmness might seasonably interpose against impetuous councils.”²¹ Madison asserts in *Federalist 62* that the Senate, as a second branch of the legislature, must provide a check on the House because of the propensity for large assemblies “to yield to the impulse of sudden and violent passions and to be seduced by factious leaders.”²² The Senate was to be yet another filter through which popular sentiments would flow. The Senate would instill detached, calm, and reasoned judgment.

It is important to consider how the length of term defines the roles and parameters of expected behavior within the framework of representation. The House, with its short term and frequent elections, was unable to provide for adequate stewardship of the general welfare of the people.²³ The length of term for senators was vital to its role in the bicameral legislature. The long term of office provides a

comfortable distance from the people, detached from the immediate and sometimes unwise passions formulated by factions. Senators needed a considerable term to maintain distance from people, allowing them to make reasoned assessments.

The Framers' plan further removed senators from the people by establishing their selection solely through state legislatures. The people did not directly elect their senators until the ratification of the Seventeenth Amendment following the turn of the century. It is important to note how the mode of election also defines the role of the legislator by creating a certain level of responsibility to the constituency. I do not believe, however, that the Seventeenth Amendment profoundly alters the Framers' framework of representation. The length of term and indirect election were two sources of independence for senators to allow them more discretion in their legislative endeavors. Most importantly, the framework of representation provided senators with a means to distance themselves from the people. The six-year term, by itself, allowed for appropriate levels of independence.

As mentioned earlier, a hallmark of Madison's scheme of representation was to refine the immediate desires of the public through a series of checks and balances. The Senate, comprised of fewer members each from larger constituencies, was to provide stability to the legislature. As such, senators have to weigh the views of a constituency encompassing a multitude of competing interests. The views of the constituency would have to be assessed to determine what was best for the overall constituency (the state) and the country as a whole. The views of the public would be further tempered

(refined) through representation in the Senate. The intent was to instill stability in the law-making activities of Congress, and ultimately bring stability to the rest of the nation.

Madison continued to lay out his quasi-Burkean vision for the Senate in *Federalist 63*. He viewed the Senate as the branch of the legislature that would pursue and protect the national interest. In *Federalist 63*, Madison expressly states that “the utility of a Senate is the want of a due sense of national character.”²⁴ The legislature is responsible for and to the people. The Framers’ scheme of representation allocates these two objectives to the Senate and House respectively. The House will pursue those measures that stem from immediate interaction with the people; the Senate will approve only those measures that are “well-chosen.”²⁵ It is the latter that is needed for the general welfare of the nation. Madison states that the House does not serve long enough to make an impartial appraisal on matters of the general welfare.²⁶ Senators are adequately removed from the constituents to give honest and reasoned judgments in the best interest of the people and the nation. Madison metaphorically refers to senators as “stewards” responsible for the collective and permanent welfare of the country.²⁷

The contemporary Senate closely resembles this Madisonian vision. Nelson Polsby observed that the Senate has “become a more national and outward-looking and less state-oriented and inward-looking institution.”²⁸ The prospect of being viewed as an influential figure in national policy making has become a motivating agent for

senators. The desire for national recognition states Polsby, started in the 1950s with the burgeoning power of television. Television provided a forum from which senators could seek higher office. This brought about “fundamental changes in the career prospects for Senators.”²⁹ Senators changed their outlook to take advantage of the increased career opportunities. Polsby noted that the nationally focused Senate was a clear departure from the pre-1950s Senate where senators closely guarded and diligently pursued parochial and state interests.

Although the Framers expected senators to be inclined towards national interests (which seems to be the case), the Framers believed they would not be entirely removed from their state's interests. They were elected indirectly by the people and as public servants always needed to consider their interests.³⁰ This sentiment was argued during the ratification debates on the Constitution. Richard Harrison dismissed the need for a term limit on senators. Harrison believed a term limit would nullify “their sense of dependence.”

If the senator is conscious that his reelection depends only on the will of the people...he will feel an ambition to deserve well of the public. The love of power, in a republican government, is ever attended by a proportional sense of dependence.³¹

It seems clear that the Framers did not intend for senators to completely dismiss their constituents' wishes. The role of senators, while definitely of a Burkean flavor, is not entirely within that realm. Senators also maintain (to a much lesser degree than the House) attributes of an “instructed delegate.”

The electoral characteristics of the House guarantee a close dependence on the constituency and necessitate the pursuit of local interests. In *Federalist 10* Madison states that the national interest will be advanced in the federal legislature. Therefore, the House will naturally consider the national interest. Thus Madison's scheme does not restrict members of the House into either a delegate or a "Burkean" trustee role of representation. The length of term dictates, to some degree, what role the legislator will assume. The differing lengths of terms and modes of election for representatives and senators, and the creation of a bicameral legislature, were a partial means by which the Framers were able to address the concerns they had of a powerful legislature. Ultimately, Madison and the other Framers had two primary objectives in creating the legislature. First, the Framers wanted to weaken the potential capabilities of factions by enlarging the sphere of representation. Enlarging the sphere of representation pit competing interests/factions against each other insured that any bill would pass through a multitude of refining "filters" prior to becoming law. Thus any law would likely be the product of compromise and therefore tend to be prudent. Second, it insured the legitimacy of the government by maintaining a close dependence on the people.

Did the Framers Expect or Want Abundant Turnover?

It is stated in the term limits discussion (both contemporary and during the Constitution ratification debates) that a term limit would also maintain a close

dependence on the people by their representatives. The argument is made that regular turnover will keep legislators mindful of the policies they pursue as they too will be affected by them also once their tenure cap has been reached.

If the Framers thought turnover essential to the operation of good government (by maintaining a close dependence on the people) then why was a term limit not included in their final version of the Constitution? Proponents argue that the Framers believed in the necessity of regular congressional membership turnover though they expected robust turnover to occur naturally—hence the absence of a term limit in the constitution. Therefore proponents believe a term limit is compatible with the Framers’ framework of representation. Neil Gorsuch and Michael Guzman state that term limits are consistent with the Framers’ intent, as they are analogous to other restrictive elements of the American scheme of representation (e.g., bicameralism, checks and balances).³² I question this assertion, however. We see in *Federalist 57* that the prospect of reelection is an integral check for it keeps the representative closely connected to the constituency. While term limits may be analogous to other aspects of the representational scheme of the Framers, it is clearly contrary to their ideas about the significance and function of reelection. In this view, it seems that the Framers believed term limits were ill-suited to their plan and were not included as a result.

There is further evidence within Madison’s writings to suggest a term limit (producing regular turnover) is not consistent with the Framers’ scheme of

representation. Madison believed that the House of Representatives alone was ill suited to provide stability. The close connection to and dependence upon the people made the House susceptible to following an unwise course at times. Madison also suggested that frequent elections could result in recurrent turnover of membership of the House. Every election would bring in new members, with new ideas and opinions, desiring to change established laws.³³ Continual change of this manner was imprudent and jeopardized the prospects for success of the new government.³⁴ Madison noted that continual change was especially detrimental to matters of national affairs.³⁵

It is interesting to note in *Federalist 62* how Madison cautions on the detrimental effects of turnover:

The mutability in the public councils arising from a rapid success of new members... points out... in the strongest manner, the necessity of some stable institution in government. Every new election in the States is found to change one half of the representatives. From this change of men must proceed a change of opinions; and from a change of opinions, a change of measures. But a continual change even of good measure is inconsistent with every rule of prudence and every prospect of success.³⁶

Proponents argue that term limits were not included in the final draft of the Constitution because the Framers anticipated rapid turnover. Madison's quote seems to support this assertion, while also illuminating his unease with the potential for excessive turnover. Excessive turnover jeopardizes the success and stability of government, and term limits (which mandate prolific turnover), would therefore appear inconsistent with the American framework of representation. This also has relevance to contemporary discussions on term limits. States that have enacted term

limits have been beset with a host of problems resulting from rampant turnover—as Madison’s quote forecasts. Instability and deficiency following the first wave of forced retirements have characterized the California State Assembly.³⁷ Though the problems experienced in California are likely to be magnified because the six-year term limit, adopted in that state, results in considerable turnover with greater frequency. It should be noted that term limits advocacy groups aggressively promote a six-year term limit for members of the House.

Elections and Term Limits

Congressional elections are clearly relevant to the term limits debate, and to the American framework of representation. As we saw earlier, the Framers used term length to instill varying levels of dependence on the constituency by the representative or senator. Madison’s scheme of representation (in *Federalist 10* and *51*) outlined the best course for creating stable and responsive government. Stability would be secured by distributing powers among the three branches and making them interdependent in their use of power. One means of insuring responsiveness of the representatives to the constituency was through reelection. The power of withholding reelection was the people's check upon the legislature. Elections would be the means to counteract the misdirected ambition of representatives. Roger Sherman, a delegate to the Constitutional Convention, noted that reelection plays a fundamental part in the framework of representation. “Frequent elections are necessary to preserve the good

behavior of rulers. They also tend to give permanency to the Government by preserving good behavior because it ensures their reelection.”³⁸ Thus the potential for reelection was an essential element in the Federalist framework of representation.³⁹ A term limit would impair the potentiality of reelection.

In *Federalist 52* Madison acknowledged that there would be those representatives who will win frequent reelections and become long-standing members of the House. Madison believed that long-standing members would tend to be those who possess “superior talents.”⁴⁰ Madison’s statement seems rather prophetic in light of Jeffery Mondak’s research on the tendency of successive elections to identify and retain quality representatives.⁴¹ The Framers’ acknowledgment that frequent reelection is probable and desirable is further evidence of their dismissal of term limits as incompatible with their framework of representation.

The Framers expected that senators would be accountable to the people for their reelection bids: “[i]f the senator is conscious that his reelection depends on the will of the people, and is not fettered by any law, he will feel an ambition to deserve well of the public.”⁴² The issue of reelection further illustrates the duality of the representational roles of senators to protect the national interest, while still maintaining a connection with the public. This is consistent with earlier statements about the role of senators in the American scheme of representation.

Alexander Hamilton rejected term limits (rotation) and was concerned about its impact on the American framework: “[W]hen a man knows he must quit his station,

let his merit be what it may, he will turn his attention chiefly to his own emolument.”⁴³

Hamilton’s statement conveys a similar unease about the absence of a reelection prospect to constrain an overly ambitious representative. Linda Fowler envisions a scenario similar to the one forecasted by Hamilton. She anticipates that representatives, mandated to vacate their office by term limits, will establish close relationships with interest groups and large corporations in order to establish well-paying corporate jobs upon leaving Congress.⁴⁴ Fowler believes a term limit would be detrimental because representatives will be tempted to concentrate their energies on advancing the cause of an interest group or corporation at the expense of the constituency.⁴⁵ The absence of a prospective reelection will no longer attach representatives to their appropriate dependents in such a scenario.

Responsible Government?

Term limits proponents—George Will in particular—urge the adoption of a congressional term limit to end the policy paralysis that they believe currently overwhelms Congress. Will suggests that a term limited congressman will not focus on mollifying his constituency but rather on addressing issues of national importance. In doing so, policy paralysis will reach an end.⁴⁶ I assert, however, that it is not the personal agendas of representatives slowing the pace of legislative activity, but rather the rules and structures of the system set forth by the Framers’ framework of representation.

Adhering to Montesquieu's principles of separating powers within government, the Framers developed a government to avoid tyranny and defend liberty. This would be achieved by separating power between the Executive, Legislative, and Judicial branches and providing each with the capability to thwart the improper and ill-advised acts of the other branches. The legislature, being the closest to the people, had the most potential to go awry. By separating its power between two chambers, an additional check would be established. This idea was set forth in Madison's scheme of representation. In *Federalist 10*, we see that the two chambers are designed to refine the public's views. The House would be filled with legislators from various constituencies, representing many different interests. The Senate, with members elected from the states, and encompassing a variety of economic, social, religious, and sectional interests, would further refine the interests of the people.⁴⁷ Thus senators will probably have multiple competing interests to consider—"[e]xtend the sphere and take in a greater variety of interests."⁴⁸

By creating a bicameral legislature (and mandating mutual consent for approving legislation) this insured that ill-conceived legislation would rarely become law. By pitting many competing constituencies and interests against each other, and instilling interdependence between the chambers, the Framers were able to secure a needed sense of stability. Compromise and consensus would be a necessity to turn legislation into law.

This brings us to the issue of policy paralysis. In order for legislation to pass through the gauntlet of competing constituencies (through both chambers of Congress) and withstand a president's veto, there would have to be consensus. "Without compromise and adjustment, it would be difficult for representatives of competing constituencies to arrive at majority rule."⁴⁹ Compromise is not easily achieved, and Madison accepted this as a product of his scheme:

Another advantage accruing from this ingredient in the constitution of the Senate is the additional impediment it must prove against improper acts of legislation. No law or resolution can now be passed without the concurrence, first, of a majority of the people, and then, of a majority of the States. It must be acknowledged that this complicated check on legislation may in some instances be injurious as well as beneficial.⁵⁰

Therefore it is misleading to conclude that policy paralysis is fundamentally a result of the reelection orientation of representatives. We see that the framework of representation did not hold speed and efficiency as its primary goals. Furthermore, it is unlikely that the frequent replacement of experienced legislators with new individuals would necessarily result in a more efficient Congress. Representatives will continue to flow from the vast expanse of competing interest and ideologies. Each will pursue what they perceive to be "the national interest" and more than likely will disagree about what that entails. ✓

Recent experiences with term limits on the state level suggest that policy paralysis will be exacerbated, rather than ameliorated by a cap on legislative tenure. In November 1990, California adopted term limits for the State Assembly and Senate—

the fallout of which has recently begun to settle.⁵¹ Mandated turnover has dealt a serious blow to compromise. “Experienced members know that disagreement is the default position, and agreement takes time and compromise and education to achieve.”⁵² California Senate President Pro Tem Bill Lockyear expressed his concern that term limits would hinder compromise, hence the flow of legislation:

Over time...legislators rub elbows with equally smart people of different opinions and begin to figure out that to move forward, they need to find common ground. So that legislators, as they acquire experience, usually begin to realize that there is a role that is unique to us of trying to reconcile diverse interests and philosophies and regions and ethnic groups. Now I think we're going to truncate that phase of careers.⁵³

Compromise requires the luxury of time and a relatively stable group of bargainers.⁵⁴ ✓

In California, previously routine Legislative matters have become insurmountable problems as term limits have brought in an inexperienced group of legislators who are suspicious of one another.⁵⁵

A Momentary Reflection on the American Framework of Representation

George Will states that the task of the Framers was to devise a system of representation that was able to sustain the support of the people but was insulated from the people's momentary inclinations.⁵⁶ Will laments how contemporary Congress has become too responsive to the immediate needs of the people, and less concerned about the long-term interests of the nation. Term limits would fix this. This chapter has demonstrated the inaccuracy of Will's assertion. Legislators are responsive to the ↗

constituency, by the Framers' design. Research on contemporary legislators demonstrates that legislators' aptitude toward responsiveness varies depending upon the size of the constituency, the issue being considered, and the length of term in office. The Framers wanted legislators to be ever mindful of the people's interests and believed the prospect of reelection was the means to achieve this goal. A term limit is contrary to, not compatible with (as some term limits supporters have argued), the Framers' objective.

