

HJR

3

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 11, 1993

FURTHER REFERRALS:

Finance

Date of Committee Action: 3-29-93

The JUDICIARY Committee considered:

HJR 3

HOUSE JOINT RESOLUTION NO. 3

LIMITING TERMS OF LEGISLATORS

Proposing amendments to Constitution of the State of Alaska limiting tenure in the legislature.

RECOMMENDATIONS:

be replaced with CS HJR 3 (JUD) the same title
 a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal impact _____

fiscal note(s) Governor 2/11/93

zero fiscal note _____

zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Brian P. Porter</i>	<input checked="" type="checkbox"/>	<i>Gail Phillips</i>		<input checked="" type="checkbox"/>	
<i>Jim Norwood</i>	<input checked="" type="checkbox"/>	<i>Davidson</i>	<input checked="" type="checkbox"/>		
		<i>Janette James</i>		<input checked="" type="checkbox"/>	
		<i>Pat Felt</i>		<input checked="" type="checkbox"/>	

Brian P. Porter
 CHAIRMAN'S SIGNATURE

8-LS0155K
Cook
3/24/93

**CS FOR HOUSE JOINT RESOLUTION NO. 3(JUD)
IN THE LEGISLATURE OF THE STATE OF ALASKA
EIGHTEENTH LEGISLATURE - FIRST SESSION**

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES MARTIN, Kott

A RESOLUTION

1 Proposing amendments to the Constitution of the State of Alaska relating to
2 terms of legislators.

3 **BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * Section 1. Article II, sec. 3, Constitution of the State of Alaska, is amended to read:

5 SECTION 3. ELECTION AND TERMS. Legislators shall be elected at
6 general elections. Their terms begin on the fourth Monday of the January following
7 election unless otherwise provided by law. The term of representatives shall be two
8 years, and the term of senators, four years. One-half of the senators shall be elected
9 every two years. No person may serve consecutively more than eight full calendar
10 years as a representative. No person may serve consecutively more than eight full
11 calendar years as a senator. In addition, no person may serve consecutively more
12 than fourteen full calendar years in the legislature.

13 * Sec. 2. Article XV, Constitution of the State of Alaska, is amended by adding a new
14 section to read:

15 SECTION 29. APPLICATION OF 1994 TENURE AMENDMENT. Years
16 served in the legislature before the convening of the First Regular Session of the

1 Nineteenth Alaska State Legislature shall not be considered for purposes of applying
2 the tenure limit added by the 1994 amendment to Section 3 of Article II.

3 * Sec. 3. The amendments proposed by this resolution shall be placed before the voters of
4 the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the
5 State of Alaska, and the election laws of the state.

Rep. Brian Forter, Chairman

House Judiciary Committee

Date: March 10, 1993
Place: Capitol Room 120

Subject of Meeting: HJR 3 Limitation of
 Legislative Terms; HB 152 Jurisdiction of
 Magistrates; HB 62 Employee's Use of Legal
 Products; HB 147 Liability for Reference Info.

Please Print Name	Representing	Business/Personal Mailing Address	Zip	(H) Phone	(W) Phone	Do you Want to Testify?	Which Subject/ Which Bill?
C. S. CHRISTENSEN	COURT SYSTEM	303 K ST ANCH	99501		264-8228	(Y) N	HB 152
Rosa Jemel	NFFB	9159 Skywood	99801		789-4278	(Y) N	HJR 3
Doug Rickey	Rep. Guissardorf	State CAP.				(Y) N	HB 62 - if needed
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	
						Y N	

Term Limitation

6. Should Alaska state legislators be limited in the number of terms they can serve in office? 79.7 14.1 6.2

- Yes 1
- No 2
- Undecided 3

6a. If you answered "Yes" to question 6, how many terms should a member of the House of Representatives serve? (Select one.)

- 1. _____ Two terms (4 years) 47.1
- 2. _____ Four terms (8 years) 46.6
- 3. _____ Six terms (12 years) 6.3

6b. If you answered "Yes" to question 6, how many terms should a state senator be allowed to serve? (Select one.)

- 1. _____ Two terms (8 years) 87.7
- 2. _____ Four terms (16 years) 12.3
- 3. _____ Six terms (24 years) — 20

Background: Under the Alaska Constitution, the governor is limited to serving two consecutive terms in office. There is no limit to the number of terms that legislators can serve. A term is two years for House members and four years for Senate members. It has been suggested that the number of terms that legislators may serve should be limited.

