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Congressional Term Limits: The Right Idea, the Wrong Numbers. A Proposal in Favor of Increased Term Limits for Congress

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Congressional Term Limits: The Right Idea, the Wrong Numbers. A Proposal in Favor of Increased Term Limits for Congress

Cover Page Footnote

I would like to thank my family for their constant love and support. I would also be nowhere without my friends, inside and outside of law school. Their encouragement and jokes keep me going. Finally, I dedicate this Comment to my Dad, Dave Oravetz. He would have been proud to have read this.

**CONGRESSIONAL TERM LIMITS:
THE RIGHT IDEA, THE WRONG NUMBERS.
A PROPOSAL IN FAVOR OF INCREASED TERM
LIMITS FOR CONGRESS**

Ashley Oravetz *

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* J.D. Candidate, 2021, University of Dayton School of Law. I would like to thank my family for their constant love and support. I would also be nowhere without my friends, inside and outside of law school. Their encouragement and jokes keep me going. Finally, I dedicate this Comment to my Dad, Dave Oravetz. He would have been proud to have read this.

I. INTRODUCTION

Given the hostility of today's political environment, it is hard to imagine that people of varying political and social backgrounds can agree on much of anything. However, imposing term limits on the members of the United States Congress has long received vast support amongst all demographic and political groups.¹ Despite the overwhelming public support, congressional term limits still are not a reality, and the political movement in support of term limits has been slow at best. Instead, politicians talk a good game about supporting congressional term limits but still reap the benefits of having a job from which they can stay as long as they please.² This benefit—a virtual lifetime job—is evident by the records for longest service in the House of Representatives and Senate, with each being more than fifty years of consecutive service.³ As of 2020, several congressmembers have been serving for more than forty consecutive years; thus, the issue of congressional term limits is not only an issue of the past but is also most certainly one of the present.⁴

The movement to impose term limits gathered the most momentum in the 1990s when state legislatures began implementing various term limits on their national representatives.⁵ However, in *U.S. Term Limits v. Thornton* (“*Thornton*”), the Supreme Court struck down state term limit laws as unconstitutional qualifications for service in the House of Representatives or Senate.⁶ As a result of *Thornton*'s decision, for congressional term limits to

¹ See John McLaughlin & Brittany Davin, *Voters Overwhelmingly Support Term Limits for Congress*, MCLAUGHLIN & ASSOCS. (Jan. 15, 2018), <https://mclaughlinonline.com/2018/02/08/ma-poll-voters-overwhelmingly-support-term-limits-for-congress/> (showing that 89% of Republican, 76% of Democrat, 86% of White, 70% of African American voters approve of a constitutional amendment for congressional term limits); Jenna Johnson, *Donald Trump Calls for Congressional Term Limits to End 'Cycle of Corruption'*, WASH. POST (Oct. 18, 2016), <https://www.washingtonpost.com/news/postpolitics/wp/2016/10/18/donald-trump-calls-for-congressional-term-limits-to-end-cycle-of-corruption/>.

² See Ronald D. Rotunda, *Rethinking Term Limits for Federal Legislators in Light of the Structure of the Constitution*, 73 OR. L. REV. 561, 565 (1994).

³ John Dingell Jr. holds the record for fifty-nine years in the House and Robert Byrd holds the record for fifty-one years in the Senate. *Record Holders*, U.S. HOUSE OF REPRESENTATIVES, <https://history.house.gov/Institution/First-Milestones/Record-Holders/> (last visited Oct. 27, 2020); *Longest-Serving Senators*, U.S. SENATE, https://www.senate.gov/senators/longest_serving_senators.htm (last visited Oct. 27, 2020); *Longest Serving US Senators Fast Facts*, CNN, <https://www.cnn.com/2013/08/28/us/longest-serving-u-s-senators-fast-facts/index.html> (Oct. 4, 2020, 6:19 PM).

⁴ See *List of Members of the United States Congress by Longevity of Service*, WIKIPEDIA, https://en.wikipedia.org/wiki/List_of_members_of_the_United_States_Congress_by_longevity_of_service (Oct. 24, 2020, 10:24 AM); *Longest Serving US Senators Fast Facts*, *supra* note 3. More specifically, in the House of Representatives, Donald Young and Frank Sensenbrenner have been in office for forty-six and forty-one consecutive years, respectively. *Members With 40 Years or More House Service*, U.S. HOUSE OF REPRESENTATIVES, *supra* note 3. In the Senate, Patrick Leahy has been in office for forty-five consecutive years. *Longest Serving Senators*, *supra* note 3. While Orrin Hatch served in the Senate for forty-two consecutive years, until his retirement in 2019. *Id.*

⁵ See generally ARK. CONST. amend. LXXIII, § 3 (1992); OHIO CONST. art. V, § 8 (1992); COLO. CONST. art. XVIII, § 9a (1991); Rotunda, *supra* note 2, at 565.

⁶ See 514 U.S. 779, 783 (1995).

become a reality, the Constitution must be amended.⁷ Therefore, the Court's directive limits congressional term limits reform within the confines of Article V of the Constitution—either an amendment proposed by both houses of Congress or an amendment proposed through a national convention.⁸

There are a few problems with the current state of the congressional term limits debate. One of the problems is obvious: why would politicians want to support such strict self-imposed deadlines on their own jobs? As a result, all previous attempts to implement congressional term limits have failed to meet the constitutional requirements needed to enact a new amendment.⁹ The most recent of these failures is a 2019 amendment proposal introduced by Senator Ted Cruz.¹⁰ Senator Cruz's proposal followed the historical trend of proposing two terms of six years for Senators and three terms of two years for Representatives.¹¹

This historical trend is the other problem with the attempts to obtain a congressional term limits amendment. The two- and three-term maximums seem to have been arbitrarily selected and without any justification for why those are appropriate number of terms. Without supporting rationale, it is understandable why some people, especially the politicians who would be subjecting themselves to the term limits, are skeptical and hesitant to support such an amendment.

