

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HM 685 Congressional Term Limits

**SPONSOR(S):** Federal Affairs Subcommittee, Caldwell and others

**TIED BILLS:**                   **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Federal Affairs Subcommittee	14 Y, 1 N, As CS	Cyphers	Cyphers
2) State Affairs Committee	12 Y, 6 N	Cyphers	Hamby

### SUMMARY ANALYSIS

The memorial asks the Congress of the United States to propose an amendment to the United States Constitution limiting the time a member of the United States House or Senate can serve.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### **Background**

##### Articles of Confederation

The Articles of Confederation were adopted by Congress on July 9, 1778, and were ratified by the states in 1781. The Articles acted as the foundation for a loose conglomeration of states until it was eventually replaced by the United States Constitution in 1787. The thirteen Articles of the Articles on Confederation addressed issues of governance ranging from national defense to the coining of money, to the settling of disputes between states. The Articles also addressed the length of term, as well as term limits, for members of the unicameral legislature.<sup>1</sup>

Specifically, Article V of the Articles of Confederation addressed the length of term as well as limits to the consecutive number of years which an elected representative could serve. It stated that the term of office for each delegate (Congress was a unicameral body at the time) would be one year, and that no delegate could serve more than three out of every six years.<sup>2</sup> Since the Articles of Confederation did not articulate the office of President of the United States, United States Senator, or the United States Supreme Court, there is no mention of their terms of service or any limits to those terms.

##### The Virginia Plan

The Virginia Plan, considered to be the most significant foundational document for the drafting of the U.S. Constitution, was drafted by James Madison and submitted to the Constitutional Convention in 1787. The Plan created a sharp difference with the Articles of Confederation in that it provided for a bicameral legislature.<sup>3</sup>

In the two bodies envisioned by the Virginia delegation, the Plan contemplates but does not enumerate, the actual terms of office. However, it does note that there should be a limit to the time one can serve in the legislature. The Plan provided more direction for the creation of a “National Executive” with limits placed on the number of terms the Executive could serve (one). It also provided the basis for a National Judiciary without limitation on their tenure in office other than service during “good behavior.”<sup>4</sup>

##### The New Jersey Plan

A coalition of small states, led by New Jersey, created the New Jersey Plan in response to the Virginia Plan. This Plan, like the Virginia Plan, provides for only one term for the “Executive.” It also provided for lifetime terms, assuming “good behavior”, for a supreme “Tribunal of Judges.” The Plan; however, fails to account for the make-up, term length, or term limits of Congress.<sup>5</sup>

##### The Hamilton Plan

Also called the “British Plan”, the Hamilton Plan was offered to the Constitutional Convention as well in June of 1787. Hamilton’s Plan called for a bicameral legislature comprised of an Assembly and the

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<sup>1</sup> Text for Articles of Confederation found at: <http://www.usconstitution.net/articles.html>

<sup>2</sup> *Id.*

<sup>3</sup> Text for the Virginia Plan found at: [http://www.usconstitution.net/plan\\_va.html](http://www.usconstitution.net/plan_va.html)

<sup>4</sup> *Id.*

<sup>5</sup>Text for New Jersey Plan found at: [http://www.usconstitution.net/plan\\_nj.html](http://www.usconstitution.net/plan_nj.html)

Senate. The Assembly was to consist of representatives elected by the people who would serve three year terms. No limitation was placed on the number of terms that could be served by members of the Assembly.<sup>6</sup>

Hamilton's vision for the Senate included Senators being elected to life terms by electoral districts in their home state. The Hamilton Plan also included life terms for members of a supreme judicial authority under the condition of "good behavior." Supreme executive authority under the Hamilton Plan would be vested in a "Governor" who would be selected under an electoral system, but would subsequently serve a life term notwithstanding death, removal or resignation.<sup>7</sup>

## The United States Constitution

The United States Constitution, as ratified by the states in 1788, creates the foundation for the three branches of government (Executive, Legislative, and Judicial) with a bicameral legislature.<sup>8</sup>

### President

The U.S. Constitution limits the length of each term for the President of the United States at four years<sup>9</sup>, but it did not address the issue of term limits until after the death of President Franklin Roosevelt in 1945. President Roosevelt died while serving his fourth term in office. The 22<sup>nd</sup> Amendment to the U.S. Constitution, ratified in 1951 states:

"No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this article shall not apply to any person holding the office of President when this article was proposed by the Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this article becomes operative from holding the office of President or acting as President during the remainder of such term."<sup>10</sup>

### Congress

The United States Constitution also addresses the term of service for members of Congress. It calls for two year terms for members of the House of Representatives and six year terms for members of the Senate.<sup>11</sup> Though no changes have occurred to the length of service or number of terms that members of Congress can serve, one significant change did take place with the passage of the 17<sup>th</sup> Amendment to the U.S. Constitution. The 17<sup>th</sup> Amendment, ratified in 1914 states:

"The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote. The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

When vacancies happen in the representation of any State in the Senate, the executive authority of such State shall issue writs of election to fill such vacancies: Provided, That the legislature of any State may empower the executive thereof to make temporary appointments until the people fill the vacancies by election as the legislature may direct.

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<sup>6</sup> Text for the Hamilton Plan found at: [http://www.usconstitution.net/plan\\_brit.html](http://www.usconstitution.net/plan_brit.html)

<sup>7</sup> *Id.*

<sup>8</sup> Text for the United States Constitution found at: <http://www.usconstitution.net/const.html>

<sup>9</sup> *Id.*

<sup>10</sup> Text for 22<sup>nd</sup> Amendment to the U.S. Constitution found at: <http://www.usconstitution.net/const.html#Am22>

<sup>11</sup> Text for the United States Constitution found at: <http://www.usconstitution.net/const.html>

This amendment shall not be so construed as to affect the election or term of any Senator chosen before it becomes valid as part of the Constitution.”<sup>12</sup>

The result of the 17<sup>th</sup> Amendment is that United States Senators are no longer chosen by their state’s legislature. They are chosen, as with members of the House of Representatives, by the electors of the state.

### Supreme Court

As contemplated by James Madison in the Virginia Plan and in the New Jersey Plan, the Supreme Court was created without being encumbered by a length of term or any limit to the amount of time that can served on the bench. Once again, the only limit to the Justices’ time on the bench is resignation, retirement, death, or removal for actions not considered within the definition of “good behavior.”<sup>13</sup>

### Term Limits since the 22<sup>nd</sup> Amendment

A movement within states to enact term limits gained traction in the early 1990’s, starting with the state of California in 1990. Since then, a total of fifteen individual states have laws in place limiting the amount of time a state legislator can serve in office. Every state with term limits, with the exception of Louisiana, has enacted them as a result of a constitutional amendment initiative. Louisiana is the only state that voted to limit their time in office without the benefit of a constitutional initiative process. The Utah Legislature also voted term limits for themselves as well, but they later voted to repeal the limits.<sup>14</sup>

Six states have had their term limit laws repealed since 1997, but Utah and Idaho share the distinction of being the only two states in which the Legislature was the source of the repeal. In the other four states (Massachusetts, Oregon, Washington, and Wyoming), they were repealed based on decisions by their respective State Supreme Courts. The states with current term limits in place are<sup>15</sup>:

State	House		Senate		% Voted Yes
	Year Enacted	Limit	Year of Impact	Limit	
MAINE	1993	8	1996	8	67.6
CALIFORNIA	1990	6	1996	8	52.2
COLORADO	1990	8	1998	8	71
ARKANSAS	1992	6	1998	8	59.9
MICHIGAN	1992	6	1998	8	58.8
FLORIDA	1992	8	2000	8	76.8
OHIO	1992	8	2000	8	68.4
SOUTH DAKOTA	1992	8	2000	8	63.5
MONTANA	1992	8	2000	8	67
ARIZONA	1992	8	2000	8	74.2
MISSOURI	1992	8	2002	8	75
OKLAHOMA	1990	12	2004	12	67.3
NEBRASKA	2000	n/a	n/a	8	56
LOUISIANA	1995	12	2007	12	76
NEVADA	1996	12	2010	12	70.4

<sup>12</sup> Text for the 17<sup>th</sup> Amendment to the U.S. Constitution found at: <http://www.usconstitution.net/const.html#Am17>

<sup>13</sup> Text for the United States Constitution found at: <http://www.usconstitution.net/const.html>

<sup>14</sup> <http://www.ncsl.org/default.aspx?tabid=14839>

<sup>15</sup> <http://www.ncsl.org/LegislaturesElections/LegislatorsLegislativeStaffData/ChartofTermLimitsStates/tabid/14844/Default.aspx?TabId=14844>