Proponents of limiting the number of terms that legislators can serve believe that having an unlimited number of terms allows individual legislators to gain too much power. They also say that incumbents who have served for a long period of time have an unfair campaign advantage over any opposition.

In addition, proponents believe that career politicians become complacent and lose touch with their constituents. They further maintain that limiting the number of terms that lawmakers can serve would bring new faces and fresh ideas to state government.

Opponents argue that limiting the number of terms is unnecessary because voters can and do reject incumbents. They contend that lawmakers need time in order to gain the necessary expertise on a wide variety of issues.

These opponents also believe that senior lawmakers can spend more time in helping con-

stituents because they can afford to spend less time campaigning. In addition, opponents fear that state lawmakers in their last term would not be responsive to the public.

NFIB Alaska

National Federation of
Independent Business

POSITION PAPER

OF

NATIONAL FEDERATION OF INDEPENDENT BUSINESS
(NFIB/ALASKA)

IN SUPPORT OF

HJR 3 TERM LIMITATION

9159 Skywood Lane
Juneau, AK 99801



The Guardian of
Small Business

CHAIRMAN, MEMBERS OF THE COMMITTEE, MY NAME IS RESA JERREL,
AND I AM THE STATE DIRECTOR FOR THE NATIONAL FEDERATION OF
INDEPENDENT BUSINESS - NFIB/ALASKA. I AM HAPPY TO BE HERE TODAY TO
SUPPORT HJR 3.

NFIB/ALASKA IS COMPRISED OF 5,000 SMALL AND INDEPENDENT
BUSINESS OWNERS. THE LEGISLATIVE AGENDA OF NFIB/ALASKA IS
DETERMINED BY OUR BALLOT. THE BALLOT IS OUR ANNUAL POLL OF OUR
MEMBERS ON A SERIES OF ISSUES DEEMED CRITICAL TO SMALL BUSINESS. A
MAJORITY VOTE, OF THE MEMBERS IN RESPONSE TO THE POLL, SETS OUR
POLICY AND POSITION ON LEGISLATIVE ISSUES. WE THEN SHARE THE
RESULTS OF OUR POLL WITH THE LEGISLATURE AND ADMINISTRATION.

ON THE 1991 STATE BALLOT OUR MEMBERS VOTED EIGHTY PERCENT IN
FAVOR OF TERM LIMITATIONS.

WHEN ASKED HOW MANY TERMS SHOULD A MEMBER OF THE HOUSE OF
REPRESENTATIVES SERVE? WE RECEIVED THE FOLLOWING RESULTS:

47.1% TWO TERMS (4 YEARS)
46.6% FOUR TERMS (8 YEARS)
6.3% SIX TERMS (12 YEARS)

WHEN ASKED THE SAME QUESTION ABOUT SENATE TERMS, WE RECEIVED
THE FOLLOWING RESULTS:

88% TWO TERMS (8 YEARS)
12% FOUR TERMS (16 YEARS)
0% SIX TERMS (24 YEARS)

THE VAST MAJORITY OF OUR MEMBERS BELIEVE THAT LEGISLATIVE TERMS
SHOULD BE LIMITED TO 8 YEARS - AND THAT IS THE TERM LIMIT SET FORTH
IN SJR 3.

I AM HAPPY TO SEE THIS RESOLUTION BEING CONSIDERED EARLY IN
SESSION, I WOULD URGE YOU TO MOVE THE BILL OUT OF COMMITTEE - AND
LET THE CITIZENS OF ALASKA HAVE TO OPPORTUNITY TO VOTE ON THIS
ISSUE.

NFIB/ALASKA THANKS YOU FOR THE OPPORTUNITY TO COMMENT IN FAVOR
OF THIS LEGISLATION. IF YOU HAVE ANY QUESTIONS I WOULD BE HAPPY TO
TRY AND ANSWER THEM.

ELECTIVE DISTRICT 14
ELMENDORF A.F.B.
EAST ANCHORAGE
GOVERNMENT HILL

REP. TERRY MARTIN

HOME
355 DONNA DR., #11
ANCHORAGE, AK 99504
PHONE: 333-6990

DURING SESSION
P.O. BOX V
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE: 465-3783

Alaska House of Representatives

MEMORANDUM

DATE: February 17, 1993
TO: Representative Brian Porter
Chairman, Judiciary Committee
FROM: Representative Terry Martin *TMM*
RE: HJR 3 - Scheduling

Attached are the support materials for HJR 3 - Limitation of Terms. At your earliest convenience, would you please schedule HJR 3 in the House Judiciary. The primary purpose of this resolution is to limit the amount of legislative terms served by state representatives and senators in Alaska.