This Comment will discuss the continuing need for a congressional term limits amendment. More importantly, it will discuss how an appropriately drafted amendment will dispel modern fears surrounding congressional term limits, restore confidence in the legislative branch, and generate more support for the passage of a congressional term limits amendment. In doing so, Part II of this Comment provides background on congressional term limits and amendment making. In doing so, this Comment will highlight the historical framework for congressional term limits and identify the arguments for and against their imposition. It will also discuss previous attempts by the states to implement congressional term limits. Part II of this Comment will also provide illustrations of alternative amendment making processes to highlight how changes in the status quo can lead to a change in thinking about a particular topic and, ultimately, help reach the desired outcome. Finally, Part III will propose a new congressional term limit amendment. Part III will also include a much-needed discussion on the rationale behind the drafting of the amendment and why each part of the amendment was selected. In the end, the discussion put forth in this Comment

⁷ *Id.* (holding that “[i]f the qualifications set forth in the text of the Constitution are to be changed, that text must be amended”).

⁸ U.S. CONST. art. V.

⁹ Kris W. Kobach, Note, *Rethinking Article V: Term Limits and the Seventeenth and Nineteenth Amendments*, 103 YALE L.J. 1971, 1973 (1994).

¹⁰ See S.J. Res. 1, 116th Cong. (2019).

¹¹ *Id.*

aims to show how the proposal discussed below is more realistic and more likely to bring about increased support for the imposition of a congressional term limit amendment.

II. BACKGROUND

A. Constitutional History and Framework

1. Founding Era Approach to Term Limits

The idea of congressional term limits dates back to our government under the Articles of Confederation.¹² The Articles of Confederation limited service in Congress stating that “no person shall be capable of being a delegate for more than three years in any term of six years.”¹³ When the Articles of Confederation failed, the Constitutional Convention (“Convention”) convened to build a new system of government, and the qualifications and limitations for service in Congress were reexamined.¹⁴

Regarding congressional term limits, approaches to their implementation differed at the Convention.¹⁵ Only the Virginia Plan introduced the idea of congressional term limits, and it would have limited members of Congress to one term in office.¹⁶ But that portion of the Virginia Plan was rejected by the Convention delegates.¹⁷ Ultimately, the Framers decided not to include congressional term limits and only set age, citizenship, and residency requirements for Representatives and Senators.¹⁸ Additionally, the Framers included a provision that allowed the states to control the time, place, and manner of elections.¹⁹

Among Founding Era documents, there seems to be different rationales as to why the Framers chose to not include congressional term

¹² See ARTICLES OF CONFEDERATION of 1781, art. V.

¹³ *Id.*

¹⁴ See Dwayne A. Vance, *State-Imposed Congressional Term Limits: What Would the Framers of the Constitution Say?*, 1994 B.Y.U.L. REV. 429, 429 (1994).

¹⁵ John David Rausch, Jr., *When a Popular Idea Meets Congress: The History of the Term Limit Debate in Congress*, 1 POL’Y, BUREAUCRACY & JUST. 34 (2009), <https://www.wtamu.edu/webres/File/Academics/College%20of%20Education%20and%20Social%20Sciences/Department%20of%20Political%20Science%20and%20Criminal%20Justice/PBJ/2009/1n1/1n106Rausch.pdf>.

¹⁶ 1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787 20 (Max Farrand ed., 1937); Brendan Barnicle, Comment, *Congressional Term Limits: Unconstitutional by Initiative*, 67 WASH. L. REV. 415, 418–19 (1992).

¹⁷ 1 THE RECORDS OF THE CONSTITUTIONAL CONVENTION OF 1787, *supra* note 16, at 217; Barnicle, *supra* note 16, at 418–19; Rausch, *supra* note 15, at 34.

¹⁸ See U.S. CONST. art. I, § 2, cl. 2; *id.* art. I, § 3, cl. 3, *amended by* U.S. CONST. amend. XVII. A member of the House of Representatives must be at least twenty-five years old, a citizen of the United States for at least seven years, and live in the state in which they are elected to serve at the time they are elected. *Id.* art. I, § 2, cl. 2. Additionally, Senators must be at least thirty years old, a citizen of the United States for at least nine years, and a resident of the state in which they are elected to serve at the time they are elected. *Id.* art. I, § 3, cl. 3, *amended by* U.S. CONST. amend. XVII.

¹⁹ *Id.* art. I, § 4, cl. 1.

limits.²⁰ First, some Framers believed that it was necessary to allow members of the legislative branch to stay in office long enough to develop “knowledge of the means by which t[he] object [of government] can be best attained,” and term limits would hinder their ability to do this.²¹ Second, others thought that the need to expressly include term limits was unnecessary due to the short tenures that the newly created Constitution established for Congress, especially the House of Representatives.²² Most importantly, the Framers believed that those who served in Congress would engage in voluntary rotation and return home after a completed term, which was a widely followed practice in state legislatures at the time.²³ These points are illustrated by Alexander Hamilton’s famous description on the election and rotation of Senators: “[o]ne third of them are to go out at the end of two years, two thirds at four years, and the whole at six years.”²⁴ Therefore, even though the Convention did not explicitly adopt congressional term limits, there seemed to be an underlying understanding that there would “be a constant and frequent change of members” within the congressional bodies.²⁵

Finally, the Framers thought that “it [was] essential to liberty that the government in general should have a common interest with the people, so [the legislative branch] . . . should have an immediate dependence on, and intimate sympathy with, the people.”²⁶ Therefore, “[f]requent elections [were] unquestionably the only policy” to maintain the essential connections that the government should have with the people.²⁷ Since elections were designed to be frequent, and legislators needed to maintain connections with their constituents, it was thought that ineffective congressmembers would be voted out of office in due course.²⁸ Under these common themes, the Framers understood the legislative branch “of the federal government [to be] open to merit of every description, whether native or adoptive, whether young or old, and without regard to poverty or wealth, or to any particular profession of religious faith.”²⁹

²⁰ Rausch, *supra* note 15, 34.

²¹ THE FEDERALIST NO. 62, at 378 (James Madison) (Clinton Rossiter ed., 1961).

²² Rausch, *supra* note 15, at 35.

²³ *Id.*

²⁴ 2 THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION, AS RECOMMENDED BY THE GENERAL CONVENTION AT PHILADELPHIA IN 1787 TOGETHER WITH THE JOURNAL OF THE FEDERAL CONVENTION, LUTHER MARTIN'S LETTER, YATES'S MINUTES, CONGRESSIONAL OPINIONS, VIRGINIA AND KENTUCKY RESOLUTIONS OF '98-'99, AND OTHER ILLUSTRATIONS OF THE CONSTITUTION 319 (Johnathan Elliot ed., 1891) [hereinafter THE DEBATES IN THE SEVERAL STATE CONVENTIONS] (italics omitted); see also U.S. CONST. art. I, § 3, cl. 2 (establishing a rotation for the election of Senators).