Term limits supporters seeking a remedy for policy paralysis may need to look elsewhere. It is the framework of representation, not the individuals themselves, which generates gradual and moderate policy outcomes. The Framers designed the American scheme of representation to produce legislation based on very thoughtful, careful, and deliberative debate. Legislation would not emerge without compromise, and the Framers knew all too well how difficult and slow consensus could be to achieve.⁴⁴ Forcing inexperienced legislators pell-mell into this framework could produce negative consequences. The California experience suggests that the cure may be worse than the perceived illness.

A Look at Contemporary Research on the American Framework of Representation

To this point I have shown that the Framers' concept of representation includes specific attributes. The Framers felt their framework of representation needed to be responsive to the people, while instilling stability lacking in ancient democracies and

republics. The Framers designed a system that would maintain a connection between the people and their representatives, while still affording legislators some measure of discretionary decision-making. The length of term, prospects for reelection, and large constituencies would all serve to accomplish this goal. The representational roles within the framework were designed to be fluid and flexible so as not to confine congressmen to any particular role (i.e., instructed delegate or Burkean trustee). This has worked well both in theory and practice, depending in part, on term length, proximity to election, and the importance of an issue to the constituency. ✕

The earlier portions of this chapter have focused on the more conceptual aspects of representation. This section examines the practical application of the theory, with our attention turning to the behavior of contemporary legislators. The purpose is to determine whether modern day legislators are still operating within the original framework of representation, or have become misaligned with the original intentions of the Framers, as George Will and others suggest. The core of the Framers' values, states Will, was to develop a Congress where members would have the opportunity and incentive to "transcend the maelstrom of private interests and engage in deliberation about the public good."⁵⁷ Will believes that democracy in America is being degraded because legislators focus constantly on their constituency's concerns.⁵⁸ Government has become responsive to the public interest and public opinion. A Congress situated in this manner is not regulated by deliberation, but by clout.⁵⁹ ✕

Is Will's assessment correct? Are contemporary legislators too responsive to their constituents; has their solicitous attitude rendered them devoid of any and all discretionary powers? Are contemporary legislators directed away from the "core values" of the Framers? I question Will's assertion on a few points. First, Will incorrectly identifies the core values of the Framers with respect to representation. Madison et al. did not intend for legislators to transcend the maelstrom of public interest. Madison fully expected Congress to be embroiled in it. Their objective was to construct a government capable of tempering the immediate and imprudent desires of the public. Madison in *Federalist 51* states the Framers' position on this point:

If men were angels, no government would be necessary. If angels were to govern men, neither external nor internal controls on government would be necessary....In a republican government the legislative authority, necessarily, predominates. The remedy for this inconveniency is, to divide the legislature into different branches, and to render them by different modes of election, and different principles of action, as little connected with each other, as the nature of their common function, and their common dependence on society, will admit. It may even be necessary to guard against dangerous encroachments by still further precautions.⁶⁰*

I believe that Will's identification of the Framers' core values is partially applicable to the role of the Senate. The longer term of the Senate was devised to distance senators from the constituency and adds calmness, reason, and stability to measures emanating from the House. I also believe the Framers intended for senators to have a more national perspective on legislative matters.

It was my sense, however, that throughout *Restoration* Will transferred his own beliefs about representation onto the core values of the Framers. Will extols the representative philosophy of Edmund Burke, particularly Burke's belief that the representative's opinion should remain paramount in all legislative decisions. Any "authoritative instructions or mandates issued" by the constituency which the representative was "bound (to) blindly obey...vote and argue for, though contrary to the conviction of his judgment...were mistaken"⁶¹ Burke did, however, concede that "the representative ought to live in the closest correspondence with his constituents."⁶²

Congress, asserts Will, should be a deliberative assembly in the truest Burkean sense.⁶³ Indeed, the "core values" as Will sees them are Burkean in flavor. However, the Framers' writings pertaining to representation and Congress do not advance a predominately Burkean version of representation as Will's comment suggests. A constant theme in the American framework of representation is a connection to the people. The potential for reelection assures this connection, and the framework was deliberately devised to maintain it. This view of the American framework of representation runs counter to the Burkean philosophy of representation.

John Kingdon stated that he does not expect to find a Burkean style conflict between the representatives and the constituency because the recruitment process does not give rise to such conflict. Selecting a legislator to represent the constituency is a deliberate act. In general, the constituency selects a person who is most like them. As such, the representative will share, for the most part, views similar to those of the

constituency.⁶⁴ This factor helps to explain why previous research has shown that congressmen are given a fair amount of latitude in voting. In fact, legislators are rarely given specific voting information by the constituency.⁶⁵ Representatives use personal discretion in voting, but uphold the overall views of the constituency to avoid reprisals at the polls.

Therefore, there emerges from contemporary data, a sense that representation (the American version) does not mandate a rigid set of behaviors from legislators. The representational scheme provides a fluid and flexible application of these roles to be determined by the representative. In a study on representation and the effect of elections on congressmen's voting behavior, James Kuklinski found that frequency of elections increased representative sensitivity to constituency opinions and preferences.⁶⁶ To that end, he noted that legislators with two-year terms had higher policy agreement with their constituents when compared to senators.⁶⁷ Though, overall policy agreement between legislative voting and constituency opinion was low in the period between elections.⁶⁸ For the most part, the upper chamber is afforded more discretion of judgment because an election is not always looming in the very near future; the opposite holds true for the lower chamber.↓

Today, supporters of the notion that representatives should be no more than delegates of those who sent them will take heart in the finding that frequent elections work to ensure representativeness by members of our lower chambers. Similarly, those who believe that representatives should pursue what they themselves believe to be in the best interest of the mass public may find consolation in the fact that members of most upper chambers face less frequent elections.⁶⁹

Concluding Remarks

Kuklinski's research is significant as it demonstrates how elections serve as an "effective linkage mechanism between the constituencies and representatives."⁷⁰ We have seen (and Kuklinski's research corroborates) that elections are an important part of the Framers' framework of representation. Term limits would interfere with this linkage. Linda Fowler's observations on term limits suggest that the absence or alteration of this linkage could result in representatives that change their focus from their constituency to special interests or their own self-interest. Their focus would not likely change to the national interest, as term limits supporters believe. ★

Despite the arguments of term limits supporters, it does appear that the Framers' broad framework of representation has continued over the centuries. This framework insures that legislators are responsive to their constituency, while still given some measure of discretion. Recent empirical studies verify that these features still exist.

Congress is sometimes slow to produce legislation, but not for the reason term limits supporters suggest. We have seen that Madison et al. created a system that produced legislation only after careful consideration, with the consensus of the majority of the legislative branch, and the approval of the president. In light of this analysis of the Framers' framework of representation, it appears that contemporary legislators are behaving appropriately. The framework of representation does not need

to be altered by a term limits reform. It seems to be working quite well—or at least according to plan.

NOTES

¹ George Will, *Restoration: Congress, Term Limits and the Recovery of Deliberative Democracy*, (New York: The Free Press: 1992): 107-110.

² *Ibid.*, 185.

³ *Ibid.*, 183.

⁴ *Ibid.*, 147.

⁵ Alexander Hamilton, *The Federalist Papers*, No. 9, (New York: Bantam Books: 1982): 37-42.

⁶ Madison, *Federalist No. 63*, 321; Madison, *Federalist No. 62*, 316.

⁷ Hamilton, *Federalist No. 9*, 38.

⁸ *Ibid.*

⁹ Alan P. Grimes, *American Political Thought*, (New York: Holt, Rinehart, and Winston: 1960):126.

¹⁰ Madison, *Federalist No. 10*, 47.

¹¹ Madison, *Federalist No. 62*, 315; see also No. 51, 263.

¹² Madison, *Federalist No. 10*, 46-47.

¹³ Madison, *Federalist No. 51*, 263.

¹⁴ *Ibid.*, 267.

¹⁵ Madison, *Federalist No. 57*, 290.

¹⁶ *Ibid.*, 290-291.

¹⁷ *Ibid.*

¹⁸ Hamilton, *Federalist 71*, 363.

¹⁹ Madison, *Federalist 10*, 46-47.

²⁰ Max Farrand, ed., *The Records of the Federal Convention of 1787*, vol 1, (New Haven: Yale University Press, 1966): 421.

²¹ *Ibid.*, 422.

²² Madison, *Federalist 62*, 315.

²³ Madison, *Federalist* 63, 320.

²⁴ Madison, *Federalist* 63, 316.

²⁵ *Ibid.*, 319.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ Nelson Polsby, "Political Change and the Character of the Contemporary Congress," in, *The New American Political System*, 2nd ed, ed. Anthony King, (Washington D.C.: American Enterprise Institute, 1992): 33.

²⁹ *Ibid.*

³⁰ See Hamilton statement in *Federalist* 71, 363. See also note # 14.

³¹ Jonathon Elliot, ed., *Debates on the Adoption of the Federal Constitution*, vol. 2, (New York: Burt Franklin, 1970): 298.

³² Neil Gorsuch and Michael Guzman, "Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations," *Cato Policy Analysis No. 178*, (September 24, 1992): 2-4. Available [Online]:<<http://www.cato.org/pubs/pas/pa-178.html>> [January 29, 1998].

³³ Madison, *Federalist* 62, 316.

³⁴ *Ibid.*

³⁵ *Ibid.*

³⁶ *Ibid.*,

³⁷ Peter Schrag, "The Populist Road to Hell," *The American Prospect*, 24 (Winter 1995): 4. Available [Online]:<<http://www.people.memphis.edu/~mcrouse/elcite.html#news>> [March 3, 1998].

³⁸ Farrand, *Records*, vol. 1, 463.

³⁹ Erik H. Corwin, "Limits on Legislative Terms: Legal and Policy Implications," *Harvard Journal on Legislation*, 28 (Summer 1991): 585.

⁴⁰ Madison, *Federalist* 52, 274.

⁴¹ Jeffery J. Mondak, "Elections as Filters: Term Limits and the Composition of the U.S. House," *Political Research Quarterly*, 48 (December, 1995): passim.

⁴² Elliot, *Debates*, 298.

⁴³ *Ibid.*, 320.

⁴⁴ Linda Fowler, "A Comment on Competition and Careers," in., *Limiting Legislative Terms*, eds. Gerald Benjamin and Michael Malbin, (Washington D.C.: CQ Press, 1992): 183.

⁴⁵ Ibid.

⁴⁶ Will, *Restoration*, 185.

⁴⁷ Alpheus Thomas Mason and Richard Leach, *In Quest of Freedom American Political Thought and Practice*, (Englewood Cliffs, New Jersey: Prentice-Hall, 1959): 150.

⁴⁸ Madison, *Federalist 10*, 48.

⁴⁹ Lawrence J.R. Herson, *The Politics of Ideas: Political Theory and American Public Policy*, (Prospect Heights, IL: Waveland Press: 1984): 73.

⁵⁰ Madison, *Federalist 62*, 315.

⁵¹ A reminder to the reader that the California version of term limits places a cap on legislative service at eight years for senators and six years for members of the assembly.

⁵² Schrag, "The Populist Road to Hell," passim.

⁵³ Quote taken from, Rob Gurwitt, "Legislatures 1996: Greenhorn Government," *Governing*, February 1996, 17.

⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Will, *Restoration*, 104.

⁵⁷ Ibid., 104-5.

⁵⁸ Ibid., 107.

⁵⁹ Ibid., 108.

⁶⁰ Madison, *Federalist 51*, 262-263.

⁶¹ Neil Riemer ed., *The Representative: Trustee? Delegate? Partisan? Politico?* (Boston: D.C. Heath & Co., 1967): 3.

⁶² Ibid.

⁶³ Will, *Restoration*, 101.

⁶⁴ John Kingdon, *Congressmen's Voting Decisions*, 3rd ed. (Ann Arbor: University of Michigan Press: 1989): xii.

⁶⁵ Warren Miller and Donald Stokes, "Constituency Influence in Congress," *The American Political Science Review* 57 (March 1963): 56; Kingdon, *Congressmen's Voting Decisions*, 30, 46-47.

⁶⁶ James Kuklinski, "Representativeness and Elections: A Policy Analysis" *The American Political Science Review* 72 (March 1978): 165. It should be noted that the California legislature and not the U.S. Congress was the focus of Kuklinski's study, though he makes inferences about representation at the national level based on his findings. As he does, so will I.

⁶⁷ *Ibid.*, 174.

⁶⁸ *Ibid.*, 172.

⁶⁹ *Ibid.*, 177.

⁷⁰ *Ibid.*, 166.

CHAPTER 4

EXAMINING THE INCUMBENCY ADVANTAGE AND TURNOVER

Electoral competition is no longer possible in a system where the benefits and power of incumbency virtually guarantee a lifelong career as a legislator.

Mark Petracca¹

The modern day powers of incumbency have become a shield protecting members of Congress from competition.

John Fund²

So far, we have examined the framework of representation and concluded that the responsiveness of representatives to their constituencies has remained consistent with the Framers' intentions. Now, we turn our attention to contemporary representatives and review the manner in which they perform their legislative duties and seek reelection. The term limits debate has focused on incumbent legislators and their ability to stave off competition. This chapter takes a closer look at the incumbency advantage to gain a better understanding of the real impact of incumbency on congressional electoral competition. Analyzing the impact of the tools of incumbency (e.g., franking privilege, travel expenses, staffs, constituency casework, etc.) will ultimately allow us to examine whether congressmen, as Morris Fiorina and David Mayhew suggest, have shaped Congress to suit their reelection goals. The quote

above by Mark Petracca clearly illuminates proponents' perceptions that incumbency advantage is insurmountable. Supporters see term limits as the means to rejuvenate the electoral competition presently lacking in Congress and direct representatives away from constituency mollification toward serious problem solving (therefore ending policy paralysis).