By 1995, 23 states had passed laws imposing term limits on their states' Congressional delegations. During the same year; however, the U.S. Supreme Court ruled in *U.S. Term Limits, Inc. v. Thornton*, that state-imposed term limits on Congress were unconstitutional and that federal term limits could only be imposed through an amendment to the U.S. Constitution.<sup>16</sup>

Since the 1994, several attempts have been made to enact Congressional term limits, but thus far, none has received the necessary two-thirds vote from members to send the issue to the states for ratification.<sup>17</sup> In the 111<sup>th</sup> Congress, Senator Jim DeMint filed an amendment to the U.S. Constitution limiting U.S. Senators to two six-year terms and members of the House of Representatives to three two-year terms.<sup>18</sup>

More recently, Senator David Vitter has introduced a potential constitutional amendment for consideration during the 112<sup>th</sup> Congress to limit members of the U.S. Senate and the U.S. House of Representatives to twelve years each.<sup>19</sup> So far, no action has yet been taken on the measure.<sup>20</sup>

In order to be sent to the states, an individual amendment proposal must first be approved by a two-thirds vote in both chambers of Congress (290 votes in the House and 67 votes in the Senate). If approved by the U.S. Congress, the proposed amendment would be sent to the individual states for ratification. If the legislatures of at least three-fourths (39 states) approve the measure, then it will be officially ratified and become the 28<sup>th</sup> Amendment to the U.S. Constitution.<sup>21</sup>

### **Effects of Proposed Changes**

If enacted, this memorial would request that the United States Congress propose an amendment to the United States Constitution which will limit the number of terms in which members of the United States House and Senate may serve.

The legislation also contains whereas clauses in order to support the memorial. The whereas clauses include:

WHEREAS, Article V of the Constitution of the United States authorizes Congress to propose amendments to the Constitution which shall become valid when ratified by the states, and

WHEREAS, a continuous and growing concern has been expressed that the best interests of this nation will be served by limiting the terms of members of Congress, a concern expressed by the founding fathers, incorporated into the Articles of Confederation, attempted through legislation adopted by state legislatures, and documented in recent media polls...

#### **B. SECTION DIRECTORY:**

None

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<sup>16</sup> <http://www.law.cornell.edu/supct/html/93-1456.ZO.html>

<sup>17</sup> The four constitutional amendments on term limits which the House rejected 29 March 1995 were sponsored by: Democrat [John Dingell](#) [12/12 retroactive], rejected 135-297; Republican [Bob Inglis](#) [6/12, un-retroactive], rejected 114-316; Republican [Van Hilleary](#) [12/12, unretroactive, but defers to more stringent state imposed limits], rejected 164-265; Republican [Bill McCollum](#) [12/12 unretroactive and would override more stringent state limits]; approved by less than the requisite 2/3, 227-204; on February 12, 1997 Congress did likewise by a margin of 217-211 [50.7%].

<sup>18</sup> [http://demint.senate.gov/public/index.cfm?p=PressReleases&ContentRecord\\_id=df3453ee-c1f0-e8d5-3fb3-77379823cf1c&ContentType\\_id=a2165b4b-3970-4d37-97e5-4832fcc68398&Group\\_id=9ee606ce-9200-47af-90a5-024143e9974c&YearDisplay=2009](http://demint.senate.gov/public/index.cfm?p=PressReleases&ContentRecord_id=df3453ee-c1f0-e8d5-3fb3-77379823cf1c&ContentType_id=a2165b4b-3970-4d37-97e5-4832fcc68398&Group_id=9ee606ce-9200-47af-90a5-024143e9974c&YearDisplay=2009)

<sup>19</sup> <http://thomas.loc.gov/cgi-bin/bdquery/D?d112:37:./temp/~bdbhtz::>

<sup>20</sup> *Id.*

<sup>21</sup> [http://www.usconstitution.net/xconst\\_A5.html](http://www.usconstitution.net/xconst_A5.html)

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

### D. FISCAL COMMENTS:

None

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable

2. Other:

None

### B. RULE-MAKING AUTHORITY:

Not Applicable

### C. DRAFTING ISSUES OR OTHER COMMENTS:

None

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Amended 3/23/11 in Federal Affairs Subcommittee: The amendment removes twelve years as the consecutive years service limit in each body of Congress.