²⁵ 2 THE DEBATES IN THE SEVERAL STATE CONVENTIONS, *supra* note 24, at 319; see also S. REP. NO. 104-158, at 13 (1995).

²⁶ THE FEDERALIST NO. 52, *supra* note 21, at 324 (James Madison).

²⁷ *Id.*

²⁸ See generally *id.*

²⁹ *Id.* at 323–24.

2. Constitutional Provisions for Amendment Making³⁰

During the Convention, the mode for amending the Constitution was also settled.³¹ The delegates at the Convention readily agreed that the Constitution would need an amendment process but disagreed as to how the process should work.³² Two main amendment-making proposals circulated throughout the Convention.³³ The first proposal did not require the national government's consent to amend the Constitution, and the second proposal placed the power to make amendments to the Constitution jointly in the national and state governments.³⁴ After debating over the precise language of the amendment-making provision, the Convention ultimately settled on a compromise between the two ideas.³⁵

Therefore, under Article V, an amendment is added to the Constitution when one of two methods are satisfied. First, an amendment is added after two-thirds of both houses of Congress propose an amendment and send the proposal for ratification by three-fourths of the state legislatures or ratifying conventions.³⁶ This approach allows for the national legislature's involvement in amending the Constitution.³⁷ Second, when two-thirds of the state legislatures apply for one, "Congress . . . shall call for a Convention for proposing Amendments . . ."³⁸ If an Article V national convention is called for and convened, any proposals that pass through are sent to the states for ratification by three-fourths of state legislatures or ratifying conventions.³⁹ The Article V national convention option, represents a way to bypass Congress and amend the Constitution without the national government's involvement.⁴⁰

³⁰ While the precise mode of adopting a term limit amendment is outside the scope of this Comment, this section aims to provide only enough background information so that the two amendment processes, as set out in the Constitution, are known. The amendment proposed in this Comment would be suitable for either process. For a more detailed discussion on whether one method of the amendment process should be preferred or is better suited over the other in the context of a congressional term limit amendment, see Ronald D. Rotunda & Stephen J. Safranek, *An Essay on Term Limits and a Call for a Constitutional Convention*, 80 MARQ. L. REV. 227 (1996) (highlighting the feasibility of the Article V national convention method for a term limit amendment).

³¹ See generally James Kenneth Rogers, Note, *The Other Way to Amend the Constitution: The Article V Constitutional Convention: Amendment Process*, 30 HARV. J.L. & PUB. POL'Y 1005 (2007).

³² See *id.* at 1006.

³³ *Id.*

³⁴ Compare 3 RECORDS OF THE FEDERAL CONVENTION OF 1787, *supra* note 16, at 630 (proposing an amendment procedure where the national government could participate in proposing amendments) with 1 RECORDS OF THE FEDERAL CONVENTION, *supra* note 16, at 22 (proposing an amendment procedure where the national government's consent was not required).

³⁵ See Rogers, *supra* note 31, at 1006.

³⁶ U.S. CONST. art. V.

³⁷ See Rogers, *supra* note 31, at 1006–07.

³⁸ U.S. CONST. art. V.

³⁹ *Id.*

⁴⁰ See Rogers, *supra* note 31, at 1006.

B. Other Amendments Made Using Alternative Methods

Despite the existence of two paths for amending the Constitution, the Article V national convention route has never been used.⁴¹ The Seventeenth and Nineteenth Amendments, however, provide insight into the path that supporters of congressional term limits have taken, and should continue to take.⁴² This is because the route to passage that these amendments took demonstrates when “an alternative amendment process [is] necessary because the direct stake that members of Congress [have] in the existing institutional arrangement [make] it impossible to persuade two-thirds of both houses to propose the relevant amendment.”⁴³ The following discussion briefly summarizes the road to ratification for the Seventeenth and Nineteenth Amendments.

1. The Seventeenth Amendment

As originally written, the Constitution called for Senators to be “chosen by the legislature” of the state they represent.⁴⁴ As a result, Senators, who enjoyed political office largely due to the relationships they maintained with state legislatures, were staunchly opposed to the idea being elected by popular vote.⁴⁵ Despite the Senate’s resistance to change, public support for the senatorial popular vote grew, and its supporters turned to individual states to promote change.⁴⁶ When efforts to have an Article V national convention failed, state processes for how Senators were selected changed.⁴⁷ For example, some states adopted initiatives that allowed the voters to elect their choice for Senator.⁴⁸ However, the Constitution still technically required Senators to be nominated by the state legislature, so state officials bound themselves to nominate the winner of these elections by signing pledges to vote accordingly.⁴⁹

Eventually, most states adopted this method for nominating Senators; thus, while still conforming with the letter of the Constitution, the people were effectively electing their Senators.⁵⁰ As more Senators were effectively being elected by the people, internal support for a senatorial popular election amendment grew, and the Seventeenth Amendment was ratified, making popular election of Senators a constitutional fixture.⁵¹

⁴¹ *Id.* at 1005; Kobach, *supra* note 9, at 1973.

⁴² *See generally* Kobach, *supra* note 9.

⁴³ *Id.* at 1974.

⁴⁴ U.S. CONST. art. I, § 3, cl. 1, *amended by* U.S. CONST. amend. XVII.

⁴⁵ Kobach, *supra* note 9, at 1976.

⁴⁶ *Id.* at 1976–77.

⁴⁷ *Id.* at 1977.

⁴⁸ *Id.* at 1978.

⁴⁹ *Id.*

⁵⁰ *Id.* at 1978–79.

⁵¹ *See* U.S. CONST. amend. XVII; Kobach, *supra* note 9, at 1979–80.