This chapter will examine the sources of incumbency advantage (as identified by prominent term limits proponents), and offer an alternate view to be considered. Supporters of term limits contend that electoral competition for congressional seats has declined over time and cite as evidence the ever-increasing reelection rate of incumbents. Term limits proponents believe that increasing exploitation of perks, constituency casework, and pork barrel politics has slowly and steadily led incumbents to be “insulated from accountability when there is no competition of ideas, parties, or candidates.”³ Bill Frenzel, a former member of the House of Representatives and a term limits supporter, states that reelection rates started to creep up steadily in the mid 1800’s and have reached “extraordinarily high” numbers over the last twenty years.⁴ Senators, notes Frenzel, have attained high reelection rates particularly over the past thirty years. “Nowadays most members only face token opposition.”⁵

Term limits proponents also cite the high reelection rates as proof that turnover of congressional membership is almost non-existent. I assert, however, that a closer examination of reelection rates and a different perspective of turnover are needed within the term limits debate. It is critical to understand how and why incumbents

have reached high levels of invincibility. The goal of this chapter is to determine whether exploitation of perks, constituency service, and pork barrel legislation have resulted in incumbent invulnerability. A principal assertion made in this paper is that these benefits have not provided incumbents with the sizeable electoral advantages claimed by term limits proponents. The examination of reelection rates of House members and senators shows that this argument is not supported by the evidence. By comparing reelection rates over the past fifty years with the increases in perks of office, constituency service, and pork barrel legislation, the data suggests that these “advantages” have not been the impenetrable wall proponents claim.⁶

This discussion regarding incumbency advantage will focus on the use of perks commonly identified in the literature. Four of the five major benefits include: larger staff sizes, increased franked mail, proliferation of subcommittees, and increased number of free trips to the district. The fifth benefit is pork barrel activities of legislators, and this will be analyzed in a different manner later in the chapter.

By comparing the increasing use of perks with reelection rates over time, one should expect to find, if proponents are correct in their assertions, a steady and marked rise in reelection rates corresponding to a steady increase in the use of perks. As subcommittees, franked mail, staff sizes, and free trips have grown (especially over the past thirty years) incumbent legislators should have become increasingly less vulnerable to defeat.

The data, however, suggests that there is no direct connection between the growth in incumbency advantage and the expansion of incumbency benefits. This runs counter to the pro-term limits argument that incumbents have effectively made themselves invulnerable to defeat. It will be shown that the incumbency advantage experienced by House members has remained static over the past fifty years. Reelection rates have not correspondingly increased with the size and scope of the perks of office. In fact, the electoral fortunes of incumbent senators have fluctuated wildly from one election cycle to the next.

Those skeptical of term limits reform do concede that there are some benefits of incumbency such as the ease with which an incumbent accumulates campaign funds.⁷ The question, however, is whether these benefits warrant term limits reform or if a term limit is the most appropriate reform to address identified problems. Ultimately, this chapter will illuminate the misguided claims that incumbents who are primarily interested in attaining reelection have successfully shaped Congress to meet their careerist goals.

This chapter will further address the impact of the challenger on congressional elections. Term limits proponents claim that the incumbent's skillful use of perks, pork barrel politics, and especially constituency service, scares away potentially qualified challengers so that "most member of Congress face only token opposition."⁸ However, prior research has shown that constituency service (believed by term limits proponents to pay significant electoral dividends) has no appreciable effect on incumbents'

reelection rates or on the quality of challengers.⁹ A later discussion will illustrate that incumbents experience advantages over challengers that are unrelated to manipulation of the electoral process.

Finally, this chapter will look at the issue of turnover in Congress. This section offers another explanation of turnover and shows—contrary to proponents’ claims—that Congress is not immortal; there has been significant turnover of congressional membership over time.¹⁰ The discussion on turnover and challenger quality will demonstrate that voters are willing to remove an incumbent legislator provided they have sufficient reasons for doing so.

Term Limits Proponents’ Views on Perks, Constituency Service, Pork Barrel Politics and Turnover.

Since chapter two provided much of this information, I will review, only briefly, the prevailing themes and beliefs about incumbency advantage held by term limits supporters.

Most term limits proponents view incumbency advantage with a degree of disdain. Many believe, as Fiorina and Mayhew do, that congressmen have carefully transfigured Congress and inflated perks to sustain their careers in Congress.¹¹ George Will offers his perspective on this issue in his book *Restoration*. Will wrote:

[N]o one can reasonably think that the resulting spending, considered in aggregate, represents even an attempt to spend rationally rather than politically. And political spending means, inevitably, spending to serve the spenders’ reelection requirements.¹²

Now there are few limits to the areas in which legislators can operate to confer the favors that are the currency for purchasing perpetual incumbency. That currency has considerable purchasing power.¹³

Will believes that constituency casework and pork barrel politics are the indispensable tools of representatives used to retain their seats in Congress. They are, however, only beneficial if the constituency has been made aware of the incumbents' efforts.¹⁴ This fact, supporters claim, is the reason why the franking privilege has skyrocketed over the past decade, resulting in increased exposure for the incumbent at the challenger's expense.¹⁵

There are similar ramifications for increased travel budgets of congressmen. Since 1978, representatives have been allocated an unlimited number of trips to their districts (see figures 3.3 and 3.7). Fiorina argues that increased travel allowances have been used to develop a base of support, dependent upon personal contacts and favors.¹⁶ Increased travel affords the opportunity to make contacts and generate constituency casework—hence, score more political points.

Overall, term limits supporters take a rather dim view of Congress in general, and incumbent congressmen specifically. Congress has been likened to “a circus” that is “vacuous, corrupted and backwards, controlled by special interests and orchestrated by experienced legislators.”¹⁷ Incumbent legislators are portrayed as cowardly—unwilling to deal with “an unbalanced” Social Security system, a “half-regulated,” “half-free,” medical system, and runaway deficits.¹⁸ To tackle hard issues means

risking a vote in Congress that would be unpopular back home and bring negative repercussions. Constituency service and pork barrel politics is a risk-free way of appeasing the constituency.¹⁹

Fiorina states that incumbents have increased resources to serve their electoral needs.²⁰ Among those resources is the doubling of personal staff. Fiorina notes that the rise in personal staff members occurred at the same time marginal districts began their decline.²¹ The implication is that staffs had a direct effect on the security of incumbents' jobs. The staff spends well over half of its time on constituency casework related matters.²² Fiorina explains:

When given sixteen to eighteen employees to allocate as they see fit, congressmen quite naturally put the lion's share to work on the most important thing, reelection, while perhaps reserving a few for secondary matters such as formulating our country's laws and programs.²³

A second reelection resource Fiorina identified as expanded by congressional incumbents is the devolution of congressional power from full committee to subcommittee—particularly in the House. This transfer of power enabled representatives to have a power base that can be touted to the constituency or used to advance pork barrel activities.²⁴ This devolution of power, especially following the 1974 power revolt in the House, provided congressmen with greater opportunities for credit claiming—argued to be a strategy used for obtaining reelection.²⁵

Mayhew described various activities that career-minded, reelection-oriented members of Congress have pursued. Among these is credit claiming, for their

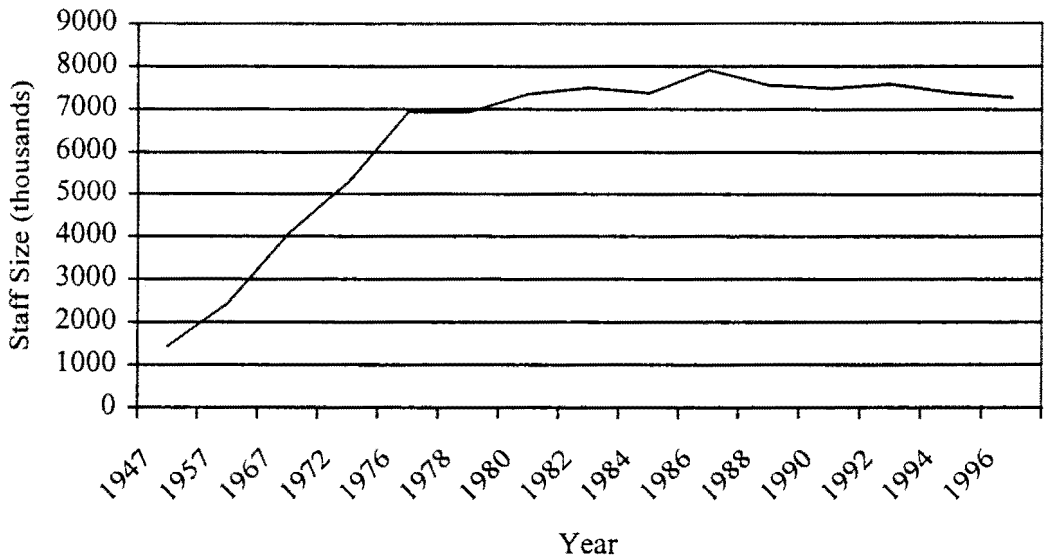
casework or pork barrel activities. Legislators convey to the constituency their personal role in doing good things for the district.²⁶ These activities allow legislators to score points with the constituency without alienating any particular voting block.

John Fund, a prominent term limits proponent, summed up the supporters' positions on incumbency advantage and the means to achieve it when he wrote:

Franking privileges, huge staffs, liberal travel funds, easy access to news media and unfair campaign finance laws have all provided incumbents with a grossly unfair advantage....[w]ould be challengers were unwilling and unable to spend the time and money required by the virtually impossible task of unseating those in power....A limit on elected congressional...legislative tenure would reduce the incentive for such abuses of power by eliminating congressional careerism. No longer would longtime incumbents hold those political offices. They would be held by citizen-legislators, who would be more disposed to represent the will of the people...²⁷

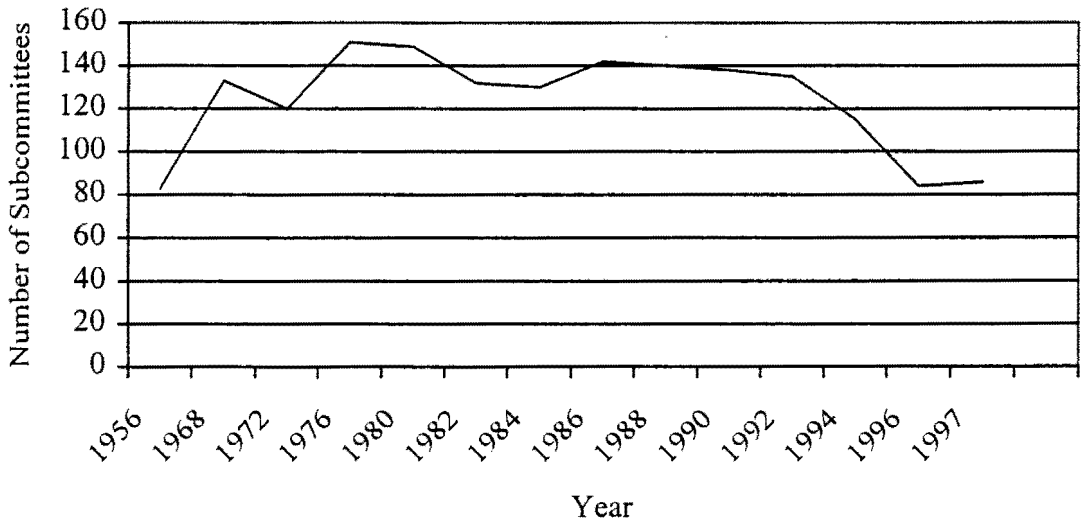
The growth of the reelection-oriented perks John Fund and Fiorina mention earlier are illustrated in the tables below (see figures 3.1 through 3.7). The tables note the growth of these various perquisites of office and growth of subcommittees over the past fifty years. These tables further demonstrate that proponents are correct when they contend that the perks of office for congressmen have increased significantly since the New Deal.

Figure 3.1 Staff Size - House of Representatives



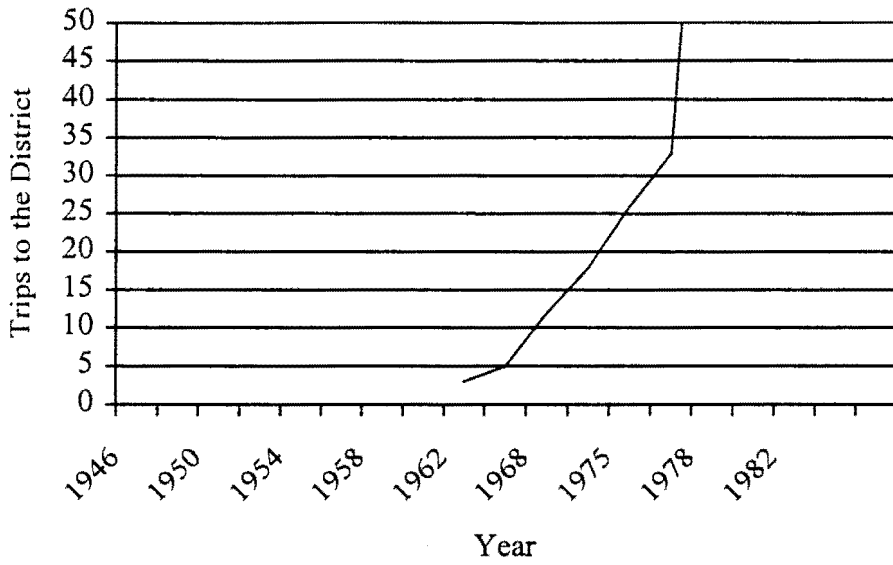
Source: Norman Ornstein, Thomas Mann, and Michael Malbin, eds., *Vital Statistics on Congress 1997-1998*, (Washington D.C.: American Enterprise Institute, 1998):135.

Figure 3.2 Number of Subcommittees - House



Source: *Vital Statistics on Congress 1997-1998*, 120.