If you have any questions or require additional information, please contact my aide Tom Anderson at 6618.

REQUEST FOR SCHEDULING

ELECTIVE DISTRICT 14
ELMENDORF A.F.B.
EAST ANCHORAGE
GOVERNMENT HILL

REP. TERRY MARTIN

HOME
355 DONNA DR., #11
ANCHORAGE, AK 99504
PHONE: 333-6990

Alaska House of Representatives

DURING SESSION
P.O. BOX V
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JUNEAU, AK 99811
PHONE: 465-3783

SPONSOR SUMMARY

HJR 3

An amendment to the Constitution of the
State of Alaska relating to the limitation of terms
in the Alaska State Legislature

HJR 3 is an amendment to the Constitution of the State of Alaska requiring a limitation on legislators serving in the House of Representatives and the State Senate. A person in the House cannot serve consecutively more than four full or partial terms, and a person in the Senate may not serve consecutively more than two full or partial terms. In addition, no legislator may serve consecutively during more than eleven full or partial calendar years.

Need for Legislation

In retrospect of the past election in 1992, and in view of the current national trend against continuous incumbency, it would seem appropriate that a constitutional amendment be implemented through which career politicians are prevented from running for the same office.

At the original Alaskan Constitutional Convention, drafters and delegates concurred that lifelong politicians were not desired. Whereas knowledge and seniority accrued through long service in the House and Senate, the intent for creating a legislature was to maintain a continuous stream of fresh thoughts and ideas. This resolution would amend the constitution and impose the term limit.

In our recent national election on November 3rd, 14 states had the limitation of terms initiative for federal and state legislative seats on their ballots, all of which passed. In addition, 29 state legislatures introduced the term limit bill/resolution in their prospective states. In 1992, figures show that out of the 7,461 state legislators, 1,374 (18%) were new members. Indeed, the sentiment of today's voter is to limit the term of the legislator.

ELECTIVE DISTRICT 14
ELMENDORF A.F.B.
EAST ANCHORAGE
GOVERNMENT HILL

REP. TERRY MARTIN

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Alaska House of Representatives

DURING SESSION
P.O. BOX 1
STATE CAPITOL BUILDING
JUNEAU, AK 99811
PHONE: 465-3783

SECTIONAL ANALYSIS

HJR 3

Proposing an amendment to the Constitution of the
State of Alaska limiting tenure in the legislature

Section 1.

States that no representative may serve consecutively more than four full or partial terms, no senator may serve consecutively more than two full or partial terms, and no legislator may serve consecutively during more than eleven full or partial calendar years.

Section 2.

Adds a new subsection, (29), relating to the tenure of legislators, stating that the 1994 amendment will only apply to office served after 1992.

Section 3.

States that the amendment proposed by HJR 3 will be placed on the ballot at the next general election.

HOUSE COMMITTEE REPORT

2/11

(7)
Date Referred: January 11, 1993

FURTHER REFERRALS:

Judiciary
Finance

Date of Committee Action: 2-11-93

The STATE AFFAIRS Committee considered:

HJR 3

HOUSE JOINT RESOLUTION NO. 3

LIMITING TERMS OF LEGISLATORS

Proposing amendments to the Constitution of the State of Alaska limiting tenure in the legislature.

RECOMMENDATIONS: the same title
 be replaced with CS HJR 3 (STA) a new title
 have attached amendments(s)
 do pass
 do not pass
 no recommendations
 individual recommendations
 additional referral to the _____ Committee

ADOPTS: _____ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) _____
 fiscal impact GOV
 zero fiscal note _____

APPROVES PREVIOUS: (Dept/Date) _____
 fiscal note(s) _____
 zero fiscal note(s) _____

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
<i>Al Vezev</i> Vezev	X	<i>F. Uimer</i> Uimer		X	
<i>Olberg</i> Olberg	✓	<i>Betty Davis</i> B Davis		X	
<i>G. Davis</i> G. Davis	✓				
<i>Sanders</i> Sanders	✓				
<i>Kott</i> Kott	✓				



 CHAIRMAN'S SIGNATURE
 STATE AFFAIRS REPORT

SUBMITTED BY REP. MARTIN
RE: HJR 3
1/21/93

Incumbents face trouble: state legislators

CINCINNATI — About 70% of state legislators agree that voter discontent will cause substantial numbers of incumbent state lawmakers to lose their seats in the general election, according to the results of a National Conference of State Legislatures (NCSL) poll.