2. The Nineteenth Amendment

Just as with the passage of the Seventeenth Amendment, a similar course of events occurred with the passage of the Nineteenth Amendment, which granted women the constitutional right to vote.⁵² In the early years of the fight for women's suffrage, internal interests of the men holding political office suppressed any proposal for a women's suffrage amendment.⁵³ In the face of no congressional support, suffragists engaged in state-by-state reform, usually in the form of amending state constitutions, to give women the right to vote.⁵⁴ By 1918, enough states had given women the right to vote that the elections of many prominent politicians, including President Woodrow Wilson, were claimed as victories by the women who voted for them.⁵⁵ As a result, this new wave of politicians quickly became supportive of the women's right to vote.⁵⁶ By 1919, a suffrage amendment was approved in both houses of Congress and sent to the states for ratification.⁵⁷ In 1920, with the battle for women's suffrage already won in the states, the national battle was won when the Nineteenth Amendment was ratified to the Constitution.⁵⁸

C. Term Limits Background

1. State Actions Regarding Term Limits and the Court's Response

Learning from the successes of the Seventeenth and Nineteenth Amendments, several states engaged in state-level reforms to place term limits on their national representatives. In the 1990s, the state movement towards congressional term limits began when Colorado limited the number of terms federal legislators could serve to no more than two consecutive terms in the Senate and no more than three consecutive terms for Representatives.⁵⁹ By 2000, twenty-three states imposed term limits on their federal legislators, by statute or constitutional amendment.⁶⁰ Most of the state-imposed term limits identified two terms of six years in the Senate and three terms of two years in the House of Representatives as the maximum number of terms that individual incumbents could serve.⁶¹ However, some states deviated from this norm, allowing four terms of two years for the House of

⁵² See Kobach, *supra* note 9, at 1980–83.

⁵³ *Id.* at 1980.

⁵⁴ *Id.* at 1981.

⁵⁵ *Id.* at 1982–83.

⁵⁶ *Id.* at 1983.

⁵⁷ *Id.*

⁵⁸ See U.S. CONST. amend. XIX; Kobach, *supra* note 9, at 1983.

⁵⁹ COLO. CONST. art. XVIII, § 9a (1991); Vance, *supra* note 14, at 431.

⁶⁰ See, e.g., ARK. CONST. amend. LXXIII, § 3 (1992); OHIO CONST. art. V, § 8 (1992); N.D. CENT. CODE § 16.1-01-13 (1992).

⁶¹ See, e.g., ARK. CONST. amend. LXXIII, § 3 (1992); COLO. CONST. art. XVIII, § 9a(1) (1991).

Representatives.⁶² Other states limited service to a twelve-year total period.⁶³

States also established procedures for what their Senators and Representatives could do once the maximum terms were served.⁶⁴ In this regard, state term limit laws generally fell into two categories: (1) those that placed a lifetime ban after an incumbent served a set period of years and (2) those that set a maximum number of terms a Senator or Representative could serve before restrictions on continued service were enforced on them.⁶⁵

Under the latter category, there were two common restrictions that state term limit laws implemented.⁶⁶ The first restriction included service bans for a certain number of years before the individual could again run for office.⁶⁷ One example of this type of restriction can be found in Ohio's Constitution which states that "[n]o person shall hold office" after serving two successive terms in the Senate or four consecutive terms in the House of Representatives.⁶⁸ But terms were only "considered successive unless separated by a period of four or more years."⁶⁹ Therefore, after four years, a person would be free to run for elected office again.⁷⁰

The second common restriction was a prohibition on the incumbent's name from appearing on an election ballot.⁷¹ States that limited ballot access in this manner did so in one of two ways: (1) states that limited ballot access for a set amount of time or (2) states that imposed a lifetime ban on a name from appearing on an election ballot.⁷² Arizona's Constitution is an example of how states restrict ballot access for a certain number of years because after reaching the maximum consecutive terms allowed, a person's name "shall not appear on the ballot . . ." ⁷³ However, after one full term away from the ballot, the name could reappear.⁷⁴ On the other hand, the Arkansas Constitution is an example of the lifetime ballot restriction because after reaching the maximum number of terms, it stated that the incumbent "shall not be certified as a candidate and shall not be eligible to have his/her name placed on the ballot for election to [Congress] from Arkansas."⁷⁵ States that restricted ballot access in this manner did not expressly disallow write-in campaigns for the

⁶² See, e.g., MO. CONST. art. III, § 45(a) (1992).

⁶³ See, e.g., § 16.1-01-13.

⁶⁴ Dominic A. Iannicola, Jr., Note, *People v. Constitution: The Congressional Term Limit Debate and a Constitutional Definition of Qualification*, 1994 U. ILL. L. REV. 683, 687 (1994).

⁶⁵ *Id.* at 687-88. Missouri was the only state that placed a lifetime ban on federal legislators. See MO. CONST. art. III, § 45(a).

⁶⁶ Iannicola, *supra* note 64, at 687-88.

⁶⁷ *Id.* at 687.

⁶⁸ OHIO CONST. art. V, § 8 (1992).

⁶⁹ *Id.*

⁷⁰ *Id.*; Iannicola, *supra* note 64, at 687.

⁷¹ Iannicola, *supra*, note 64, at 687-88.

⁷² See *id.* at 687-88.

⁷³ ARIZ. CONST. art. VII, § 18.

⁷⁴ *Id.*

⁷⁵ ARK. CONST. amend. LXXIII, § 3 (1992).

politicians who met the term maximums, and, in fact, these laws were understood to at least allow for such write-in activities to occur.⁷⁶

State congressional term limit laws were challenged in the courts almost as soon as they were enacted.⁷⁷ The court battle came to a conclusion when the Supreme Court decided *Thornton*.⁷⁸ In *Thornton*, the Court considered whether Arkansas's congressional term limits amendment placed unconstitutional qualifications of service in Congress.⁷⁹ After engaging in an extensive history of the Qualifications Clauses, the Court determined that the age, residency, and citizenship requirements set forward in the Qualifications Clauses were fixed and, therefore, could not be altered without amending the Constitution.⁸⁰ As a result, Arkansas's amendment was rendered an unconstitutional qualification on service in the United States Congress, and the remaining state laws regarding federal term limits were effectively rendered unenforceable.⁸¹

2. Congressional and Other Action Regarding Term Limits

Before and after the Court decided *Thornton*, legislation in support of a congressional term limits amendment was introduced in almost every legislative session since 1943.⁸² With only a few exceptional cases, roughly 150 amendment proposals have failed to reach the floor of the Senate or House of Representatives for a vote.⁸³ One of the most recent amendment proposals was introduced by Senator Ted Cruz in January of 2019.⁸⁴ This proposal, like many of its predecessors, would limit members of the Senate to two terms of six years and members of the House of Representatives to three terms of two years.⁸⁵ These term maximums are by far the most common limits included in the amendment proposals. There have been a couple of different term limit maximums included in other proposals, but even those proposals were unsuccessful.⁸⁶ Like many of its predecessors, Senator Cruz's proposal was referred to the Judiciary Committee where it has remained, without any more attention.⁸⁷

⁷⁶ Iannicola, *supra* note 64, at 687; Julia C. Wommack, *Congressional Reform: Can Term Limitations Close the Door on Political Careerism?*, 24 ST. MARY'S L.J. 1361, 1398–90 (1993).