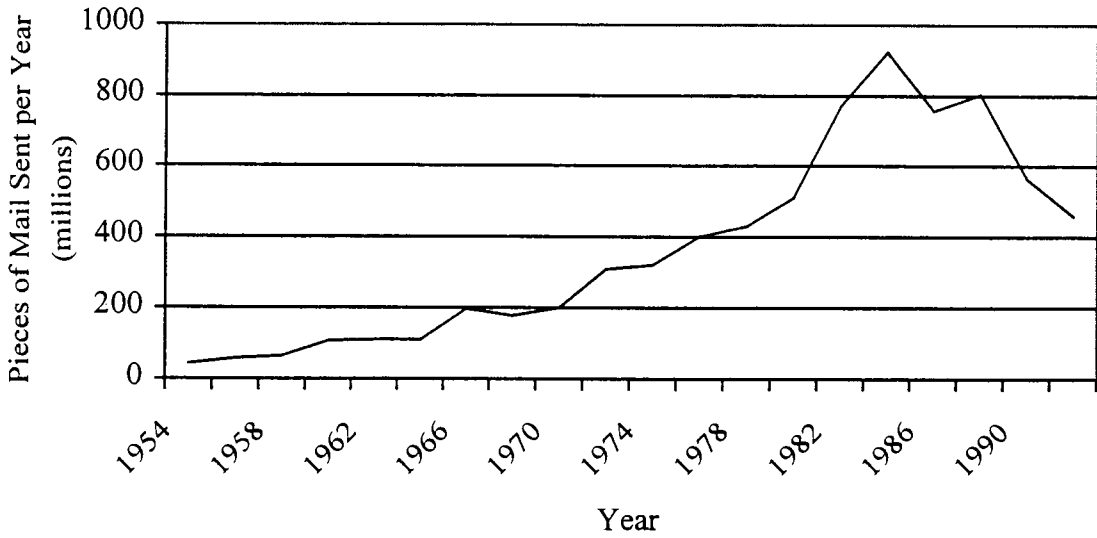
Figure 3.3 Paid Trips to the District - House



Note: After 1978, there was no set limit on the number of trips congressmen could take to their district. Travel expenses were provided in a lump sum—with other office expenses—to spend as congressmen deemed necessary.

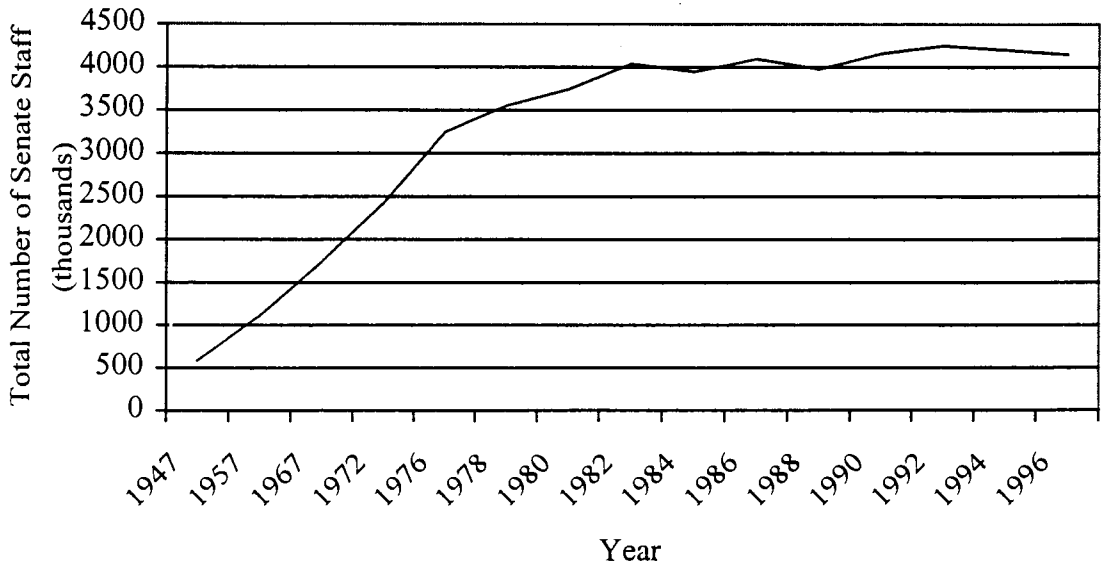
Source: *Vital Statistics on Congress 1997-1998*, 150; Gary Jacobson, *The Politics of Congressional Elections*, 4th ed., (New York: Longman Press, 1997): 30.

Figure 3.4 Franking Privilege - Congress



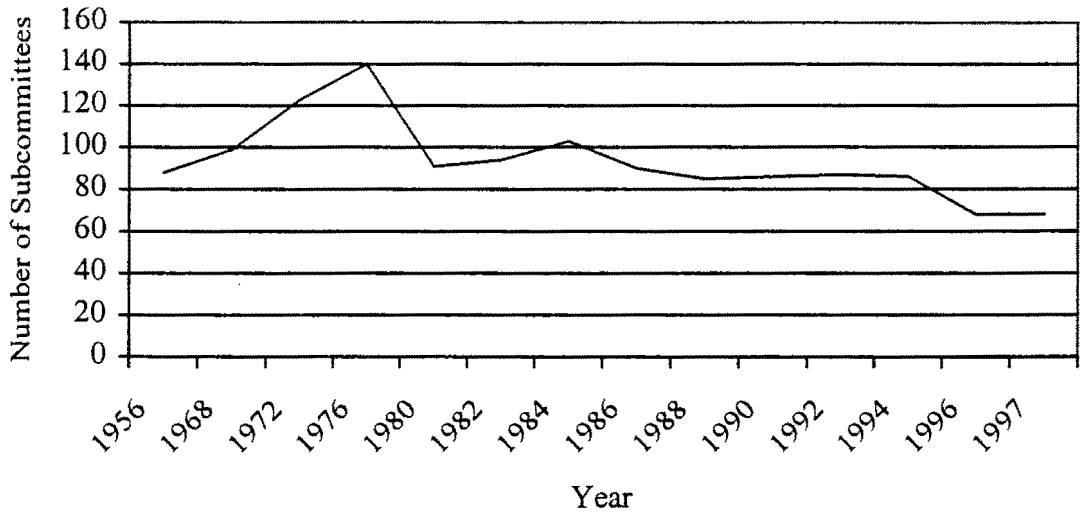
Source: *Vital Statistics on Congress 1997-1998*, 172.

Figure 3.5 Staff Size - Senate



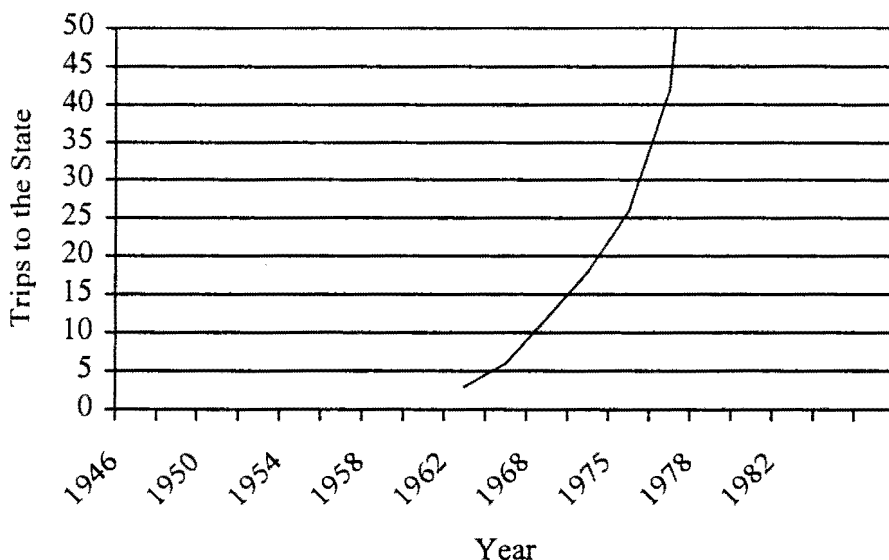
Source: *Vital Statistics on Congress 1997-1998*, 135.

Figure 3.6 Number of Subcommittees - Senate



Source: *Vital Statistics on Congress 1997-1998*, 121.

Figure 3.7 Paid Trips to the State - Senators



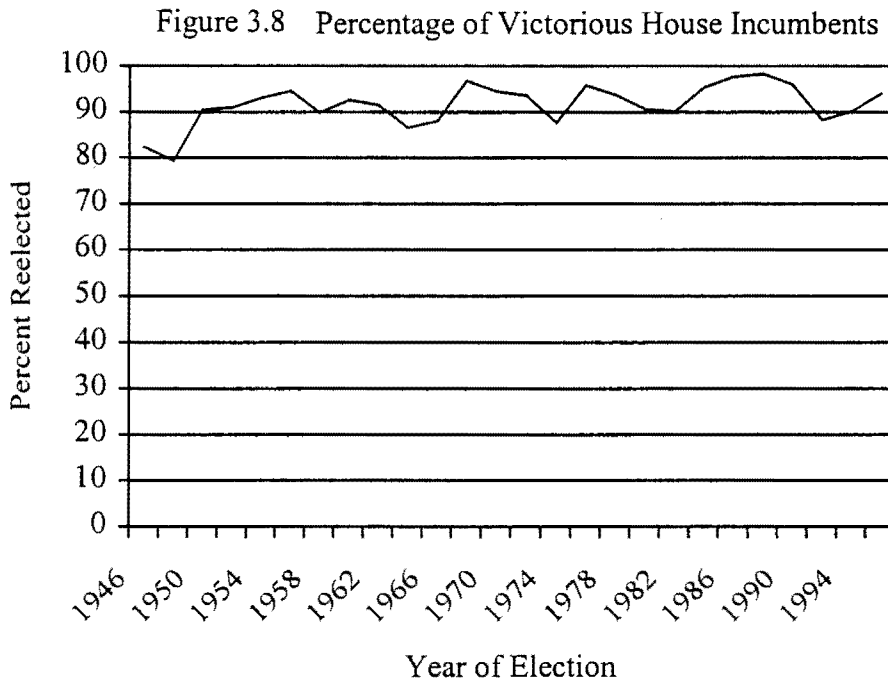
Note: After 1978, there was no set limit on the number of trips congressmen could take to their district. Travel expenses were provided in a lump sum—with other office expenses—to spend as congressmen deemed necessary.

Source: Morris Fiorina, *Congress: Keystone of the Washington Establishment*, (New Haven: Yale University Press, 1989): 57; *Vital Statistics on Congress 1997-1998*, 151.

The Reelection of Incumbents and the Role of Perks, Constituency Casework and Pork Barrel Politics

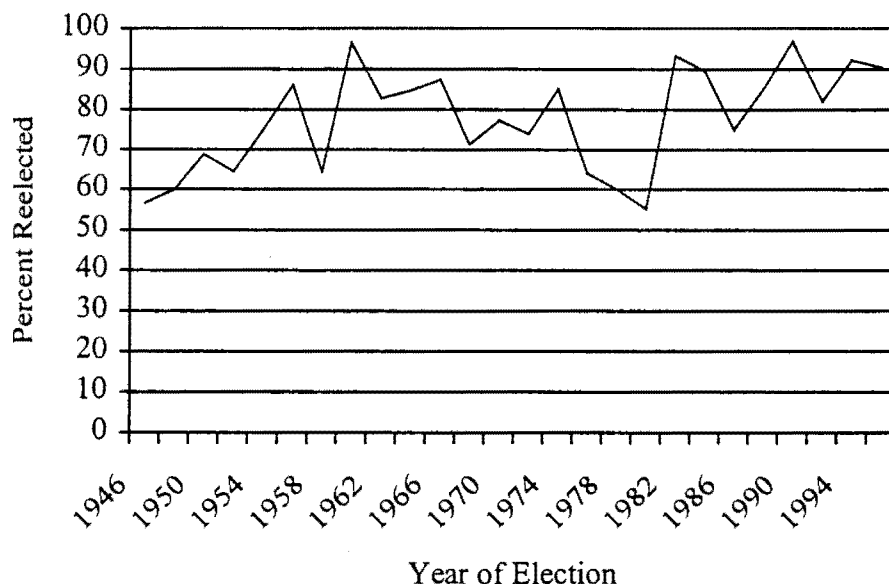
Fund's statement (see page 87) typifies supporters' belief that the exploitation of perks and the use of constituency casework and pork barrel legislation by legislators are the reasons Congress is clogged with invincible, self-serving politicians. Term limits supporters are correct when they assert that incumbent House members are highly successful in their reelection bids (see figure 3.8). This is consistent with

Jacobson and Fowler's assessment of incumbency as conferring upon the candidate major electoral benefits.²⁸ What needs to be identified, however, are the reasons incumbents have obtained these enormous advantages. Is it from prolonged and deliberate attempts by representatives to create an environment conducive to reelection? Or, is the advantage derived from prior success at the polls and voters' use of incumbency as a vote casting short cut? I believe the latter accounts for a considerable portion of incumbent successes. Particularly when the economy is strong and the overall mood of the country is upbeat, incumbents will prosper at the polls.²⁹ Victory of this sort is logical—constituents want to maintain the status quo when things are going well.



Source: *Vital Statistics on Congress 1997-1998*, 151.

Figure 3.9 Percentage of Victorious Senate Incumbents



Source: *Vital Statistics on Congress 1997-1998*, 62.

Proponents of term limits would likely disagree with this assessment. They would probably argue that incumbents, through manipulation of the various incumbency benefits, effectively control electoral outcomes. It would be fair to assume that some congressmen intentionally use incumbency benefits and perks, believing they will result in an electoral windfall. The truth, however, is that the expansion of perks and the focus on constituency casework and pork, utilized as a sure-fire formula for winning reelection, appears to be overstated as figures 3.8 and 3.9 demonstrate. There is no discernible pattern demonstrating that incumbents have greatly benefited at the polls due to the growth of the perks of office. In short, the growth of perks and

benefits and the reelection rates of House members do not correspond. Reelection rates have meandered between eighty to ninety-six percent from 1946 to the present (shown in figure 3.8), with no steady or dramatic increases occurring.

The proliferation of subcommittees noted by Mayhew has seen a wide fluctuation in numbers. These significant fluctuations, however, have not affected the reelection rates of House incumbents. The decade from 1972 to 1982 saw a significant increase in the number of subcommittees, while reelection rates actually dropped below the median. The proliferation of subcommittees (supplying the power base for House members) appears to have had a minimal impact on the reelection rates for House incumbents.