Two-thirds of legislators who have held office at least seven years expect incumbents to lose their re-election bids Nov. 3. Nearly three-fourths of lawmakers with at least 12 years of legislative service expect incumbents to lose.

The lawmakers were polled at the annual NCSL convention in late July in Cincinnati. The poll was conducted on the floor of the ex-

hibition hall by LEXIS, part of Mead Data Central Inc., Dayton, Ohio, a full-text, computer-assisted legal research service.

Three-fourths of the lawmakers surveyed oppose limits on the number of terms they can serve. About 53% of Democratic legislators are against term limitations, while 58% of Republicans oppose such limits. Not surprisingly, more than 80% of the lawmakers who have held office for seven years or more oppose limits.

Nearly two-thirds of state legislators favor a constitutional amendment requiring a balanced federal budget. Of the lawmakers polled, 91% of the Republicans favor the amendment, but

59% of the Democrats oppose it. In other poll findings, six of seven legislators agree that heavy reliance on property taxes to fund public schools creates fiscal inequities among school districts. To remedy such inequities, 44% of the legislators indicated they favor increasing state income taxes, 32% prefer hikes in state sales tax levels and 22% favor redistributing property taxes across school districts.

About 58% of legislators said they favor efforts to privatize government activities. About 83% of Republicans and 38% of Democrats indicated they look favorably on privatization.

— Ellen Shubert

The Anchorage Times

"Believing in Alaskans, putting Alaska first"

Publisher: BILL J. ALLEN

Editors: DENNIS FRADLEY, PAUL JENKINS, WILLIAM J. TOBIN

The Anchorage Times Commentary in this segment of the Anchorage Daily News does not represent the views of the Daily News. It is written and published under an agreement with former owners of The Times, in the interests of preserving a diversity of viewpoints in the community.

Time for term limits

THE ELECTION campaign just ended — and we speak here of the local races for state offices — offered in a disgusting way new evidence of the absolute necessity for limiting terms in the Alaska Legislature.

Tens of thousands of dollars were spent by candidates in some races. Maybe a hundred thousand or more in a few.

No matter how important we all might feel legislative service to be, it is not — and should not — be something to be bought at a huge cost.

Clearly, the candidates themselves are not spending their own money to win these big-buck seats in Juneau.

Instead, they are spending a little bit of yours — through individual contributions — and an awful lot that comes from special interests, the big spenders who are compelled (because that's the way the system works these days) to try to protect their backsides by seeing to it that friendly faces are elected to the Legislature.

And so we elect legislators who often are more committed to big money backers than they are to their constituents at large.

AND THE PRESSURE is always on to act in the Legislature, and to vote in the Legislature, in ways that will ensure re-election the next time around.

It's a way of doing things that no longer fits the mood of the people, or the needs of the state as the new century looms ahead.

The first priority of restoring good government to Juneau is to provide Alaska with a true citizen Legislature.

We haven't had that for decades — not since we started paying pensions to lawmakers, not since we permitted legislators to stay in Juneau more than four months a year, not since the members of the House and Senate elevated their positions to full-time jobs, and not since we let them become year-round professional politicians without jobs in the real world.

It's time for a change.

And no constitutional amendment is required. All the 1993 session needs to do is to pass a term limitation law.

It should be right up near the top of priority matters when the ladies and gentlemen of the House and Senate convene in Juneau Jan. 11.

THE ANCHORAGE TIMES, P.O. Box 100040, Anchorage, AK 99510

SUBMITTED BY
 REP. MARTIN
 RE: HJR 3
 1/21/93

Election Update: Focus on Legislatures

Term limits sweep country

Veteran lawmakers are unable to hide

By TODD SLOANE
 Staff Writer

Love 'em or hate 'em, term limits for state legislators are here to stay in 15 states, and chances are they're coming soon to a state near you.

Within weeks of the Nov. 3 passage of term limits for state legislators in 12 states — which joined California, Colorado and Oklahoma in limiting legislative tenure — new term limit proposals came forth in Georgia and New Jersey.

Proposals already are working their way toward the ballot in Maine, Idaho, Utah and Massachusetts. And there are growing movements to limit terms in New York and Texas.