⁷⁷ See generally Wommack, *supra* note 76 (highlighting a number of early court challenges to state-imposed congressional term limits).

⁷⁸ See generally 514 U.S. 779 (1995).

⁷⁹ *Id.* at 782–83.

⁸⁰ See generally *id.*

⁸¹ See *id.* at 783.

⁸² Casey Burgat, *Five Reasons to Oppose Congressional Term Limits*, BROOKINGS (Jan. 18, 2018), <https://www.brookings.edu/blog/fixgov/2018/01/18/five-reasons-to-oppose-congressional-term-limits/>; see also, S.J. Res. 21, 104th Cong. (1995); H.J. Res. 6, 115th Cong. (2017); S.J. Res. 1, 116th Cong. (2019);

⁸³ Kobach, *supra* note 9, at 1973; Rausch, *supra* note 15, at 36.

⁸⁴ S.J. Res. 1.

⁸⁵ Compare *id.* with H.J. Res. 6.

⁸⁶ See, e.g., S.J. Res. 21.

⁸⁷ *Actions Overview S.J. Res. 1*, LIBR. OF CONG., <https://www.congress.gov/bill/116th-congress/senate-joint-resolution/1/actions?r=1&s=1> (last visited Oct. 28, 2020). Only three congressional hearings

With congressional action failing, different organizations have been established to campaign for congressional term limits.⁸⁸ The activities of these organizations range from providing information relating to the imposition of congressional term limits; identifying politicians who support congressional term limits; and supporting state attempts to call for an Article V national convention.⁸⁹ Additionally, these organizations largely support the typical mandate of two terms of six years for the Senate and three terms of two years for the House of Representatives.⁹⁰ But these organizations have not provided any justifications for why these number of terms were chosen.⁹¹

With the support of these organizations, sixteen states have applied for an Article V national convention regarding the creation of a congressional term limits amendment.⁹² These attempts are falling short, however, as none have secured the required three-fourths of states needed to mandate that Congress call for an Article V national convention on a term limits amendment.⁹³ Thus, the effort here is slow moving enough that providing more information about congressional term limits may speed up this process.

3. Reasons Against Term Limits

The federal, state, and organizational efforts to establish congressional term limits have also given birth to several arguments against the imposition of congressional term limits. First, opponents argue that imposing congressional term limits is undemocratic because it would take power away from the voter base.⁹⁴ More specifically, a hallmark of American government is that the people get to choose who they want to represent them, and according to opponents, voters have done a good job of voting out unpopular or inefficient lawmakers, even without term limits.⁹⁵ Therefore, placing a time bar on those who serve and restricting who gets to appear on the ballot would curtail voter choice.⁹⁶

Another argument against congressional term limits is that implementing them would impair Congress's ability to efficiently function.⁹⁷ Effective legislating and policymaking can be difficult, and it often takes time

have ever been held on the congressional term limits debate: one in 1945 and two in 1995. Rausch, *supra* note 15, at 36.

⁸⁸ U.S. Term Limits is the most notable organization that advocates for congressional term limits. It also sponsors a movement to have a term limits constitutional convention. *About*, U.S. TERM LIMITS, <https://www.termlimits.com/about/> (last visited Oct. 27, 2020).

⁸⁹ *See id.*

⁹⁰ *Congressional Pledge Template*, U.S. TERM LIMITS, *supra* note 88.

⁹¹ *See About*, U.S. TERM LIMITS, *supra* note 88.

⁹² *Progress*, U.S. TERM LIMITS, *supra* note 88.

⁹³ U.S. CONST. art. V; *Progress*, U.S. TERM LIMITS, *supra* note 88.

⁹⁴ *See Rotunda*, *supra* note 2, at 566.

⁹⁵ S. REP. NO. 104-158, at 9, 12 (1995); Burgat, *supra* note 82.

⁹⁶ Burgat, *supra* note 82.

⁹⁷ *Id.*

to master the skill.⁹⁸ Knowing this, critics argue that the interests of the public are not properly served if a revolving door of new and inexperienced lawmakers arrive in Washington D.C. every year.⁹⁹ Instead, the argument is that the longer a politician keeps their job, the more comfortable and capable they become at navigating Congress.¹⁰⁰

Opponents also point out that the imposition of congressional term limits would also kick out effective lawmakers, not just the bad ones.¹⁰¹ To opponents, it seems counterintuitive to force the best employees out of a job after a set number of years because in no other profession would that practice be encouraged.¹⁰² Instead, the best employees should be able to keep working, and their skills and expertise should be utilized, so long as they remain effective and the voters are pleased in the work.¹⁰³

Finally, critics argue that congressional term limits would create a disincentive for lawmakers to engage in social and educational growth.¹⁰⁴ More specifically, any desire for politicians to cultivate relationships, especially bipartisan ones, would arguably diminish.¹⁰⁵ Establishing trust and working relationships is often not an easy thing to do in politics.¹⁰⁶ Therefore, according to critics, imposing term limits would increase the likelihood that people would more readily rely on their already established relationships, rather than attempt to make new ones.¹⁰⁷ Along the same lines, opponents believe that introducing congressional term limits would decrease a congressman's incentive to educate themselves and develop in-depth understandings of the issues and policy choices they are making.¹⁰⁸ Instead of gaining this expertise, it is argued that politicians will rely heavily upon the guidance of lobbyists, the executive branch, and administrative agencies, as these groups would have greater expertise in administering the laws and more knowledge over a particularized field.¹⁰⁹

With all of these arguments, critics remind people of the power of elections. With the looming threat of reelections, Senators and Representatives must be accountable, or else they will be voted out of office as the voting base searches for a better government.¹¹⁰ Term limit opponents argue that without the threat of losing reelection, elected officials have no

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ See S. REP. NO. 104-158, at 9 (1995).

¹⁰² Burgat, *supra* note 82.

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ See *id.*

¹⁰⁷ See *id.*

¹⁰⁸ *Id.*

¹⁰⁹ S. REP. NO. 104-158, at 9 (1995).

