Why Not Term Limits?

It would be hard to find a public issue as little understood among the American people as term limits. The idea of restricting tenure in public office has been around for a long time, but whenever it has been tried, it has failed to deliver a better, more accountable government. In recent years proponents have been arguing that it would restore good government by forcing the retirement of "entrenched" incumbents. No less than a dozen well-funded PACs have waged a campaign to induce the states to pass structural and statutory laws limiting the number of consecutive terms their elected officials may serve in both state and federal office. By October 1994, 22 states had amended their constitutions to restrict the tenure of all elected officials.

Had those states confined their laws to limits only on state and local incumbents, their initiatives would have succeeded without controversy. But by attempting to impose term limits on their U.S. representatives and senators, the states raised a crucial constitutional issue: Can states add a new qualification for the eligibility of candidates for Congress?

A Step Too Far

On May 22, 1995, the U.S. Supreme Court answered that question by ruling against Arkansas, one of the 22 term-limiting states. In its 5-4 landmark decision, the High Court found no fault with Arkansas' move to limit the terms of its state officials, but ruled that the state had no power to establish term limits for its federal legislators. The Court properly ruled that any change in the qualifications of candidates for Congress would require a constitutional amendment.

As now written, the Constitution stipulates that no person shall be a representative or senator who has not reached a required age (25 for the House of Representatives, 30 for the Senate), held residency in the state he intends to represent, and maintained U.S. citizenship for a specified number years (seven for the House, nine for the Senate).

Under term limit proposals, a candidate could not run if he had already served for a specified number of years. Because such a condition would be consistent with the category of qualifications which the Constitution places under federal jurisdiction, limiting the terms of federal legislators is not a power reserved by the states.

The language of the Constitution and the history of its framing make it clear that the Founders had no intention of leaving it to the various states to determine qualifications for their congressional representation. To the contrary, they were determined to make those qualifications uniform throughout the union in order to keep candidate restrictions to a minimum and to avoid selective conditions that might be added by the several states.

The absence of any mention of term limits in the Constitution does not indicate an oversight by the Framers. Proposals to limit elected officers to a specific number of terms were introduced at least three times during the 1787 Convention but were rejected, not because anyone deemed them to be a state prerogative, but because the Framers saw such limits as an unnecessary imposition with offices having terms of short duration — such as the two-year term in the House of Representatives. For the most part, short terms (which allow for limiting terms via the ballot box) would encourage more accountability than limiting the number of terms. In his notes on the Convention, James Madison wrote: "Frequent elections are necessary to preserve the good behavior of rulers. They also tend to give permanency to Government, by preserving that good behavior, because it ensures their re-election."

Of the 39 signers of the new Constitution, 26 had served in the nation's first Congress established under the Articles of Confederation, where all elective terms were limited. They knew from experience the faults of limited terms. One of the many defects of the Articles pointed out in the 1787 Convention was that (in the words of Gouverneur Morris) imposing ineligibility "tended to destroy the great motive to good behavior, the hope of being rewarded by a re-appointment."

The Convention debates clearly establish that the Framers stood firmly against any term limits for federal legislators. They recognized that there is no better way to get rid of an unaccountable congressman than through the efforts of a vigilant electorate. Term limitation would take power out of the hands of the people, where it belongs, by limiting their choices at the ballot box.

In opposition to the majority ruling in the Supreme Court's recent decision against Arkansas, the minority reverted to the Tenth Amendment, reasoning that inasmuch as limiting terms is not expressly listed as an enumerated federal power, then it must be a right reserved to the states. But Hamilton addressed this issue quite clearly in *The Federalist*, #60, noting that the states' "authority would be expressly restricted to the regulation of the times, the places, and manner, of elections. The qualifications of the persons who may choose or be chosen ... are defined and fixed in the Constitution, and are unalterable by the legislature." With those qualifications "defined and fixed in the Constitution," the imposition of a new qualification — e.g. term limitation — can only be accomplished via a constitutional amendment.

Major Mischief Ahead?

A term limit amendment introduced by Congress and ratified by the states would be bad enough. But a bolder — and more dangerous — plan has been in the works for some time: the push for a constitutional convention. Resentment over the Supreme Court's ruling may supply the final motivation needed for inducing 34 states to call for a federal constitutional convention — and thereby open the door for serious constitutional mischief. If such a convention should be called, a supreme irony would prevail: The states' attempts to deal with uncontrolled congressional power through term limits would be harnessed to drive them into total federal power. ■

— DON FOTHERINGHAM