Typical of the latest proposals

was one from Georgia Lt. Gov. Pierre Howard, who pledged Nov. 9 to seek a limit to terms equal to eight years for state executive officers and 12 years for legislators.

Mr. Howard said the difference between a state government without term limits and one with term limits "is the difference between fishing in a stagnant pond and fishing in a trout stream where the water's running through." The proposal will be put in the hopper by Senate Majority Leader Wayne Garner, a fellow Democrat.

Voters, some attention-seeking politicians and taxpayer groups say they love term limits because the measures put an end to career politicians and their cozy, money-driven relationships with special interests while relaxing partisan gridlock.

By and large, legislative leaders and public policy analysts hate term limits, saying they will lead

See Term Limits on Page 20



Term limits

Twelve states, including Washington (left), adopted term limits for state legislators on Nov. 3:

- Arizona, Arkansas
- Florida, Michigan
- Missouri, Montana
- Nebraska, Ohio
- Oregon
- South Dakota
- Washington
- Wyoming

Three states already had term limits:

- California
- Colorado
- Oklahoma

Election Update: Focus on Legislatures

Term limits

Continued from Page 3
 to more gridlock as leadership loses control of the crowded government institutions. The loss of institutional and policy memory and fealty to leadership will lead to numerous agendas in constant conflict, they say.

It is too early to determine how term limits for state legislators will play out, but one of the major goals of the limits, "throwing the bums out," already has started to be realized in California, which adopted term limits in 1990. An Assembly member is allowed to serve no more than six years, or three two-year terms, in his or her lifetime. On the other side of the Legislature, senators get eight years, or two four-year terms.

The departure of Democrat Barry Keene, the one-time Senate majority leader who said he resigned out of frustration with gridlock in California's legislative process, was probably hastened by the knowledge that he would get to serve only his current term, which was scheduled to expire in 1996.

Bruce Bronzan, a Democrat considered one of the country's most experienced health policy experts and chairman of the California Assembly's Health Committee, left for an academic post, saying he couldn't pass up the opportunity, the knowledge that he would be out on his ear in just two years anyway influenced

his decision, say insiders in Sacramento.

First limited crop of lawmakers

The 28 new members of the California Assembly, who account for more than one-third of its 80 members, represent the first crop of elected lawmakers who know they can serve no more than six years, assuming that each is re-elected twice.

New Democratic Assemblyman Louis Caldera, who represents the area of central Los Angeles, said, "People have a sense that they've been elected to do a job and they have only a short period of time to do it. I'm not going there to occupy space."

Lewis K. Uhler, co-author of the state's term limit initiative, said this year's candidates were different because they knew before running that they could not make a career out of legislative service. He said the group was more experienced, older and also represented a broader cross-section of the populace than past legislative classes.

"This seems to be a group of people with more concern for solving the issues than simply getting re-elected, which is what we thought this process was all about," Mr. Uhler said.

How this new breed of legislator will change institutions and affect public policy is already being assessed nationally.

"Within a few years, we are

going to see entire leaderships being thrown out," said Karl Kurtz, director of state services for the National Conference of State Legislatures, Denver. Without seniority, "people will have only a few years to become and serve as legislative leaders. You will likely see one-term speakers, with their successors already in line before they take charge."

In large states like California, Michigan and Ohio, where political leaders have established large campaign funds to aid current and potential members of the same political parties, there will be no reason for leaders to maintain these funds because the loyalty to specific leaders won't be meaningful, Mr. Kurtz said.

Lack of institutional memory

Alan Rosenthal, director of the Eagleton Institute of Politics at Rutgers University, New Brunswick, N.J., argued that term limits will eliminate institutional memory, causing a new kind of policy gridlock.

"You now have legislators who have honed their political expertise over many, many years, who know what has been tried and worked and what has been tried and didn't work," he says. "What will probably happen under term limits is that, as new people keep coming in, policy will be rewritten and rewritten. The real question will be whether local governments

will be able to absorb all of these policy changes."

If power shifts away from legislatures, it will go to executive branch agencies, which will have far more institutional memory. Governors will seem to be more effective than weak legislative leaders, Mr. Rosenthal argues.

Measures differ considerably

Two State University of New York professors, Gerald Benjamin and Michael J. Malbin, who both work with the Rockefeller Institute of Government, Albany, N.Y., pointed out in their book, "Limiting Legislative Terms," that not all term limits are alike.

