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Term Limits for Members of Congress: Policy and Legal Overview

Introduction

Legislative proposals for congressional term limits date to 1789. Supporters generally argue that requiring frequent turnover among Members of Congress would make the House and Senate more responsive to, and representative of, constituents. Opponents counter that elections serve as de facto term limits at voter discretion, and that experienced Members of Congress are required to ensure that elected officials, rather than congressional or agency staff or lobbyists, make policy decisions. In Congress, at the U.S. Supreme Court, and in the states, the 1990s featured substantial term-limits activity. Members of Congress continue to propose congressional term limits—a change that the Supreme Court in *U.S. Term Limits, Inc. v. Thornton* (1995) held would require an amendment to the U.S. Constitution. This CRS In Focus provides a brief overview of policy and legal issues concerning term limits for Members of Congress. It does not discuss term limits for congressional committee chairs or leadership positions.

Selected Congressional Activity

Several constitutional amendments have been introduced in the 118th Congress that, if passed and ratified, would limit congressional terms. These measures include H.J.Res. 3; H.J.Res. 5; H.J.Res. 11; H.J.Res. 20; H.J.Res. 32; S.J.Res. 1; and S.J.Res. 2. As with all proposed constitutional amendments, each was referred to the House or Senate Judiciary Committees.

The proposed term-limits amendments introduced in the 118th Congress generally are similar. The joint resolutions would limit eligibility to serve in the House of Representatives to three or six terms, counting as one term an election to fill a vacancy if the Representative served for more than one year. Similarly, the proposals would restrict eligibility to serve in the Senate to two terms, counting as one term an election or appointment to fill a vacancy if the Senator served for more than three years. Most proposals would not include terms that began before the date of the amendment's ratification.

Most recently before the 118th Congress, the Senate Judiciary Committee, Subcommittee on the Constitution, held a term-limits hearing on June 18, 2019. Committees in both chambers held hearings, at least partially dedicated to term limits, between the 1940s and 1990s. (As noted below, Congress was particularly active on term limits during the 1990s.) The Senate defeated a proposed congressional term-limits amendment to a presidential term-limits bill, H.J.Res. 27, in 1947; the amendment sponsor cast the lone “aye” vote.

Policy Momentum and Decline in the 1990s

Term limits occupied substantial political and policy energy throughout the country in the 1990s. Proposed congressional term limits were a component of the 1994 “Contract with America” policy agenda on which House Republicans campaigned that year. Although a simple majority of the House (227-204) supported proposed constitutional amendment H.J.Res. 73 in March 1995, that margin fell short of the two-thirds majority required for passage. In 1995-1996, the Senate considered an alternative proposal, S.J.Res. 21, but did not vote on final passage. The House also fell short (217-211) of the two-thirds majority required to pass term-limits amendment H.J.Res. 2 in February 1997.

Consequentially for Congress during this period, the Supreme Court held in the 1995 decision *U.S. Term Limits v. Thornton*, discussed below, that a constitutional amendment would be necessary to limit congressional terms. After the Court issued its decision, those favoring term limits generally concentrated on state-level advocacy and proposals to amend the U.S. Constitution.

Congressional Term Limits Held Unconstitutional

Key Constitutional Provisions

The U.S. Constitution establishes the qualifications for Senators and Representatives. Article I, Section 3, clause 3 requires Senators to be at least 30 years old, nine years a U.S. citizen, and an inhabitant of the state from which the Senator is elected. In a parallel provision, Article I, Section 2, clause 2 requires Representatives to be at least 25 years old, seven years a U.S. citizen, and an inhabitant of the state from which the Representative is elected. Moreover, Article I, Section 5, clause 1 provides that each house of Congress has the express authority to be the final judge of the “Elections, Returns and Qualifications” of its Members.

Supreme Court Precedents

In the landmark case of *Powell v. McCormack* (395 U.S. 486 (1969)), the Court addressed the scope of Congress's authority in judging the qualifications of its Members under Article I, Section 5. Powell was reelected to the House of Representatives in the 90th Congress, but the House voted to deny him a seat based on findings that he had engaged in misconduct during the prior Congress. The Court held that in assessing the qualifications of its Members, Congress may only look to the requirements set forth in Article I, Section 2. The Court further concluded that “the Framers’ underst[ood] that the qualifications for members of Congress had been fixed in the Constitution.” Accordingly,

the Court ruled that, because Representative Powell was duly elected and “was not ineligible to serve under any provision of the Constitution,” the House of Representatives lacked the authority to exclude him from a seat in Congress.

