Why aren’t there term limits for Members of Congress?

A number of groups in recent years have proposed term limits for Congress in order to check the power of Congressmen and change the incentives facing members of Congress. However, of all policy proposals, congressional term limits are particularly difficult to pass, because they usually require support from the very people they seek to limit. Current members of Congress are unlikely to want to impose term limitations on themselves.

Even from the early days of the republic, many people have proposed congressional term limits as a way to cause the House and Senate to remain a truly citizen legislature.\(^1\) This theme was especially emphasized by the Anti-Federalists.\(^2\) However, the Founders did not include any official term limits in the constitutional and governmental framework they implemented. Instead they relied on tradition and election to cause rotation among officials. Even the president was not subjected to an official term limit. Instead, presidents voluntarily followed the two-term precedent set by George Washington (or were persuaded to do so by voters) until President Franklin Roosevelt broke that informal precedent during the tumultuous years of the Great Depression and World War II. After his death, the two-term-limit precedent was formalized through the Twenty-Second Amendment to the U.S. Constitution in 1951.\(^3\)

Prior to the Seventeenth Amendment, senators were chosen by their States (through state legislatures) rather than the popular vote of the state. Under that system, states and local political parties tended to impose de facto term limits on their Senators.\(^4\) While there was no legal requirement to do so, political parties and state legislatures would often have their members

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\(^2\) Id.

\(^3\) No president was elected to a third term until Franklin D. Roosevelt in 1940. In 1951, a few years after Roosevelt’s death, the Twenty Second Amendment was ratified imposing a limit of two terms on future presidents.

rotate terms between the U.S. Senate and state positions. Today, the power of the states and parties has declined while the prestige and importance of Congress has increased. Members of both the House and Senate are more likely to run for re-election. Incumbents, Congressmen who run for re-election, win almost 90% of the time in the Senate and at an even higher rate in the House.

Advantages of Term Limits

Advocates of term limits object to the high rate at which politicians win re-election despite low Congressional approval ratings. These advocates hope that decreasing the amount of time Congressmen spend in the capital will cause Congressmen to be more dependent upon constituents and better connected to the interests of their constituents while reducing the influence of lobbyists and interest groups. They also argue that the current system incentivizes career politicians to put off hard decisions and increase government spending to appease all sides, all while amassing personal political power through seniority. The goal of term limits is to foster better policy by removing career politicians. Proponents advocate that term limits may cause legislators to “be more willing to question established programs.” However, these policy changes could result in good or ill depending on what replaces the established policy. Advocates frequently tout term limits as a means to rein in government spending.

Disadvantages of Term Limits

On the other hand, the shorter time available for Congressmen to be in office may incentivize Congressmen to make radical decisions seeking immediate political fame or to establish their credentials, knowing that any adverse long-term consequences of their decisions will not set in until their terms expire anyway. Others fear that inexperience, confusion, and disorder will take root if the legislators’ experience is capped at only two or three terms in office. Some argue that less-experienced politicians may rely more heavily on lobbyists or even use their time as an elected representative to impress lobbyists to win a lucrative lobbying career upon reaching the end of their congressional term. Frequent rotation may reduce the civility and collegial relationships that develop between members of opposing political parties through their shared common experience over their time as elected representatives. Currently, Congressmen recognize that they need to develop respectful relationships with even their opponents, because they will likely need to interact with one another over the long-term. With term limits, members with ideologically opposing views may be tempted to pursue short-term political victory, at the cost of long-term national stability. Opponents of term limitations argue that the best form of term limitation is through the regular election cycle; term caps would only deprive constituents of the representative they wanted to elect. Term limits will be effective for getting corrupt or otherwise bad legislators out of office sooner, but at the same time, limits the impact of good legislators.

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5 See id.
Twenty-three states tried to impose term limitations on their own Congressmen and Senators by the 1990s. They tried to impose term limitations on their own Congressmen and Senators by the 1990s. For instance, Arkansas passed a state constitutional amendment limiting its Representatives to Congress to three terms and its Senators to two terms before preventing them from appearing on election ballots. This was a creative method of imposing term limits on representatives without requiring those representatives to approve of the limitation. However, the Supreme Court struck down these state provisions and held that these provisions were improper means to add qualifications for federal representatives over and above those required by the United States Constitution. The Court recognized the “cogent arguments” for and against term limits. Yet, since the imposition of term limits would be a “fundamental change in the constitutional framework,” the Supreme Court held that individual states did not have the power to make such a change. The only way to institute term limits would be to pass an amendment to the Constitution of the United States.

In the 1990s, Republicans in the House campaigned for a constitutional amendment imposing term limits as part of its “Contract with America.” However, these efforts failed to garner the two-thirds majority vote of the House and Senate necessary for constitutional amendments. Efforts have continued in recent years. This year, several Senators introduced a resolution to propose a constitutional amendment establishing term limits. President Trump has also called for Congressional term limits.

Each time that the Constitution has been amended thus far, the amendment has been proposed and approved by Congress. However, the Constitution does allow a way to amend the Constitution without involving Congress. According to Article V of the Constitution, constitutional amendments may also be proposed by a convention called by two-thirds of the states via their legislatures. Whether the Congress or a convention proposes the amendment, the amendment would then need to be ratified by three-fourths of the states before it could take effect. A number of term limit advocates have proposed this method to avoid the reluctance Congressmen naturally have to limit their own power. Thus, term limits are still a possibility for the future, but passing them will require surmounting significant political hurdles.

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11 Incumbents could still conduct write-in campaigns and win re-election through that means.
13 United States Term Limits v. Thornton, 514 U.S. 779, 837 (1995) (“We are, however, firmly convinced that allowing the several States to adopt term limits for congressional service would effect a fundamental change in the constitutional framework. Any such change must come not by legislation adopted either by Congress or by an individual State, but rather -- as have other important changes in the electoral process -- through the amendment procedures set forth in Article V.”).
15 See e.g., S.J. Res. 21, 111th Cong. (2009).