This data suggests that Thomas Mann's statement in 1977 still holds true today. Mann wrote that there is little systematic evidence directly linking the activities of incumbents with their reputation among the constituents.³⁰ The use of perks has not ingratiated House members to their constituents or made them any more or less vulnerable over the past fifty years. Just as there was no discernible relationship between the expansion of perks and rise or fall in reelection rates for House incumbents, it also appears that these "benefits" have not served incumbent senators any better in their quest for invincibility.

The reelection rates of Senators from the period of 1946 to 1996 are best characterized by what Gary Jacobson termed the ebb and flow of electoral politics. While House reelection rates appear, for the most part, stable around a median, Senate

reelection rates have fluctuated wildly during this time period (see figure 3.9). Note that in 1980 only fifty-five percent of incumbent senators running for reelection were victorious; two years later ninety-three percent of incumbent senators won their reelection bids. There is no consistent pattern in the performance of incumbent senators with each successive election (see figure 3.9). The data suggests, on average, that senators are rarely invulnerable to the threat of a quality challenger.

The data on reelection rates and use of incumbency benefits is consistent with the assessment of Bond et al. Bond's research showed that incumbent activities described by Mayhew, Fiorina and Fund (e.g., constituency casework, pork barrel legislation, and exploitation of perks) did not deter quality challengers from running against them. In fact, notes Bond, incumbents who had exploited these benefits were more likely to attract quality, well-financed candidates than those who did not.³¹ Term limits proponents bemoan the lack of genuine electoral competition, claiming that incumbents' use of perks have stifled would-be challengers. The data above, coupled with Bond's findings, however, suggests that the perceived incumbency advantage has not been a feature of incumbent exploitation of self-created resources. The increases in perks, noted Jacobson, have not resulted in representatives winning more often or by more comfortable margins. "All indicators are that representatives have been working harder at reelection than ever...[though] they run harder just to stay in the same place."³²

Constituency Casework and Pork Barrel Politics

The preceding data has focused on the impact of perks (specifically mailing, trips, subcommittee, and staff expansion) on incumbents' chances for reelection. Constituency casework and pork barrel politics also factor considerably into the term limits debate as evidenced in the preceding pages. The reelection rates of incumbent House members and senators also reveals the impact that constituency casework and pork barrel legislation have had on securing electoral advantages.

There has been considerable debate about the efficacy of constituency casework in paving the way for a successful reelection. Fiorina reported a sharp increase in the number of congressional staffers from the early 1960s to the mid 1970s (see figures 3.1 and 3.5). These increases in staff were, as Fiorina noted, almost entirely allocated for constituency casework.³³

From Fiorina's assessment it would seem appropriate to consider the growth in staff sizes to be indicative of the long-range impact of constituency casework on reelection fortunes. If staff sizes have increased significantly (put to the task of securing reelection), then it is also reasonable to assume that this should impact overall reelection rate of incumbent legislators.

Once again, comparison of House and Senate incumbent reelection rates versus the growth of staff offers a curious suggestion. Fiorina states that staff sizes in the House of Representatives have increased dramatically since the mid 1950s and leveled off in the 1980s. However, during this same time period, the reelection rates for

incumbents have remained the same. There was no significant rise in reelection rates from the 1950s to the 1980s to indicate that House incumbents were prospering from their increase in personnel.

Examination of the growth of Senate staff is rather striking (see figure 3.5). As with the House, there is no corresponding rise in staff size (being utilized for constituency casework) and reelection rates for senators. The period between 1972 to 1976 observed the sharpest increase in the number of staff allocated to each senator; at the same time, incumbent senators running for reelection fared far worse than at any other time in the past fifty years. Thus, it is fair to assume that senators' staffs, purportedly handling constituency casework, were not responsible for insuring reelection.

The evidence above suggests constituency casework (through staff workload) has had no direct effect on guaranteeing electoral security for incumbents. This is consistent with Mann's research, as he too found that constituency casework had no direct payoff to the incumbent.³⁴

Jacobson questions the value of pork barrel activities and its benefit to the incumbent.³⁵ Some research has shown, in limited cases, that high levels of government awards to a district could scare off potential challengers.³⁶ This finding is clouded by other research that found that there is no effect of incumbents' pork barrel activities on the challengers' campaign expenditures. As argued earlier in this chapter, there is no direct connection between the use of perks and electoral success. Prior

research has found the same holds for pork barrel politics and constituency service. Ragsdale and Cook found that “doing things right for the district” had neither long-term nor short-term impact on the campaign resources of either the incumbent or challenger.³⁷ This implies that challengers were not any less inclined to run against an incumbent because of their past record of securing federal projects for the districts.³⁸ Nor was there reluctance by campaign contributors to donate funds to a challenger’s campaign or reluctance by quality challengers to run.³⁹

The relevance of the discussion on incumbents’ attention to constituency service, and how this affects the challengers’ campaign expenditures, is that it partially addresses the assertion made by proponents that incumbents deliberately skew elections in their favor. The finding that quality challengers are, in fact, quite able to finance and orchestrate competitive campaigns despite incumbents’ ombudsman-like activities, however, undermines this argument.

Consistent with the examination of other perks, there is simply a lack of compelling evidence to suggest that constituency casework and pork barrel activities have favorably impacted incumbency reelection rates or have made incumbents any more or less safe over the past fifty years. Incumbents who utilize constituency casework and pork barrel legislation with the intent of making themselves more secure are, once again, working very hard to stay in the same place. Ultimately, Will’s assertion that incumbents’ use constituency casework and pork barrel politics to further their career aspirations does not hold up under analysis.

The Importance of Challenger Quality in Congressional Elections

Proponents of term limits often argue that the absence of robust competition in congressional races is one of the reasons a term limit is necessary.⁴⁰ Even some term limits opponents acknowledge that House races often lack credible challengers.⁴¹ It is also recognized that on average legislators do well in elections. However, the term limits debate centers around the self-serving, reelection-oriented activities of the incumbents, and their ability to skew elections in their favor. The previous discussion suggests that these activities were ineffective in making the incumbent any more invincible.

What then, accounts for the relatively high reelection rates of incumbents—especially House incumbents? Prior research offers an explanation that validates the findings and conclusions offered earlier. Gary Cox and Jonathon Katz found that incumbency advantages come in three forms. The first advantage was the “direct effect” that comes from the expansion of benefits (resources) and constituency based activities. Constituents are appreciative of tangible things done for them by their representative and reward them with their vote. The second advantage comes in the form of “scare-off” effects; this occurs when strong challengers are discouraged by the incumbents’ activities. The third advantage is the “quality effects” of incumbency, which is measured in the difference between the candidates’ quality and experience. Cox and Katz found that quality effects were the most important source of incumbency advantage.⁴² In other words, quality, experienced incumbents frequently encounter

poorer quality, inexperienced candidates in elections, and the quality of the challenger is more influential in electoral outcomes than any reelection-oriented activity of the incumbent. This factor is significant when the findings of Bond et al. are also considered. Recall Bond found that the use of perks by incumbents did not deter quality candidates from challenging them. Considering this, it seems that the characteristics of the candidate's plays a more important role in election outcomes than does the reelection-oriented activities of an incumbent.

On average, Senate elections tend to be more competitive than House races because of increased media attention and overall higher quality candidates running.⁴³ The increased media attention offers challengers more opportunities to be seen and heard by voters, so the people can make an assessment of the them.⁴⁴ The fact that Senate incumbents normally encounter stiffer competition probably accounts for some of the wider variation in Senate incumbent reelection rates vis-à-vis House incumbents.

Mann asserts that robust competition is dependent upon strong challengers and the public's dissatisfaction with the state of the country and economy.⁴⁵ Mann believes the 1980's were devoid of incumbent upsets because a "benign national political environment" gave voters little incentive to vote against the incumbent.⁴⁶

I agree with Petracca's argument that challengers are held to a higher standard than are incumbents.⁴⁷ Voters have already approved of the incumbent in prior elections (even at a time when they were not incumbents). It is the challengers'

responsibility to provide the electorate with sufficient reason to remove their previously approved representatives. The 1994 House and 1980 Senate elections are clear illustrations that voters will vote out of office the most revered incumbent legislators if they have sufficient reason for doing so.

Turnover

While voters do not routinely vote out their particular member of congress, there is still turnover of some proportion of the congressional membership each session of congress. It is safe to assume that proponents of term limits would like to see incumbent legislators perpetually vulnerable to defeat. The same can be said for turnover of congressional membership. Term limits supporters are dissatisfied with the degree of natural turnover (i.e., through retirement, resignation, death, or defeat) that has occurred over that past fifty years. Proponents believe that “turnover is too little, and too slow to preserve liberty, promote citizen participation, and enhance political participation.”⁴⁸ Supporters of term limits also believe that turnover occurs too slowly, resulting in a less vital Congress (particularly in the House of Representatives).⁴⁹ The result of this lost vitality is policy paralysis. The same legislators continually engage in the same discussions, failing to move forward on problems of national importance (e.g., national debt, and rampant crime). A term limit would infuse different individuals with new ideas into Congress and release this paralysis.

It is common for term limits supporters to emphasize the high reelection rates of incumbents as proof that turnover is insufficient.⁵⁰ Often supporters review the average number of incumbent defeats over a short period of time and claim this as the only source of turnover. Not surprisingly, they find that turnover among congressional membership is usually a very low number—seven to fifteen percent of the membership of either chamber.

This, however, can be misleading. I propose that in order to look at actual turnover of congressional membership, other factors besides defeat, must be considered. To examine this issue, turnover will be reviewed by simply counting the number of freshmen coming into the House and Senate over a given period of time. Turnover will be reviewed in twelve-year intervals as term limits proposals typically call for a twelve-year cap on legislative service.⁵¹

Turnover of House membership in the past twenty-four years (or over the past two twelve-year blocks) has been significant (see table 3.1). Over the course of the past twelve years (1984-1996) 388 representatives have served as newly elected freshman in the House. From 1972 to 1984 the number of freshman elected to the House was a significant 418. This means that during this time frame (consistent with term limits proposals) 418 new individuals (out of a total House membership of 435) have served in the House of Representatives—obviously this amount of turnover necessitates that some members have a brief tenure.

Statistics on the tenure of House members from 1953 to 1997 reveals the average tenure of representatives, during any session of congress in this time period, is ten years.⁵² The data also shows that, during any given session of congress, the majority of House members have served anywhere from three to six terms in office. This implies that the majority of members are getting elected and staying for multiple terms before leaving (voluntarily or otherwise). Additionally, of those House incumbents who suffered defeat (between 1946 and 1996) the average number of terms served prior to defeat was 3.7 terms (a six to eight year tenure).⁵³ The data above implies that turnover is not limited to just a few volatile seats, but is generally more pervasive throughout the House of Representatives.

Turnover among members of the House is also significant over a six year period (yet another term limits tenure cap proposal). Over the last six-year time span (1990-1996) 309 new freshman representatives started their service. Norman Ornstein observed that the “old argument that undergirded the term limits proponents was that there is less turnover in Congress than in the Supreme Soviet. Obviously, that has been blown completely out of the water.”⁵⁴ Clearly proponents’ perception that Congress is immortal is inaccurate.

Table 3.1 Turnover of House Membership

Election Year	Number of Incumbents Defeated or Retired
1946	102
1948	112
1950	67
1952	77
1954	52
1956	43
1958	73
1960	56
1962	58
1964	86
1966	71
1968	36
1970	51
1972	64
1974	91
1976	63
1978	73
1980	71
1982	79
1984	41
1986	49
1988	30
1990	43
1992	108
1994	86
1996	72

Note: Totals do not include resignations or deaths in office.

Source: Vital Statistics on Congress 1997-1998, 61.

Turnover of Senate seats are nearly as impressive (see table 3.2). During the past twelve years, 1984-1996, sixty-five new senators served in the Senate. From 1972 to 1984, seventy-two individuals served as incoming freshman to the Senate.

Table 3.2 Turnover of Senate Membership

Election Year	Number of Incumbents Defeated or Retired
1946	22
1948	18
1950	14
1952	15
1954	12
1956	10
1958	16
1960	6
1962	10
1964	7
1966	7
1968	14
1970	11
1972	13
1974	11
1976	17
1978	20
1980	18
1982	5
1984	7
1986	13
1988	10
1990	4
1992	12
1994	11
1996	15

Note: Totals do not include resignations or deaths in office.

Source: *Vital Statistics on Congress 1997-1998*, 62.

The amount of turnover for both the House and Senate is noteworthy. One of the goals of term limits reform is to inject vitality into Congress by mandating that new individuals serve as representatives. One term limits supporter claims that, “turnover in Congress should not come chiefly because members choose to leave on their own timetable. In a democratic society some turnover should be caused at the polls.”⁵⁵ However, Thomas Mann makes the assertion that there is no compelling reason to have one hundred percent turnover when fifty to seventy-five percent of congressmen are replaced every decade.⁵⁶ It is true that turnover is not completely the result of incumbent defeat. However, as the data on turnover shows, it is unnecessary to increase electoral competition to infuse Congress with new blood.⁵⁷

Faced with this evidence it is likely that proponents would still express concern about the “old guard” legislators (those with extended, uninterrupted service in Congress). In the 105th Congress there are thirteen members of the House have served more than twenty years; twenty-three senators have served more than nineteen years. It is these legislators that are most aggressively targeted by term limits advocates. They are portrayed as paragons of the worst attributes of incumbent politicians. However, senior legislators do not necessarily possess all negative attributes. Recall in *Federalist* 53 Madison acknowledges that there would be some members with exceptional talents who will serve for many years.

A few of the members, as happens in all such assemblies, will possess superior talents; will, by frequent reelections, become members of long standing; will be thoroughly masters of the public business, and perhaps not unwilling to avail themselves of those advantages. The greater the proportion of new members, and the less the information of

the bulk of the members the more apt will they be to fall into the snares that may be laid for them. This remark is no less applicable to the relation which will subsist between the House of Representatives and the Senate.⁵⁸

In *Federalist 62* Madison also warns that excessive turnover leads to instability in legislatures.⁵⁹ The implication of Madison's assertions in *Federalist 53* and *62*, is that long-standing members serve a function of stability in Congress. Contemporary congressional scholars (such as Richard Fenno and Gary Jacobson) see senior legislators as very committed to problem solving and programmatic activities in general. This at the expense of their reelection campaigns. I will have more to say on this subject in chapter 5.