For instance, California limits lifetime service to six and eight years in the Assembly and Senate, respectively, while Colorado opted for a limit on continuous service in one chamber. Once a person hits the limit of eight consecutive years, he or she must do something else for four years before serving again in that body.

However, those four years may be spent in the other house of the Legislature. The majority of term limit plans adopted Nov. 3 follow the Colorado method. This would have the effect of allowing skilled "entrepreneurial" career politicians to stay in business. Legislatures and other government offices will become a game of musical chairs, Messrs. Benjamin and Malbin speculate.

FISCAL NOTE

STATE OF ALASKA
1993 LEGISLATIVE SESSION

BILL NO. HJR 3

Revision Date: _____
Title: Amendment to the Constitution RE: limiting tenure in the legislature
Sponsor: Representatives Martin and Kott
Requestor: _____

Department Affected: Office of the Governor
SRU: Division of Elections
Component: General and Primary Elections
COMPONENT SERIAL NO. 22

EXPENDITURES/REVENUES:

OPERATING	FY 94	FY 95	FY 96	FY 97	FY 98	FY 99
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	2.2*	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	2.2*	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE FUND SOURCE:	0	0	0	0	0	0
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FUNDING:

1002 Federal Receipts	0	0	0	0	0	0
1003 GF Match	0	0	0	0	0	0
1004 GF	2.2*	0	0	0	0	0
1005 GF/Program Receipts	0	0	0	0	0	0
1006 GF/MHTIA	0	0	0	0	0	0
OTHER	0	0	0	0	0	0
TOTAL	2.2*	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year (FY93) impact: 0

ANALYSIS: (Attach a separate page if necessary.) *This figure covers cost of inclusion of information about this issue in the Official Elections Pamphlet as required by AS 15.58, and programming for DataVote counting of votes cast on the measure. However, only 4 measures can be printed on a single ballot card. Should this measure require printing an additional ballot card, the fiscal impact would be 53.4.

Prepared by: Charlot E. Thickstun, Director Phone: 465-4611
Division: Division of Elections Date: 1/15/93

Approved by Commissioner: Lt. Governor John B. Coahill
Agency: Office of the Lt. Governor Date: 1/15/93

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Distributed by Rep. Martin
March 10, 1993

A BULWARK AGAINST FACTION

James Madison's Case for Term Limits

STEPHEN C. ERICKSON

In 1787 a French diplomat made a remarkable prediction about the American political system. Reporting to his home government, Louis Guillaume Otto pointed to what he believed was a critical flaw in the new American Constitution:

It is true that the President will be elected for only four years, the Senators for only six, the Representatives for only two, but they will always be *eligible* [Otto's emphasis]; will not elections be for sale...especially when they will be able to command the public treasury at will?

Anti-Federalist opponents of the Constitution had serious doubts about a lack of term limitation, fearing a distant government that would grow independent of its electors and become corrupted by centralized power.

Term limitation also had a backer within the ranks of the Federalists, the "Father of the Constitution" himself, James Madison. Madison's call for legislative term limitation was unique, in that he proposed to use the concept as a means to control special interests. It is his argument that speaks to us most forcefully today.

Rotation of Offices

The notion of restricting re-election is as old as the democracy of ancient Greece, where the practice of legislative term limitation found expression in the writings of Aristotle. The idea was adopted by English republicans, the most influential of whom was James Harrington. Harrington made "rotation of offices" a centerpiece of his model *Commonwealth of Oceana*, a plan Madison probably studied when contemplating the design of an American republic.

Harrington's concept of rotation was passed down to generations of English and American republican thinkers, including the framers of the Articles of Confederation. A number of early American state constitutions also adopted the concept for a range of office holders, from governors to local sheriffs and coroners. Madison's colleague and fellow Virginian George Mason wrote term limitation into the influential Virginia Declaration of Rights, illustrating how re-election restrictions were commonly associated with the most essential constitutional guarantees against tyrannical government.

Anti-Federalists believed that legislators inevitably became corrupted when allowed to hold office for long periods of time, and that one way to ensure just laws was to compel legislators to live periodically as ordinary citizens under the laws of their own design.

Equally important, rotation of offices would educate large numbers of citizens in the art of governing through office holding, and thus make it more difficult for government to encroach on their liberties undetected. Many Americans of the founding generation saw rotation of offices through mandatory term limitation as a key to the maintenance of a selfless and politically astute citizenry, qualities known as public virtue, which were necessary if the republic was to survive.