¹¹⁰ Roger Beckett, *Why Term Limits Should be Opposed*, (Apr. 1994), <https://ashbrook.org/publications/respub-v5n1-beckett/>.

incentive to work towards bettering the well-being of their constituents but will simply bide their time until another opportunity to promote their own self-interests arises.¹¹¹ Therefore, congressional term limits opponents assert that elections remain the most effective means of removing officials who are no longer responsive or serving the needs of their constituents.¹¹²

4. Reasons in Favor of Term Limits

Despite the foregoing arguments, supporters believe that the implementation of congressional term limits is an important step in restoring confidence in the government and have voiced many reasons supporting this position.¹¹³ First, congressional term limits would decrease what has become known as the “incumbent advantage.”¹¹⁴ The incumbent advantage refers to the “inequalities which inevitably hinder [election] challengers and aid incumbents.”¹¹⁵ Incumbents have more name recognition, media attention, and resources like campaign donations and staffers.¹¹⁶ Because of all of the advantages incumbents have over non-incumbent challengers, elections are not fair, free, or representative of the voter base.¹¹⁷ The “incumbent advantage” also contributes to astonishingly high reelection rates.¹¹⁸ Incumbents have won reelection at a rate of well over 90% during the last two decades.¹¹⁹ Congressional term limit proponents believe that introducing term limits will bring a sense of competitiveness back to the election process, as well as level the playing field for non-incumbent candidates.¹²⁰

Along the same lines, the introduction of term limits would soften the idea of careerism in politics.¹²¹ When the American government first was established, careers in politics were relatively rare.¹²² Instead, it was thought that members of Congress would serve for a relatively short amount of time and then voluntarily return home, no matter how talented they were at their

¹¹¹ Beckett, *supra* note 110; S. REP. NO. 104-158, at 10.

¹¹² S. REP. NO. 104-158, at 11.

¹¹³ Dana Lynn Tolento, Note, *Congressional Term Limits: An Optimistic Attempt to an Unsolvable Issue*, 21 SETON HALL LEGIS. J. 657, 670 (1997).

¹¹⁴ Rotunda, *supra* note 2, at 562.

¹¹⁵ Dan Greenburg, *Term Limits: The Only Way to Clean Up Congress*, HERITAGE FOUND. 5 (Aug. 10, 1994), <https://www.heritage.org/political-process/report/term-limits-the-only-way-clean-congress>.

¹¹⁶ Tolento, *supra* note 113, at 671; Greenburg, *supra* note 115, at 5.

¹¹⁷ Tolento, *supra* note 113, at 671.

¹¹⁸ See John W. Schoen, *Incumbents in Congress are Hard to Beat—and a Lot of It Has to Do with Money*, CNBC (Apr. 26, 2018), <https://www.cnbc.com/2018/04/26/here-is-why-incumbents-in-congress-are-hard-to-beat.html>.

¹¹⁹ *Id.* In 2014, incumbent congressmembers had a 95% reelection rate and in 2016 reelection rates were 97%. *Id.*

¹²⁰ Wommack, *supra* note 76, at 1383.

¹²¹ See Vance, *supra* note 14, at 439.

¹²² Greenburg, *supra* note 115, at 5. One relatively famous example of a Founding Era Representative who made a career in Congress is President John Quincy Adams. President Adams served in the House of Representatives for seventeen years after his Presidency ended, representing Massachusetts until his death in 1848. See *Senators*, U.S. SENATE, *supra* note 3.

jobs.¹²³ In the early years of Congress, this idea held to be true, and the average length of service was just around four years for the Senate and two and a half years for the House of Representatives.¹²⁴ However, the same cannot be said for today. The average years of service in Congress has grown, peaking at just over ten years for Representatives and just over thirteen years for Senators.¹²⁵ Furthermore, as of 2019, the longest currently serving Representative has been in office for forty-six years, and the longest currently serving Senator has been in office for forty-four years.¹²⁶ Congressional term limits would reintroduce the idea that serving in Congress is a personal sacrifice, for a definite period of time, and not a comfortably secure job.¹²⁷

Next, term limits ensure that fresh faces, perspectives, and ideas make their way into the halls of Congress.¹²⁸ A constant complaint about Congress is that it is ineffective and out of touch with the voters.¹²⁹ Introducing new people into the political system would help ensure that the interests of the citizen base are heard and forms the center of legislating.¹³⁰ Additionally, supporters of term limits also think that the reintroduction of citizens' concerns into policymaking will decrease the reliance that politicians place into special interest groups, who rely on long term incumbents to support their initiatives.¹³¹

Finally, term limits have widespread voter support.¹³² Throughout the 1990s, voters in a large number of states supported state initiatives to impose congressional term limits at state and national levels.¹³³ Today, voting polls still show a large amount of public support for the impositions of term limits across political, racial, and socioeconomic lines.¹³⁴ With public support for congressional term limits being so high, proponents assert that denying the people, through their elected officials, an opportunity to vote on a congressional term limit amendment is denying them an option to make a choice about term limits.¹³⁵ Supporters argue that instead of Congress alone deciding what the voters think about congressional term limits, Congress should at the very least perform their constitutional duty and propose an

¹²³ Rausch, *supra* note 53, at 35; Greenburg, *supra* note 115, at 5.

¹²⁴ WILLIAM T. EGAR ET AL., CONG. RSCH. SERV., R41545, CONGRESSIONAL CAREERS: SERVICE TENURE AND PATTERNS OF MEMBER SERVICE, 1789–2019 2 (2019), <https://fas.org/sgp/crs/misc/R41545.pdf>.

¹²⁵ EGAR ET AL., *supra* note 124, at 2.

¹²⁶ *Id.* at 3–4.

¹²⁷ See THE FEDERALIST NO. 53, *supra* note 21 (James Madison); Vance, *supra* note 14, at 436; Robert Longley, *Why No Term Limits for Congress? The Constitution*, THOUGHTCO, <https://www.thoughtco.com/why-no-term-limits-for-congress-3974547> (last updated Mar. 3, 2020).

¹²⁸ Greenburg, *supra* note 115, at 1.

¹²⁹ Iannicola, *supra* note 64 at 687; Wommack, *supra* note 76, at 1382.

¹³⁰ Wommack, *supra* note 76, at 1382.

¹³¹ *Id.* at 1383; see also S. REP. NO. 104-158, at 12–15 (1995).

¹³² Rotunda, *supra* note 2, at 566.

¹³³ See *supra* Part II.C.1.

¹³⁴ See McLaughlin & Davin, *supra* note 1.