Term limits proponents believe that another benefit of forced turnover would be representatives who better appreciate their lawmaking responsibilities. Legislators would be more mindful of laws and regulations they have enacted if they were forced to return home and live under them.⁶⁰ Proponents argue that serving briefly and retiring would be a return to a one-time norm for representation (in the late eighteenth and early nineteenth centuries).⁶¹ John Fund writes:

[M]any delegates assumed that voluntary term limits would be the norm, It was never thought that serving in Congress would become a career. And indeed, in the first House election after George Washington was elected president, 40 percent of incumbents did not return, allaying fears of an entrenched 'government of strangers.' The practice through the first half of the 19th century was for members to serve only four years in the House and six in the Senate; in every election 40 to 50 percent of Congress left office.⁶²

What is interesting to note is the subtle change found in Fund's position.

Earlier, (see in particular note 55) Fund asserts the need for turnover via electoral defeat of the incumbent. Yet in the quote above he seems to infer that voluntary retirement is an acceptable vehicle for turnover. Fund is not alone among term limits supporters in falling into this contradiction; nor is he alone in claiming that turnover is a thing of the past. It is a common practice among term limits supporters to hearken back to the representation of the eighteenth and early nineteenth century as the model for how representatives should behave today. Another term limits supporter wrote:

The ideas of citizen-representatives serving a relatively short time in not new or radical. Although the writers of the Constitution did not see fit to include a term limitation, perhaps that was because the public-service norm of those days did not include careerist senators and representatives.⁶³

We will later see that careerism and turnover are closely intertwined. If turnover is virtually non-existent, then the claims of term limits supporters about careerist goals of congressmen bears some import. However, it is evident after examining the rate of turnover for House members and senators that there is an ebb and flow to turnover of congressional membership. Some election years yield little turnover (e.g., Senate, 1990), while other years have produced considerable turnover (e.g., House, 1994). Mann is correct in his assertion that there is no consistent pattern of declining turnover.⁶⁴ I also concur with his assessment that one hundred percent turnover is not required to be meaningful.

Mann's assessment dovetails nicely with Jeffrey Mondak's research on elections. Mondak found that the election process effectively weeds out inferior legislators over time.⁶⁵ Thus natural turnover still serves to rejuvenate Congress with different members, hence new ideas. At the same time, congressmen who stay on for an extended period of time are likely of a higher caliber. The implementation of term limits would replace these legislators with possibly inferior, inexperienced ones.

Careerism

The previous discussion on incumbency advantage and turnover is very relevant as we look at reelection goals and legislative careers. This discussion will center on proponents' claims that contemporary congressmen have made running for reelection "the great constant of their lives" in their quest to prolong their careers.⁶⁶ They have successfully shaped Congress to this end and have provided themselves with the tools to pursue their mission.

David Mayhew believes that running for reelection is the primary, if not the sole pursuit, of representatives. Other term limits proponents, like Will, portray legislators in a similar light. The data on congressional incumbent reelection rates, however, suggests that reelection-based activities of congressmen are not what they appear to be. First, no direct link has been found between the growth of the various incumbency benefits (perks) and reelection rates for incumbents. Second, the use of incumbency benefits has had negligible effects on deterring would-be competitors. So, too, has the expansion of perks, constituency casework, and pork barrel politics been

ineffective in assisting representatives with their congressional career aspirations.

True, some congressmen have obviously (whether intentional or not) made a career out of public service. However, even if legislators have deliberately sought to shape Congress to suit their reelection goals, there is no evidence to support that their efforts have been worthwhile. Incumbent reelection performance has not drastically improved over time. Senate reelection rates, in particular, have been too unstable to claim that a majority of Senate incumbents would be able to maintain a career with any sense of certainty.

The striking amount of turnover in the House and Senate also calls into question the goal of establishing a lengthy congressional career. The 388 new individuals filtering through the House over the last twelve years indicate that there is not a widespread plan to fashion a long-term career out of legislative service.

Concluding Remarks for Chapter 4

For the most part, incumbents do experience an advantage in congressional elections. The sources of this advantage, however, are not perks of office and reelection-oriented activities (i.e., constituency casework and pork barrel legislation) claimed by term limits supporters. In fact, it is quite possible for credible challengers to run effective campaigns against incumbents—if the climate is right for defeat. Some researchers have shown that challengers often encounter difficulties in orchestrating credible campaigns. The poor performance of the challenger has been found to be

partly attributable to the belief, by both challenger and incumbent, that the advantages of incumbency do matter.⁶⁷ The discussion earlier in this chapter illustrates that incumbents and challengers are incorrect in believing this to be true.

Ragsdale and Cook's research shows that incumbents' use of perquisites and reelection-oriented activities are not nearly the overwhelming obstacles for challengers, nor the boon for incumbents, as often believed. And "the belief of incumbent invulnerability may not be as firmly grounded in reality as incumbents, challengers, and congressional observers have supposed."⁶⁸ This, too, is consistent with the data comparing reelection rates with perk growth, constituency casework, and pork barrel politics presented earlier. Therefore, it seems clear from the evidence and supporting research that the beliefs of term limits supporters about incumbency advantage, and related issues of turnover and careerism, are predicated on misperceptions.

NOTES

¹ Quote of Mark Petracca taken from: Doug Bandow, "Real Term Limits: Now More Than Ever." *Cato Policy Analysis* No. 221, (March 28, 1994):6. Available [Online]: <<http://www.cato.org/pubs/pas/pa-221.html>> [January 26, 1998].

² John Fund, "Term Limitation: An Idea whose Time Has Come," *Cato Policy Analysis* No. 221, (October 30, 1990):13. Available [Online]: <<http://www.cato.org/pubs/pas/pa-221.html>> [January 26, 1998].

³ *Ibid.*, 11.

⁴ Bill Frenzel, "Term Limits and the Immortal Congress," *Brookings Review*, 10 (Spring, 1992): 18.

⁵ *Ibid.*, 19.

⁶ I have chosen the past 50 years as my frame of reference because of arguments made by prominent term limits advocates who have argued that congressional careerism has grown considerably in this time period. In short, the means to foster and build a congressional career were largely non-existent immediately after World War II and following implementation of New Deal programs. The identified incumbency benefits increased significantly during this time period. It was Fiorina who noted that the growth of the activist federal government took off after the New Deal. See, Morris Fiorina, *Congress: Keystone of the Washington Establishment*, 2nd ed., (New Haven: Yale University Press, 1989):44. George Will actually identifies the modern post war era of American politics to have begun in 1952. See, George Will, *Restoration: Congress, Term Limits and the Recovery of Deliberative Democracy*, (New York: The Free Press: 1992): 74.

⁷ See, e.g., Linda Fowler, "A Comment on Competition and Careers," in *Limiting Legislative Terms*, eds., Benjamin and Malbin (Washington D.C.: Congressional Quarterly, 1992): 183; Gary Jacobson, *The Politics of Congressional Elections*, 4th ed., (New York: Longman Press, 1997): 19.

⁸ Frenzel, "Term Limits and the Immortal Congress," 19.

⁹ See, Jon Bond, Cary Covington, and Richard Fleisher, "Explaining Challenger Quality in Congressional Elections," *Journal of Politics*, 47 (1985): 511-527.

¹⁰ Frenzel, "Term Limits and the Immortal Congress," 19.

¹¹ The works mentioned here are Fiorina, *Congress: Keystone of the Washington Establishment*; and David Mayhew, *Congress: The Electoral Connection*, (New Haven: Yale University Press, 1974).

¹² Will, *Restoration*, 62-63.

¹³ *Ibid.*, 72.

¹⁴ Eric O'Keefe and Aaron Steelman, "The End of Representation: How Congress Stifles Electoral Competition." *Cato Policy Analysis* No. 279, (August 20, 1997):2. Available [Online]: <<http://www.cato.org/pubs/pas/pa-279.html>> [January 28, 1998].

¹⁵ Ibid.

¹⁶ Fiorina, *Congress: Keystone of the Washington Establishment*, 57.

¹⁷ Bandow, "Real Term Limits: Now More Than Ever," 6.

¹⁸ Ibid.

¹⁹ Fiorina, *Congress: Keystone of the Washington Establishment*, 47.

²⁰ Ibid., 53.

²¹ Ibid., 54.

²² Ibid., 55.

²³ Ibid., 56.

²⁴ Ibid., 53.

²⁵ Jacobson, *The Politics of Congressional Elections*, 184; Fiorina, *Congress: Keystone of the Washington Establishment*, 58-63.

²⁶ Elaine K. Swift, "Electoral Connection Meets the Past: Lessons from Congressional History, 1789-1899," *Political Science Quarterly*, 102 (Winter, 1987-88): 626.

²⁷ Fund, "Term Limitation: An Idea Whose Time Has Come," 22-23.

²⁸ Jacobson, *The Politics of Congressional Elections*, 19; Fowler, "A Comment on Competition and Careers," 183.

²⁹ Consider as evidence to this point the mid 1980's. The mood of the country was overwhelmingly optimistic under the Reagan presidency. The economy has rebounded from the malaise of the 1970's. Incumbents did exceptionally well during this time period. It culminated with the wellspring of the current term limits movement in 1988. If this holds true—and the economy stays on course—incumbents should do very well in upcoming 1998 elections.

³⁰ Thomas Mann, *Unsafe at Any Margin: Interpreting Congressional Elections*, (Washington D.C: American Enterprise Institute: 1977): 71.

³¹ Bond, Covington, and Fleisher, "Explaining Challenger Quality in Congressional Elections," 524.

³² Gary Jacobson, "The Marginals Never Vanished: Incumbency and Competition in Elections to the U.S. House of Representatives, 1952-82," *American Journal of Political Science*, 31 (February, 1987): 138.

- ³³ Fiorina, *Congress: Keystone of the Washington Establishment*, 56.
- ³⁴ Mann, *Unsafe at Any Margin: Interpreting Congressional Elections*, 72.
- ³⁵ Jacobson, *The Politics of Congressional Elections*, 32.
- ³⁶ Kenneth Bickers and Robert Stein, "The Electoral Dynamics of the Federal Pork Barrel," *American Journal of Political Science*, 40 (November, 1996): 1300-1326.
- ³⁷ Lyn Ragsdale and Timothy Cook, "Representatives' Actions and Challenger's Reactions: Limits to Candidate Connections in the House," *American Journal of Political Science* 31 (February 1987):71-74.
- ³⁸ See, Paul Feldman and James Jondrow, "Congressional Elections and Local Federal Spending," *American Journal of Political Science*, 28 (1984): 147-163.
- ³⁹ Bond, Covington, and Fleisher, "Explaining Challenger Quality in Congressional Elections," 524.
- ⁴⁰ See e.g., Fund, "Term Limitation: An Idea Whose Time Has Come," 7; Will, *Restoration*, 212; Frenzel, "Term Limits and the Immortal Congress," 19.
- ⁴¹ See, Thomas Mann, "The Wrong Medicine: Term Limits Won't Cure What Ails Congressional Elections," *Brookings Review*, 10 (Spring, 1992): 24.
- ⁴² This discussion was gleaned from: Jacobson, *The Politics of Congressional Elections*, 36. Original reference can be found in, Gary Cox and Jonathon Katz, "Why Did Incumbency Advantage in U.S. House Elections Grow," *American Journal of Political Science*, 40 (May 1996): 478-493.
- ⁴³ See Peverill Squire, "Challenger Quality and Voting Behavior in U.S. Senate Elections," *Legislative Studies Quarterly*, 27 (May, 1992): 247-264; Mark Westlye, "Competitiveness of Senate Seats and Voting Behavior in Senate Elections," *American Journal of Political Science*, 27(February, 1993): 253-283.
- ⁴⁴ Jacobson, *The Politics of Congressional Election*, 78-79; 99-100.
- ⁴⁵ Mann, "The Wrong Medicine," 24.
- ⁴⁶ *Ibid.*
- ⁴⁷ Mark P. Petracca, "A Comment on 'Elections as Filters,'" *Political Research Quarterly*, 48 (December, 1995): 734.
- ⁴⁸ Bandow, "Real Term Limits: Now More Than Ever," 6.
- ⁴⁹ Frenzel, "Term Limits and the Immortal Congress," 19.
- ⁵⁰ See e.g., Fund, "Term Limitation: An Idea Whose Time Has Come," 7; Frenzel, "Term Limits and the Immortal Congress," 19; and Bandow, "Real Term Limits: Now More Than Ever," 6.

⁵¹ Term limits proposals commonly seek to limit the years of service for Representatives and Senators to twelve years. There are those among the supporters who seek to limit House members to no more than six years of service. In recent debates in the House, nine different proposals on term limits were put forward. This resulted in confusion and dissension—even among term limits supporters. The primary backer of term limits in the House, Bill McCollum, R-Fla., put forth a plan, that was eventually voted on, calling for a 12 year limits of service for both representatives and senators. McCollum's plan was put forward as it would clear the confusion and was the plan most likely to win. For a discussion of the debate over the various term limits options see, "Serving Time," In *Online Backgrounder*, (February 12, 1997), Available [Online]:

<http://www.pbs.org/newshour/bb/congress/february97/limits_2-12.html> [April 7, 1998]; The argument has also been made that the House will be placed in a diminished role if the House and Senate have differing lengths of tenure. The belief is that a no term limits proposal with such an arrangement would garner enough votes in the House to pass. Also, Newt Gingrich, now a tepid supporter of term limits, argues as partial justification against the six year term limits, that six years is not nearly enough time to learn all the intricacies of being a lawmaker. For more discussion about the twelve year term limit proposal see, Fund, "Term Limitation: An Idea Whose Time Has Come," 21; and Paul Jacobs, "Whose Government is It, Anyway?" (November 16, 1996), Available [Online]: <<http://www.termlimits.org/whoseisit.shmtl>> [December 2, 1997]; James Bond, "Temporizing on Term Limits: the Speaker Likes 12 Years, Not 6." *Cato Briefing Papers No. 22*. (February 7, 1995), Available [Online]: <<http://www.cato.org/pubs/briefs/pb-022.html>> [January 26, 1998].

⁵² Statistics on the tenure of congressmen is located in, Norman Ornstein, Thomas Mann, and Michael Malbin, eds., *Vital Statistics on Congress 1997-1998*, (Washington D.C.: American Enterprise Institute, 1998): 19-21.

⁵³ *Ibid.*, 64-65. The average tenure of defeated incumbents was derived from the aggregate total number of terms served by defeated incumbents divided by the total number of elections held (fifteen) between 1946 to 1996.