Popular Government's "Mortal Diseases"

Madison agreed that a measure of public virtue was required for the operation of republican government, but was more inclined to believe that man was essentially a self-interested creature and that public virtue alone was not enough to secure the republic. His great concern was that groups of people, or factions as he called them, would come to dominate government at the expense of the common good. Madison's idea of faction is nearly identical to the modern notion of special interest.

In his now-famous Federalist Number 10, Madison defined faction as a group of citizens "adverse to the rights of other citizens, or to the permanent and aggregate interests of the community." He pointed out that factions may derive from different moral and philosophical opinions, but are especially potent and determined when motivated by economic interests. They are "the mortal diseases under which popular governments have everywhere perished," said Madison. Because factions are endemic to free society, the central intellectual challenge in designing a constitution for the United States was to minimize the effects of special interests on government. The enslavement of modern American government to special interests and local constituencies at the expense of pressing national concerns indicates that something

STEPHEN C. ERICKSON is a doctoral candidate in early American history at the College of William and Mary.

has gone drastically wrong with the Founders' strategy for controlling faction.

The system of checks and balances taught to every American school child is the Founders' first weapon against faction. Their plan gave the various branches of government not only different powers, but also contrasting temperaments.

To the executive they gave energy and to the judiciary independence. In keeping with the classical model, the Founders attempted to provide the two branches of Congress with the complementary characters of wisdom and virtue. Chosen by direct election, the House was designed to be immediately representative of the people, exercising republican government in its raw form. Madison argued that this lower branch would be most capable of reflecting the public virtue found in the body of the citizens, but might lack the wisdom to distinguish self-interests from broader community interests, become motivated by popular passions, and thus be prone to faction.

Coolness in the Senate

To check the potentially narrow-minded perspective of the lower branch, Madison supported a Senate that would proceed "with more coolness, with more system, and with more wisdom than the popular branch." Popular passions were to be cooled through indirect election, a "refining process" whereby senators were elected by state legislatures—although Madison personally preferred indirect means other than state governments. Members of the upper house represented greater territories and would therefore possess a broader view, and hold office for six-year terms to give them more time to become acquainted with national concerns. While the upper house would be a constant check upon faction, its actions would in turn be monitored by the lower house to safeguard against the potential corruption of government bodies more distant from the oversight of the people. On paper, the House and Senate struck an ideal balance.

But differences between the upper and lower houses of Congress disappeared in the 19th and early 20th centuries, as the indirect election process was gradually eliminated throughout the states. Today's senators are, in effect, representatives with longer terms, and are no more resistant to special interests than their counterparts in the House. Even if the Founders' "refining" mechanism were still in place, it is difficult to see how it would be an adequate defense against modern special interests, given the vast capability of modern government to serve those interests. Indeed, circumstances have rendered both houses of Congress identical in character and temperament.

Advantage of Large Republic

Another way Madison hoped to discourage faction was in the creation of a large republic. While a small republic might easily split into two factions or interests, Madison believed that a large and populous territory like the United States, containing many conflicting interests, would be less prone to faction because in a large republic it would be difficult for any single interest to form a



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Unlike Anti-Federalists who wanted term limits to keep government close to the people, Madison wanted them to give legislators more independence from their own narrow constituencies.

majority and serve itself at the expense of the common good; on the contrary, a host of conflicting interests would check each other. Madison's theory held as long as the federal government's power remained relatively limited. Yet limited federal power encouraged the rise and militant assertion of a minority Southern slave interest, which led to the Civil War—America's bloodiest battle with faction.

Ironically, the Civil War marked a major step in the growth of an increasingly powerful federal government that eventually undermined Madison's large-republic theory. Commanding enormous power and resources, modern government now serves thousands of special interests simultaneously in ways unimagined by Madison and his fellow Founding Fathers. Today special interests are banded together and served by their agents in government, principally congressmen, to form a collective majority. Modern politics have rendered national interests to be, in practice if not in reality, the sum of a vast number of special interests. The mechanisms the Founders incorporated into the Constitution are too feeble to address the threats posed by special interests to a modern state operating within an infinitely more complex society than that of 18th-century America.

Madison Calls Twice for Term Limits

Madison, however, proposed to deploy another weapon in the fight against special interests, and that weapon was legislative term limitation.