¹³⁵ S. REP. NO. 104-158, at 16.

amendment, vote on it, and then let the citizenry decide for themselves how the government ought to work.¹³⁶ Taking this view, term limits are not necessarily as undemocratic as they may seem.¹³⁷

III. ANALYSIS

A. A Reformulated Amendment Proposal is Needed

Despite the long history and debate over the propriety of congressional term limits, it is surprising that so little discussion has been had on what term length is the most appropriate. Instead, most of the conversation regarding congressional term limits seemingly accept the two-term limit for the Senate and the three-term limit for the House as the standard, with only a couple of state statutes and old federal amendment proposals differing from those numbers.¹³⁸ However, no matter what makeup of term limits are proposed, no attempt at justifying them has been made—not even in the few congressional hearings that have taken place on the topic.¹³⁹ The lack of justifications for the specific number of terms selected renders term limits arbitrary and meaningless; thus, making it easier for congressional term limits opponents to attack any attempt to alter the status quo. Therefore, the time is more than ripe to reexamine the current state of congressional term limits, and hopefully bring the country one step closer towards the implementation of a congressional term limits amendment.

In reexamining this debate, it is important to revisit the amendment proposals and reconsider the exact number of terms that should be imposed when establishing congressional term limits. The most popular trend of two- and three-term maximums, while attractive for the swift rotation that would occur under them, are not realistic. In today's society, it takes time to legislate, which is why many people are fearful of imposing such extreme time constraints on congressmembers.¹⁴⁰ Therefore, a constitutional amendment must take into consideration the reality of modern government's weaknesses; seriously take into account the concerns that have been voiced over term limits; and remain faithful to the arguments supportive of the imposition of term limits. Once a term limit proposal does that, it is more likely that a greater share of the public—especially politicians who are the most likely population to vote on such a proposal—will be open toward the adoption of a congressional term limit amendment.

¹³⁶ *See id.*

¹³⁷ Rotunda, *supra* note 2, at 566.

¹³⁸ *See supra* Part II.C.1–2.

¹³⁹ *See, e.g.*, S. REP. NO. 104-158.

¹⁴⁰ Burgat, *supra* note 82.

B. The Proposed New Term Limit Amendment

The following amendment should be considered for ratification to the United States Constitution:¹⁴¹

Section 1- After this Article becomes operative, no person shall be elected to serve a full term as Senator more than three times or to serve a full term as a Representative more than five times, except for as stated in Section 3 below; no person who has been a Senator for more than three years of a term for which some other person was previously elected shall be elected more than twice; and no person who has been a Representative for more than a year of a term to which some other person was previously elected shall be elected more than four times.

Section 2- No election or service starting before the ratification of this Article shall be taken into account when determining eligibility for election under Section 1.

Section 3- After a Senator has reached three terms, or after a Representative has reached five terms, as defined in Section 1, the person shall not be certified as a candidate and shall not be eligible to have their name placed on the ballot for election to the United States Congress.¹⁴²

C. The Rationale Supporting the Proposed Amendment

The amendment outlined above is an example of how congressional term limits can be achieved. While also serving as a compromise, the amendment proposed can be supported by several different reasons that provide extra weight towards the imposition of congressional term limits. Thus, this proposed amendment has a more realistic chance of passage and ratification to the Constitution.

1. Realistic Term Lengths

The most strikingly different feature of this proposed amendment is the different number of terms that it would allow Senators and Representatives to serve before they would be required to leave office. Simply put, the normal two- and three-term maximums are too short. If these maximums are adopted then a Senator could be in office for twelve

¹⁴¹ Some of the language in this proposal is adopted from previous amendment proposals. For a representative example, see S.J. Res. 21 104th Cong. (1995).

¹⁴² The language in Section 3 of this proposal is adapted from state congressional term limit laws like those that were enacted in Arkansas. See ARK. CONST. amend. 73, § 3 (1992). It is commonly understood that the language in Arkansas's congressional term limit law allowed those who has reached the maximum amount of terms to still be elected into office if, and only if, they won election via a write in campaign, even though not explicitly written in the language of the law. See, e.g., Iannicola, *supra* note 64, at 687; Wommack, *supra* note 76, at 1389. Nothing in this Comment is intended to change this understanding and is proceeding under the assumption that the language in Section 3 of the proposed amendment should be given the same meaning.

consecutive years, while a Representative could be in office for a maximum of six consecutive years.¹⁴³ Both are below the average term length for many of today's congressmembers.¹⁴⁴ Instead, the maximum term lengths should fall more in line with today's averages. Under this proposal, the maximum consecutive number of years a Representative could serve would increase to ten, equaling the current average length of service for Representatives.¹⁴⁵ Additionally, the proposed term limits would increase the maximum term length for a Senator to eighteen consecutive years, which is only five years longer than the current average term for Senators, but still drastically shorter than the forty-four years, which is how long the current longest serving Senator has been in office.¹⁴⁶ Despite this proposal's overall increase on term lengths, it still serves the purpose of eliminating the longest serving members of Congress.¹⁴⁷

Moreover, increasing congressional term limits would make Congress more in line with the presidential term cycle. Under the Twenty-Second Amendment, the President can serve only two terms of four years before becoming ineligible to run again for office.¹⁴⁸ Therefore, if congressional term limits were enacted under the standard two- and three-term limits, complete terms, especially in the House of Representatives, would be shorter than what a person at most could serve as President of the United States. By increasing congressional term limits to be a couple years more than a President's term maximum, Congress would have more time to work with the President on important bills, policies, and initiatives that the government sponsors prior to leaving office. With more time, these co-equal branches of government would have more opportunities to co-govern, especially if one particular political party is controlling both branches, without an extremely fast rotation of new people in the government.

2. More Time to Cultivate Relationships and Gain Knowledge

Another advantage of increasing the number of terms Congressmembers can serve is that it would eliminate the argument that congressional term limits would decrease opportunities to build relationships and gain knowledge.¹⁴⁹ By increasing the number of terms that Senators and Representatives would be allowed to serve, this proposed amendment would give them the time required to gain the necessary relationships and knowledge needed to be an effective lawmaker.

Establishing relationships with fellow politicians is essential to

¹⁴³ See, e.g., S.J. Res. 1 116th Cong. (2019).

¹⁴⁴ See EGAR ET AL., *supra* note 124, at 2–4.

¹⁴⁵ See *id.* at 2.