⁵⁴ Ornstein quote taken from, Chris Black, "High Turnover Puts New Spin on Debate Over Term Limits: More Fresh Faces in Congress," *Boston Globe*, November 29, 1996, A1.

⁵⁵ Fund, "Term Limitation: An Idea Whose Time Has Come," 14.

⁵⁶ Mann, "The Wrong Medicine," 25.

⁵⁷ *Ibid.*, 24.

⁵⁸ James Madison, *The Federalist Papers No. 532*, (New York: Bantam Books, 1982): 274.

⁵⁹ Madison, *The Federalist Papers No. 62.*, 316. See also footnote number 36 in chapter 2.

⁶⁰ Will, *Restoration*, 200-201.

⁶¹ See, e.g., *Ibid.*, 12; Fund, "Term Limitation: An Idea Whose Time Has Come," 14.

⁶² Fund, "Term Limitation: An Idea Whose Time Has Come," 3.

⁶³ Thomas F. Harnett, "Put Member of Congress on a Short Lease," *Wall Street Journal*, September 19, 1988, A(14). This direct quote was taken from, Fund, "Term Limitation: An Idea Whose Time Has Come," 27.

⁶⁴ Mann, "The Wrong Medicine," 24.

⁶⁵ Jeffrey A. Mondak, "Focusing the Term Limits Debate: A Comment on 'Elections as Filters'," *Political Research Quarterly*, 48 (December, 1995): 701-727.

⁶⁶ Will, *Restoration*, 12

⁶⁷ Ragsdale and Cook, "Representatives' Actions and Challenger's Reactions: Limits to Candidate Connections in the House," 76.

⁶⁸ *Ibid.*

CHAPTER 5

A FINAL WORD ON TERM LIMITS AS A VIABLE REFORM

Gary Jacobson wrote that it is difficult to make an argument against term limits because it is based more on emotion than analysis.¹ While I agree that normative issues are prevalent in the term limits debate, there is still a means to assess term limits as a reform. Proponents of term limits conclude that this reform will restore integrity to congressional elections and lead to the resolution of unresolved national problems. Term limits advocates justify the need for this reform based on their appraisal of incumbency advantage, the absence of turnover, and policy paralysis within Congress. I have entered the term limits debate to address the soundness of the advocates' appraisal of these issues as the basis for this reform.

In the preceding chapters I have presented an argument that a term limit for members of Congress is inappropriate because it is predicated on unsound arguments. I also assert that term limits reform has misidentified the problem it is seeking to correct. The analysis presented earlier shows that actions by career-minded incumbent legislators (i.e., expansion of franked mail, travel expenses, personal staff, and the focus on constituency service and pork barrel politics) have not had the electoral

benefits proponents claim. Term limits supporters have further misidentified the amount of congressional turnover actually occurring. In addition, proponents have not considered that representatives are responsive to their constituents because the system of representation, devised by the Framers, is designed to elicit such behavior. Finally, advocates have failed to recognize that the Framers designed Congress to act slowly and methodically. This fact, more than any other, is likely the source of perceived policy paralysis in Congress; not intimidated legislators looking out primarily for their electoral self-interests.

Most term limits supporters lament what they perceive to be rising careerism by legislators; they assert that the problem with Congress today (that could be corrected by a term limit) is rooted in the steady rise in careerism, particularly over the past fifty years. Proponents believe that congressmen's career goals have negatively affected the political system.

This paper shows how proponents have erroneously portrayed incumbent legislators' actions and how careerism actually manifests itself. Incumbents—especially in the House of Representatives—have historically performed well in their reelection bids, though there is no connection between the increase in career oriented perks and incumbent reelection rates over time. Incumbents have not gained any more security with the use of perks, constituency service, or through pork barrel legislation. Research has shown that worthy challengers are not deterred by incumbents' use of the latter two perquisites. The analysis suggests that it is difficult to continue to justify

term limits as an applicable reform based on the argument that incumbents have skewed the playing field in their favor. There are other reasons why incumbents do well, such as name recognition, poor challenger quality, and discrepancies in campaign finance expenditures. Concerns about special interest money are expressed on both sides of the term limits debate. Campaign finance reform measures are needed to address this focus of concern. A term limit, at best, might indirectly address campaign finance discrepancies.

George Will, probably the most prominent of all term limits advocates, admits that a term limit would not cure all of the ills of American governance, and suggests that unintended consequences would likely occur if such a reform was put into place.² One impediment to any reform is unintended consequences.³ Term limits for legislators, claim supporters, is an attempt to stimulate turnover that will (through the infusion of new members able to solve long standing national problems) resolve policy paralysis, and result in fairer, more competitive elections. However, experience with term limits at the state level has shown that this reform can potentially give rise to some troubling and unintended consequences.

The Potential Impact on a Term-Limited Congress.

It is important to consider possible side effects, positive and negative, of any reform before it is enacted. Essentially, does the reform create more harm than benefit for the political system? If the reform correctly targets identified problems and the

side-effects are negligible, it may be worthwhile to consider implementation. We have shown that term limits have incorrectly identified the target. Early results from state imposed term limits suggest that the overall impact to the system is less than desirable.

Prior analysis found that the California Assembly was overcome by chaos following the first term limit. Policy paralysis abounded as inexperienced legislators, unaccustomed to the arcane rules and nuance of governing (and not knowing with whom or when to compromise) slowed legislative output considerably. The stripping away of knowledgeable, experienced legislators had been particularly devastating. A veteran staffer in a term limited state reported: “People are making very important decisions with very little knowledge of what they’re deciding. Some of the questions we’ve heard [uttered by rookie legislators during committee debate] and the lack of knowledge behind them, have been staggering.”⁴ Nelson Polsby expressed similar concerns about the depletion of experienced legislators. Polsby, a term limits opponent, believes more seniority and experience, not less, is needed in today’s Congress:

It is a delusion to think that good public servants are a dime a dozen in each congressional district, and that only the good ones would queue up to take their twelve-year fling at congressional office. But suppose they did. In case they acquired expertise, what would they do next? Make money, I suppose. Just about the time their constituents and the American people at large could begin to expect a payoff because of the knowledge and experience that these able members had acquired at our expense, off they would go to some Washington law firm.

And what about their usefulness in the meantime? It would be limited, I’m afraid, by greater expertise and better command of the territory by lobbyists, congressional staff, and downtown bureaucrats—career people one and all. So this is, once again, a proposal merely

to weaken the fabric of Congress in the political system at large. And thereby to limit the effectiveness of one set of actors most accessible to ordinary citizens.⁵

As I mentioned in earlier in this paper, the California State Assembly is operating under a six-year term limit. It is likely that the problems experienced in California are exacerbated because members' tenure is strictly curtailed. However, should term limits advocacy groups prevail with their proposal, members of the House of Representatives will also serve under a six-year term limit. Thus we must consider the possibility that the problems confronting the California State Assembly will plague the House of Representatives as well. We should also consider that problems might manifest themselves, possibly to a lesser degree, under a term limit allowing for longer tenure to be served.

Others have suggested that a term limit would alter the connection between the legislator and the constituency. It has been noted by opponents that term limits will likely cause representatives to be less responsive to their district's sentiments because there is minimal liability in doing so.⁶ This fact would be considered a much-needed change by some proponents like George Will. Will sees the need for a term limit to give congressmen the freedom to do the right thing regardless of the constituency's wishes.⁷ Though representatives will be equally free to do the wrong thing as well.⁸

The Framers expected legislators to be responsive, to a certain degree, to their constituents. The varying length of terms in office for the House and Senate were carefully selected to elicit different levels of responsiveness to constituents. House

members will be more attuned to their constituents' needs; senators will have the buffer of a six year term to insulate them from the immediate desires of their constituents. A democracy, to maintain its legitimacy, needs a close connection to the people—as reflected by the House. The Senate provides stability and reason to incautious measures passed by the House. Contemporary research by Kuklinski found that the framework is still working largely as arranged.

Reelection plays an important role in the Framers' framework of representation. It is unlikely that the Framers did not include a term limit in their final draft of the Constitution because it was unnecessary at the time, or would include too much detail—as proponents assert. It was most likely not included because reelection was an important component of the framework of representation, serving as the people's check on their representatives. The Framers were concerned about representatives having unlimited amounts of freedom if they were not dependent upon the people in some meaningful manner.

The result of this freedom could be legislators who ignore the constituency's best interests and focus primarily on their personal interests. In current discussions on term limits, Linda Fowler and others envision that incumbents will engage in a kind of "nest-feathering" in the wake of a forced retirement from the legislature.⁹ Fowler believes that the peddling of influence by special interests and corporations will increase under term limits. Legislators will tightly align themselves with corporations for the promise of well-paying jobs upon retirement. This belies proponents' beliefs

that congressmen will briefly fulfill their civic duty and return home. Eventually, special interests and corporations will dominate the recruitment process as well. Fowler's prediction suggests that campaign finance problems will likely fester and worsen under term limits.

Linda Fowler also considers the possibility that competition in congressional elections will diminish under term limits. Experience in California, however, found that a term limit did not discourage competition against incumbents.¹⁰ Rather, it improved some aspects of competition—primarily because there were more open-seat elections.¹¹ This demonstrates that proponents may be correct in assuming that a term limit will stimulate more turnover among congressional membership. Prior research has found that a term limit is likely to increase turnover as incumbents will leave the legislative body to seek other opportunities for public service or employment prior to being forced out.¹² However, Thomas Mann argues that a term limit is not necessary to increase turnover. There is no compelling reason provided by proponents to insist upon one hundred percent turnover in Congress every twelve years, when up to seventy-five percent of legislators are replaced on average over the course of a decade.¹³ Term limit proponents hope forced turnover will produce an infusion of new legislators to restore needed vitality to Congress. The evidence presented in the paper reflects that turnover already exists in a manner approximating proponents' expectations.

It is unlikely that fairer elections will result from term limits. Weak party organizations have fostered candidate-centered congressional campaigns. Term limits for congressmen will not change this. Congressional candidates—even those under an imposed tenure cap—will still have to go it alone to win elections. Candidates will be largely reliant on their personal skills and attributes, and responsible for selling these to the electorate.¹⁴ The aspects of running a successful campaign, including fund raising and developing a campaign strategy and platform, will continue to be the candidates' responsibility. If there is one distinct advantage that incumbents have, it is the ability to raise money needed to run the campaign. An incumbent congressman will retain the means to dominate an opponent in accruing campaign funding even under a term limit.¹⁵ This illustrates why campaign finance is a more appropriate reform at this time.

By now the misguided nature of this reform should be clear. It appears to exacerbate, not alleviate, what proponents view as the most undesirable characteristics of congressmen and congressional elections. It runs counter to the Framers' expectation of responsiveness to the constituents. It is also likely to create more gridlock, fail to enhance competition, and inflate the influence of special interests in Congress—leading to further campaign finance dilemmas.

An Observation on Seniority

If term limits proponents had a prime target for their reform it would be the senior legislator; a person who has spent many years in Congress as a result of successive reelection. Proponents want to remove senior legislators and replace them with a new kind of legislator.¹⁶ The new kind of legislator is one whose aspirations will include only the public's interest.¹⁷ And one committed to problem solving over career maintenance.¹⁸ A quick examination of the research on the behavior of senior incumbents reveals that the kind of legislator term limits proponents are seeking bears striking similarities to experienced legislators.

In a sense, the new legislator that Will and Petracca believe term limits will produce, is one who is less responsive to constituent demands and more focused on policy formulation. Richard Fenno observed that with increased seniority comes increased influence and responsibility. This demands more time spent focusing on work in Washington and less time focusing on the district.¹⁹ Similarly, Jacobson found that the longer representatives stay in Congress the more opportunities they have to become influential participants in policy formation.²⁰ This necessitates a trade-off between devoting all their time toward constituency-focused objectives or to their power base in Washington. This would not support congressional newcomers who tend to pay more attention to their reelection goals than do experienced members.²¹

Jeffrey Mondak's research demonstrates that elections serve to retain those representatives of the highest caliber. The best of the best would tend be senior

congressmen. A term limit would prevent the electoral system from accumulating quality representation.²² There were two noteworthy findings in Mondak's research: if a term limit is accepted as a needed reform, then it must also be accepted that the most capable members of the House will be replaced by the least capable. Second, there are more opportunities for term limits to bring negative rather than positive influence on the quality of Congress.²³

It is a curious observation that senior incumbents are typically of the highest caliber and tend to focus on policy at the expense of gratifying their constituencies (hence working toward reelection). It appears that senior incumbents have traits that term limits proponents wish to elicit via a term limit. Perhaps a better way to attain these qualities is to foster careerism, not stop it—as a term limit would.

Final Remarks

Despite setbacks, term limits proponents still seek to impede careerism by legislators. The means include seeking congressional approval for an amendment to the Constitution, altering ballots, and extracting concessions from candidates to limit their term. Proponents believe a career mindset produces a legislator who is incapable of making difficult decisions. This results in a system characterized by compromise and policy paralysis.²⁴ Proponents believe that incumbent legislators have been successful in impeding competition. They cite the absence of turnover as a testament to incumbent success.

The research in this paper has shown that the term limits argument is based on many misleading assertions about incumbency advantage, the source of policy paralysis, and the true nature of turnover. The onus of any reform is that it must correctly identify a problem as well as its source in order to rectify it. Evidence presented in this paper shows that proponents of term limits have not satisfied the former objective.

Incumbency does carry with it some advantages, though not for the reasons cited by proponents as justifying the need for this reform. Term limits proponents and opponents alike share the concern about the influence of money in congressional elections and how this tends to favor the incumbent and influence electoral outcomes. However, this issue falls more appropriately under campaign finance reform. I am troubled by the prospect of instituting a term limit as an attempt at campaign finance reform. The unintended consequences of such efforts, as experienced in California, can be devastating. Fowler's assessment further illustrates that campaign finance waters could get murkier by the dominance of special interests and corporations serving as the financial gatekeepers in elections following a term limit. Campaign finance is an important issue that needs to be pursued at another time and place and by a reform other than a term limit. Mann asserted "the burden of proof—diagnosing the problem and demonstrating that the cure is likely to work without debilitating side effects—properly falls on those who would alter the constitutional order."²⁵ The evidence

presented in this paper demonstrates that term limits advocates have failed to make their case.