The idea was first raised at the Philadelphia Convention on May 29, 1787 in the Virginia Plan. Although introduced by Governor Edmund Randolph, the Virginia Plan had been outlined by Madison in letters to Randolph and George Washington prior to the convention, and served as the initial working draft of the Constitution itself. The plan declared that members of the lower house were to be ineligible to run for re-election after a single two-year term in office and would not be allowed to run again for an unspecified number of years thereafter. The upper house was to be elected by the lower house, incorporating Madison's preferred refining

mechanism. As a result, term limitation could potentially affect the entire legislative branch. Here, in the Virginia Plan, Madison called for a radical application of legislative term limitation, mandating an entire new House of

Madison's Virginia Plan called for a two-year limit in the House of Representatives.

Representatives every two years and holding out the possibility for frequent and significant changes in the Senate.

Although term limitation was later struck from the Virginia Plan, Madison again raised the issue in a noteworthy speech on June 26 that encapsulated much of what he would later write in *Federalist 10*. The delegates had been discussing the creation of a Senate where Madison hoped to establish a bulwark against faction. Writing about himself in the third person in his notes from the convention, Madison stated:

[He] did not conceive that the term of nine years could threaten any real danger; but in pursuing his particular ideas on the subject, he should require that the long term allowed to the second branch should not commence till such a period of life, as would render a perpetual disqualification to be re-elected.

Here Madison differentiated the House and Senate far more profoundly than did the final draft of the Constitution. As a result of short terms and the potential for re-election, the House would be sensitive to the changing needs and interests of the population. The Senate, on the other hand, comprised of the old and presumably wise, would take a long and more objective view and, without election pressures that result from short terms and re-elections, would be more capable of rising above narrow self-interests than members of the House. Such ideas, found in his convention speeches and in the Virginia Plan, reflect the true Madison even more than his famous writings in *The Federalist*, where he argued not necessarily for his own proposals, but in favor of a constitution that was the product of a great political compromise.

Madison's efforts on behalf of term limitation were modest and encountered almost no encouragement at the Philadelphia Convention. Arch-Federalists took strong objection to the prospect of a government of amateurs. Their argument is one that has always dogged the case for term limitation, and indeed their objections are frequently echoed by modern critics of the idea.

Madison also agreed that government must be wise, and he therefore could support a nine-year term in the

Senate to ensure that one house of Congress was well experienced. Classical political theorists had advised the creation of upper houses comprised of aristocrats, reasoning that only a leisure class would have the time to read widely enough to govern wisely. In Harrington's republic, the upper house debated and proposed legislation, but it was the lower house that voted it up or down. Thus, government was divided into the higher function of debating and proposing carried out by an educated elite, and the lower function of choosing, performed by the representatives of more virtuous freeholders.

The Rise of Career Politicians

But who actually proposes modern legislation? Today, laws and policies are developed by legions of legislative staffers, bureaucrats, and lobbyists, while the choosing is left to elected officials in both houses of Congress. In terms of the classical model, the brain trust has moved from the old aristocratic upper house to a professional class of public policy experts. Given the complexities of modern government and society, no other division of labor seems possible. The modern U.S. Congress is no smarter than the bureaucracy that supports it, and is therefore neither especially wise nor virtuous.

No doubt many of Madison's colleagues at the Philadelphia Convention would have joined him in support of legislative term limitation had they foreseen the possibility of the rise of a class of career politicians, all but unimaginable in 1787. Indeed, Madison acknowledged that "a few" members of the legislative branch would be "frequently re-elected" but that "new members would always form a large Proportion." The Anti-Federalists were less convinced, and their case for re-election restrictions based upon worries about corruption and the establishment of a detached ruling class is still relevant today.

But it is Madison's argument for term limitation that cuts to the heart of what is wrong with the present American political system. Unlike his Anti-Federalist critics who called for term limitation to prevent the rise of a government independent of the people, Madison sought to use the concept to give legislators more independence from their own narrow constituencies and self-interests. He attempted to create a system whereby legislators were not advocates for special groups, but impartial umpires for the national interest.

Madison understood that all legislative decisions are biased and attempted to minimize those biases by encouraging legislators to be less interested and more judicious through mechanisms like term limitation. Madison knew that the desire to be re-elected could make legislators pawns to special interests. And getting re-elected is naturally a primary concern of modern career politicians. Thus, the present system maximizes the influence of special interests at the expense of the common good, and turns Madison's vision of the American republic completely on its head. ■