In *U.S. Term Limits, Inc. v. Thornton* (514 U.S. 779 (1995)), the Supreme Court determined that its decision in *Powell* established two principles: first, that the framers intended the qualifications for Congress provided for in the Constitution to be “exclusive,” and second, that the first principle is buttressed by the proposition that, in U.S. representative democracy, “the people should choose whom they please to govern them.” Building on those principles, the Court in *Thornton* invalidated an Arkansas constitutional provision that, among other things, established congressional term limits. Specifically, the state constitutional provision prohibited the name of a person from appearing on the ballot for election to the U.S. House of Representatives if the person had been elected to three or more terms or for election to the U.S. Senate if the person had been elected to two or more terms.

Examining the U.S. Constitution’s history and text, along with congressional and state practices, the Court in *Thornton* concluded that the Constitution does not provide the states with the authority to prescribe qualifications for Congress. According to the Court, allowing the states to establish congressional term limits “would effect a fundamental change in the constitutional framework.” Such change, the Court emphasized, “must come not by legislation adopted either by Congress or by an individual State, but rather ... through amendment procedures set forth in Article V.” In view of the Court’s precedents, it appears that a constitutional amendment to the U.S. Constitution would be necessary to establish congressional term limits.

Limited Policy Options for Congress

Based on the case law discussed, a federal statute establishing term limits for Members of the House or Senate would likely be held unconstitutional. As noted, proposed constitutional amendments have been introduced in recent Congresses. Article V of the U.S. Constitution sets forth two methods for amending the document—first, either two-thirds of both chambers of Congress or conventions in two-thirds of the states may propose amendments; and the proposed amendment is subject to ratification by three-fourths of state legislatures or by conventions in three-fourths of the states, respectively.

State Legislatures and Term Limits

State term-limits experiences provide context for some congressional proposals. According to the National Conference of State Legislatures, 15 states currently limit state-legislative terms. These limits vary significantly. Current state-legislative term limits range between 6 and 12 years. Some states cap lifetime legislative service. Others reset the term-limit clock after a break in service or election to another chamber. Some states also exempt incumbents who held office when term limits were adopted.

Public Opinion and Term Limits

Public opinion appears to be a major factor affecting the continuing policy debate over term limits. Most states that adopted legislative term limits between 1990 and 1995 did so through initiatives or referenda, reflecting public support for the provisions. Public opinion surveys generally reveal consistent, bipartisan support for term limits. However, surveys reveal somewhat more support for term limits among Republican respondents. For example, a 2013 Gallup random sample survey of 1,013 adults found that 75% of respondents reported that they would vote for congressional term limits if given the opportunity. Respondents who identified as Republicans (82%) and as Independents (79%) were more likely than those identifying as Democrats (65%) to answer the question affirmatively. A 2021 poll conducted for U.S. Term Limits, which advocates for congressional term limits, found that of 1,000 “general election voters nationwide,” 80% said they would “strongly” or “somewhat” approve of a constitutional amendment limiting congressional terms.

Scholarship on why the public generally supports term limits has produced mixed findings, is dated, or both. Much of the published research on the topic focuses on the sustained interest in term limits during the 1990s. To take one example, a 2002 *Legislative Studies Quarterly* (LSQ) article by political scientists Robert M. Stein, Martin Johnson, and Stephanie Shirley Post, reviewing 1990s research, found that “[a]lthough public support for term limits is consistently high ... a consistent explanation for this support remains elusive.” The LSQ paper also confirmed higher support for term limits among Republicans, and found that term limits were more popular among those who followed politics closely and whose party preferences differed from those of their elected officials.

Other scholarly research has found that survey respondents who are dissatisfied with government generally are also more likely to support term limits. Scholarship published during the 1990s found mixed evidence when testing hypotheses about whether those historically underrepresented in government, such as racial minority groups and women, were more likely than others to support term limits.

When assessing existing scholarship, it is potentially noteworthy that much of the research on the topic occurred in the early 1990s, before the House majority changed for the first time in 40 years after the 1994 elections. Public opinion data collected in the early 1990s might therefore have reflected some respondents’ desire for a different majority (what some scholars call the “out-party explanation” for term-limits support) rather than necessarily demonstrating support for term limits per se. As noted previously, however, public support for term limits generally remains high.

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