NOTES

- ¹ Gary Jacobson, *The Politics of Congressional Elections*, 4th ed., (New York: Longman Press, 1997): 217.
- ² George Will, *Restoration: Congress, Term Limits and the Recovery of Deliberative Democracy*, (New York: The Free Press, 1992): 146 and 220.
- ³ Joel F. Clark, "Debating Term Limits: A Call for Theoretical Clarity" (paper presented at the annual meeting of the Western Political Science Association, Albuquerque, New Mexico, March 10-12, 1994).
- ⁴ Quote from, Rob Gurwitt, "Legislature 1996: Greenhorn Government," *Governing*, February 1996, 18.
- ⁵ Polsby quote taken from, Will, *Restoration*, 56.
- ⁶ Jacobson, *The Politics of Congressional Elections*, 216.
- ⁷ Idea and phraseology taken from, Jacobson, *The Politics of Congressional Elections*, 216.
- ⁸ Ibid.
- ⁹ E.g., Jacobson, *The Politics of Congressional Elections*, 216; Linda Fowler, "A Comment on Competition and Careers," in *Limiting Legislative Terms*, ed., Gerald Benjamin and Michael Malbin, (Washington D.C.: CQ Press, 1992): 183; Richard Clucas, "The First Post-Term Limits Election in California," in *Extension of Remarks: Term Limits? Early Assessments*, ed., Lawrence C. Dodd, July, 1994, Center for the Study of American Politics, University of Colorado -Boulder.
- ¹⁰ Clucas, "The First Post-Term Limits Election in California," 3.
- ¹¹ Ibid., 4.
- ¹² Ibid., 3.
- ¹³ Thomas Mann, "The Wrong Medicine: Term Limits Won't Cure What Ails Congressional Elections," *Brookings Review*, 10 (Spring, 1992): 25.
- ¹⁴ Fowler, "A Comment on Competition and Careers," 182.
- ¹⁵ Clucas, "The First Post-Term Limits Election in California," 15.
- ¹⁶ Phrase borrowed from, Mark P. Petracca, "A Comment on Elections as Filters," *Legislative Studies Quarterly*, 48 (December 1995): 730.
- ¹⁷ Will, *Restoration*, 145.
- ¹⁸ Petracca, "A Comment on Elections as Filters," 730.

¹⁹ Richard F. Fenno Jr., *Homestyle: House Members in Their Districts*, (Glenview, IL: Scott, Foresman, 1978): 36-38.

²⁰ Jacobson, *The Politics of Congressional Elections*, 33.

²¹ Fenno, *Homestyle*, 38.

²² Jeffrey Mondak, "Elections as Filters: Term Limits and the Composition of the U.S. House," *Legislative Studies Quarterly*, 48 (December 1995): 730.

²³ *Ibid.*, 720.

²⁴ *Ibid.*, 714.

²⁵ Mann, "The Wrong Medicine," 23.

SELECTED BIBLIOGRAPHY

- Bandow, Doug. "Real Term Limits: Now More Than Ever." *Cato Policy Analysis* 221. March 28, 1995. Available [Online]:]: <<http://www.cato.org/pas/pa-221.html>> [January 26, 1998].
- _____. "The Political Revolution That Wasn't" Why Term Limits Are Needed More Than Ever." *Cato Policy Analysis* 259. September 5, 1996. Available [Online]: <<http://www.cato.org/pas/pa-259.html>> [January 28, 1998].
- Bauer, Monica and John R. Hibbing. "Which Incumbents Lose in House Elections: A Response to Jacobson's 'The Marginals Never Vanished'." *American Journal of Political Science* 33 (February 1989): 263-271.
- Black, Chris. "High Turnover Puts a New Spin on Debate Over Term Limits." *The Boston Globe*, November 29, 1996, A1.
- Benjamin, Gerald and Michael Malbin eds. *Limiting Legislative Terms*. Washington D.C.: CQ Press, 1992
- Bickers, Kenneth and Robert Stein, "The Electoral Dynamics of the Federal Pork Barrel." *American Journal of Political Science* 40 (November, 1996): 1300-1326.
- Bond, Jon, Cary Covington, and Richard Fleisher. "Explaining Challenger Quality in Congressional Elections." *Journal of Politics* 47 (1985): 511-527.
- Bond, James. "Temporizing on Term Limits: the Speaker Likes 12 Years, Not 6." Cato Briefing Papers No. 22. February 7, 1995. Available [Online]: <<http://www.cato.org/pubs/briefs/pb-022.html>> [January 26, 1998].
- Clark, Joel F. "Debating Term Limits: A Call for Theoretical Clarity." Paper presented at the Annual Meeting of the Western Political Science Association, Albuquerque, New Mexico, March 10-12, 1994.

- Clucas, Richard A. "The First Post-Term Limits Election in California." In *Extension of Remarks: Term Limits? Early Assessments*, ed. Lawrence C. Dodd. Center for the Study of American Politics, University of Colorado -Boulder. July, 1994.
- Corwin, Erik H. "Limits on Legislative Terms: Legal and Policy Implications." *Harvard Journal on Legislation* 28 (Summer 1991): 569-608.
- Cox, Gary and Jonathon Katz. "Why Did Incumbency Advantage in U.S. House Elections Grow." *American Journal of Political Science* 40 (May 1996): 478-493.
- Crane, Edward. "Term Limits and the Need for a Citizen Legislature." *Cato Handbook for the 105th Congress*. No date. Available [Online]: <http://www.cato.org/pubs/handbook/hb105-5.html> [May 15, 1998].
- Elliot, Jonathon ed. *Debates on the Adoption of the Federal Constitution*, Vol. 2. New York: Burt Franklin, 1970.
- Elving, Ronald D. "National Drive to Limit Terms Cases Shadow Over Congress." *Congressional Quarterly Weekly Report* 49 (October 26, 1991): 3101-3105.
- Dionne E.J., Jr. *Why Americans Hate Politics*. New York: Simon & Schuster: 1991.
- Feldman, Paul and James Jondrow. "Congressional Elections and Local Federal Spending." *American Journal of Political Science* 28 (1984): 147-163.
- Fenno Richard F., Jr. *Homestyle: House Members in Their Districts*. Glenview, IL: Scott, Foresman, 1978.
- Farrand, Max, ed. *The Records of the Federal Convention of 1878*, Vol 1. New Haven: Yale University Press, 1966.
- Fiorina, Morris P. "The Case of the Vanishing Marginals: The Bureaucracy Did It." *American Political Science Review* 71 (March 1977): 177-181.
- _____. *Congress: Keystone of the Washington Establishment*, 2nd ed. New Haven: Yale University Press, 1989.
- Fowler, Linda. "A Comment on Competition and Careers." In *Limiting Legislative Terms*, eds. Gerald Benjamin and Michael J. Malbin, 181-186. Washington D.C.: Congressional Quarterly Inc., 1992.
- Frenzel, Bill. "Term Limits and the Immortal Congress," *Brookings Review* 10 (Spring, 1992): 18-22.

- Fund, John H. "Term Limitation: An Idea Whose Time Has Come." *Cato Policy Analysis* 141. October 30, 1990. Available [Online]: <<http://www.cato.org/pas/pa-141.html>> [January 26, 1998].
- Gorsuch, Neil and Michael Guzman. "Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations." *Cato Policy Analysis* 178. September 24, 1992. Available [Online]: <<http://www.cato.org/pas/pa-178.html>> [January 26, 1998].
- Grimes, Alan P. *American Political Thought*. New York: Holt, Rinehart, and Winston: 1960.
- Gurwitt, Rob. "Legislatures 1996: Greenhorn Government." *Governing*, February 1996, 17.
- Harnett, Thomas F. "Put Member of Congress on a Short Lease." *Wall Street Journal*, September 19, 1988, A(14).
- Herson, Lawrence J.R. *The Politics of Ideas: Political Theory and American Public Policy*. (Prospect Heights, Il: Waveland Press: 1984.
- Jacobs, Paul. "Whose Government is It, Anyway?" November 16, 1996. Available [Online]: <<http://www.termlimits.org/whoseisit.shtml>> [December 2, 1997].
- Jacobson, Gary. "The Marginals Never Vanished: Incumbency and Competition in Elections to the U.S. House of Representatives, 1952-82." *American Journal of Political Science* 31 (February, 1987): 126-141.
- _____. *The Politics of Congressional Elections*, 4th ed. New York: Longman Press, 1997.
- Jost, Kenneth "Term Limits: Will a Recent Setback Derail the Term-Limit Movement." *CQ Researcher* 2 (January 10, 1992): 1-24.
- Ketcham, Ralph, ed. *The Antifederalist Papers*, New York: Mentor Books, 1986.
- Kingdon, John. *Congressmen's Voting Decisions*, 3rd ed. Ann Arbor: University of Michigan Press: 1989.
- Kuklinski, James. "Representativeness and Elections: A Policy Analysis." *The American Political Science Review* 72 (March 1978): 165.-177.
- Malbin, Michael. "Federalists v. Antifederalists: The Term-Limitation Debate at the Founding." In *Limiting Legislative Terms*, eds. Gerald Benjamin and Michael Malbin. Washington D.C.: CQ Press, 1992: 53-62.

- Mann, Thomas. *Unsafe at Any Margin: Interpreting Congressional Elections*. Washington D.C: American Enterprise Institute: 1977.
- _____. "The Wrong Medicine: Term Limits Won't Cure What Ails Congressional Elections." *Brookings Review* 10 (Spring 1992): 23-25.
- Mason, Alpheus Thomas and Richard Leach. *In Quest of Freedom American Political Thought and Practice*. Englewood Cliffs, New Jersey: Prentice-Hall, 1959.
- Mayhew, David R. and Rogan Kersh, "Term Limits Aren't Dead." *The New York Times*, April 2, 1995, A21.
- Mayhew, David R. *Congress: The Electoral Connection*. New Haven: The Yale University Press, 1974.
- McDonald, Forrest. *Novus, Ordo, Seclorum: The Intellectual Origins of the Constitution*. Lawrence, KS: The University Press of Kansas, 1985.
- Milbank, Dana. "As Term Limits Take Effect in Maine's Capitol, Government Seems to Be Doing Just Fine, Thanks." *The Wall Street Journal*, April 2, 1997, A15.
- Miller, John J. "Terminally Inept." *National Review*, March 9, 1998, 3.
- Miller, Warren and Donald Stokes. "Constituency Influence in Congress." *The American Political Science Review* 57 (March 1963): 45-57.
- Mondak, Jeffery J. "Elections as Filters: Term Limits and the Composition of the U.S. House." *Political Research Quarterly* 48 (December, 1995): 701-727.
- _____. "Focusing the Term Limits Debate: A Comment on 'Elections as Filters'." *Political Research Quarterly* 48 (December, 1995): 741-750.
- O'Keefe, Eric and Aaron Steelman. "The End of Representation: How Congress Stifles Electoral Competition," *Cato Policy Analysis* 279. August 20, 1997. Available [Online]: <<http://www.cato.org/pas/pa-279.html>> [January 28, 1998].
- Ornstein, Norman, Thomas Mann, and Michael Malbin, eds. *Vital Statistics on Congress 1997-1998*. Washington D.C.: Congressional Quarterly Press, 1998.
- Petracca, Mark P. "Rotation in Office: The History of an Idea." In *Limiting Legislative Terms*, eds. Gerald Benjamin and Michael J. Malbin, 19-43. Washington D.C.: Congressional Quarterly Inc., 1992.
- _____. "A Comment on 'Elections as Filters'." *Political Research Quarterly*, 48 (December 1995): 729-739.

- _____. "The Poison of Professional Politics." *Cato Policy Analysis* 151. May 10, 1991. Available [Online]: <<http://www.cato.org/pas/pa-151.html>> [May 15, 1998].
- Pitkin, Hanna. *The Concept of Representation*. Berkeley: University of California Press, 1967.
- Polsby, Nelson. "Political Change and the Character of the Contemporary Congress," In, *The New American Political System*, 2nd ed , ed. Anthony King. Washington D.C.: American Enterprise Institute, 1992: 29-46.
- Ragsdale, Lyn and Timothy Cook, "Representatives' Actions and Challenger's Reactions: Limits to Candidate Connections in the House," *American Journal of Political Science* 31 (February 1987): 45-81.
- Riemer, Neil ed. *The Representative: Trustee? Delegate? Partisan? Politico?* Boston: D.C. Heath & Co., 1967.
- Rothenberg, Stuart. "Transplanting Term Limits: Political Mobilization and Grass-Roots Politics." In *Limiting Legislative Terms*, eds. Gerald Benjamin and Michael J. Malbin, 97-113. Washington D.C.: Congressional Quarterly Inc., 1992.
- Rotunda, Roland D. "The Aftermath of Thornton." *Constitutional Commentary*, Summer, 1996. Available [Online]: <<http://www.termimits.org/aftermath.shtml>> [December 2, 1997].
- Schrag, Peter. "The Populist Road to Hell," *The American Prospect*. 24 Winter 1995. Available [Online]:<<http://www.people.memphis.edu/~mcrouse/elcite.html#news>> [March 3, 1998].
- Squire, Peverill. "Career Opportunities and Membership Stability in Legislatures." *Legislative Studies Quarterly* 23 (February, 1988): 65-82.
- _____. "Challenger Quality and Voting Behavior in U.S. Senate Elections." *Legislative Studies Quarterly* 27 (May 1992): 247-264.
- Swift, Elaine K. "The Electoral Connection Meets the Past: Lesson from Congressional History, 1789-1899." *Political Science Quarterly*, 102 (Winter 1987-88): 625-646.
- U.S. Congress. Senate. Committee on the Judiciary. The Subcommittee on the Constitution of the Senate., *Limiting Congressional Tenure: A History and Analysis*, report prepared by Sula P. Richardson, 95th Cong., 2d sess. 1978. 123.

- U.S. Congress. Senate. Committee on the Judiciary. *Constitutional Amendment to Limit Congressional Terms: Hearing before the Senate Committee on the Judiciary*. 104th Cong., 1st sess. October 10, 1995.
- Westlye, Mark. "Competitiveness of Senate Seats and Voting Behavior in Senate Elections." *American Journal of Political Science* 27 (February 1993): 253-283.
- Will, George F. *Restoration: Congress, Term Limits and the Recovery of Deliberative Democracy*. New York: The Free Press, 1992.
- Young, James Sterling. *The Washington Community*. New York: Columbia University Press, 1966.