¹⁴⁶ See *id.* at 2–4.

¹⁴⁷ Greenburg, *supra* note 115, at 5.

¹⁴⁸ U.S. CONST. amend. XXII, § 1.

¹⁴⁹ See Burgat, *supra* note 82.

effective governing but being able and willing to reach across the “political aisle” and compromise can take time, especially when opposite sides of the political aisle are often diametrically opposed to the other’s point of view. A congressional term limits amendment should not turn a blind eye to this reality of the modern political system. Instead, it should give congressmembers a reasonable opportunity to find common ground on any issue that is presented to them. Ten and eighteen consecutive years, for the House of Representatives and Senate respectively, should be more than enough time to establish friendships, or at least a good working relationship, with the other members of Congress.

Along the same lines, the increased term maximums would give Congressmembers more time to become knowledgeable about the issues they face when legislating, thus easing another complaint of the term limit opponents.¹⁵⁰ With added time in office, Congressmembers would be able to take the time needed to learn about complex issues of domestic or foreign policy, budget problems, environmental concerns, or any other major issue that is facing the country. Thus, fears about increased and blind reliance on the administrative state to inform legislators are also diminished by giving legislators a reasonable amount of time to learn and become knowledgeable about the laws they are creating.¹⁵¹

Despite this proposed amendment presenting a way to increase both the opportunities for cultivating relationships and increasing knowledge, there does still need to be some sort of line drawing to determine what term length is too much or not enough. The usual proposals with two- and three-term maximums have clearly been shown to not be enough. Because if that amount of time was considered to be enough to effectively govern, then a major criticism of the congressional term limits debate—lack of time to effectively legislate—would not be occurring.¹⁵² The maximums proposed above, however, should be a reasonable time frame for lawmakers to work together and make educated decisions. If not, then the power of elections would either have run their course and removed the ineffective lawmakers.¹⁵³ If elections have not effectively removed ineffective politicians within this time span, then it is likely that a new batch of lawmakers is needed to restimulate Congress.

3. Balance Careerism Concerns with Original Intent

Additionally, the increased congressional term limits presented in this proposal would balance the careerism and advantage concerns that plague both sides of the congressional term limits debate with what can be

¹⁵⁰ *See id.*

¹⁵¹ *See id.*

¹⁵² *Id.*

¹⁵³ Beckett, *supra* note 110; S. REP. NO. 104-158, at 9 (1995).

understood as the Framers' original intent when organizing Congress.¹⁵⁴ As to the advantage concern, long-serving congressmembers have the "incumbent advantage" when campaigning for reelection.¹⁵⁵ Implementing term limits will significantly decrease the applicability of the incumbent advantage because after a certain number of terms the incumbent will not be able to campaign for reelection to their seat in Congress. Therefore, advantages like name recognition will cease to play as large of a role in the election process, thus providing relatively unknown candidates with a more equal playing field when running for office.¹⁵⁶

On the other hand, the term limits proposed also combat the argument that, under a term limit regime, lawmakers would only come to office to further their individual careers.¹⁵⁷ Once enacted, these term limits would entitle Senators and Representatives to careers of eighteen and ten years, respectively. With opportunities for lengthy terms, Congressmembers would not have to immediately worry about their next job. Instead, these proposed congressional term limits would allow lawmakers to focus on making laws for a substantial part of any politician's career. Further, the length of service that this proposal offers allows for the effective lawmakers to stay in office for just about as long as, maybe even longer, than they normally are in office today.¹⁵⁸ Therefore, this proposal properly recognizes that there are indeed some highly qualified and talented lawmakers who deserve to be in office for longer than what older congressional term limit proposals would have allotted them to be in office for. This proposal also recognizes is that even effective lawmakers can become entrenched in the comfortability of holding elected office for substantial periods of time. Therefore, this proposal also seeks to eliminate those who take advantage of the system and hold office for twenty years or longer, thus truly making a career out of politics.

Thus, the congressional term limits proposed in this Comment seek to balance this careerism issue that has become common in politics with Framers' intentions when establishing Congress.¹⁵⁹ While the congressional term limits proposed above do promote longer terms, they also stay true to the Founders' idea that service in Congress was never intended to be a long career.¹⁶⁰ Imposing term limits eliminates the possibility that a person could serve in office for decades upon decades, which is ultimately what term limit proponents are seeking to do. Therefore, while the term limits proposed are an increase in the norms, they would bring Congress closer to how it was originally understood and not just a secure job for the people who are lucky

¹⁵⁴ See *supra* Part II.A.1.

¹⁵⁵ Rotunda, *supra* note 2, at 562–65.

¹⁵⁶ Greenburg, *supra* note 115, at 5; Tolento, *supra* note 113, at 671.

¹⁵⁷ Burgat, *supra* note 82.

¹⁵⁸ See EGAR ET AL., *supra* note 124, at 2–4.

¹⁵⁹ Vance, *supra* note 14, at 434–38.

¹⁶⁰ *Id.* at 435–36, 441.

enough to hold it.¹⁶¹ Balancing the individual careerism concerns of long-term office holders is vitally important in making congressional term limits a reality, and the amendment proposed would be a step in balancing them in a way that satisfies both issues.

4. Qualification Clauses and Elections Still Applicable

Next, the proposed congressional term limits outlined above do not interfere with the Supreme Court's interpretations of the Qualifications Clauses, and elections would still maintain an important role in our government. First, in *Thornton*, the Court held that the age, residency, and citizenship requirements for the Senate and House are fixed, and the States could not add additional barriers to service in Congress.¹⁶² Adding a congressional term limits amendment would not interfere with this understanding and would actually be in line with the holding of *Thornton* for a couple of reasons. First, the holding in *Thornton* allows for congressional term limits, only if added through a constitutional amendment.¹⁶³ Second, this proposal does not change any of the qualifications a person must meet in order to hold office, which is what *Thornton* was concerned with.¹⁶⁴ Instead, this proposed amendment just places limitations on how long they can serve and how, if at all, Congressmembers can return to office once their maximum term limits have run out.

The proposed term limit amendment would not completely bar people who are qualified from more service; they would just have to win an election using other means than the traditional election. Specifically, Section Three of the proposed amendment would allow for candidates who win a write-in campaign to continue to hold office, even if their subsequent election would mean serving beyond the maximum terms allotted to normally elected officials.¹⁶⁵ Therefore, the proposed amendment does not technically disqualify any person from serving in office; it simply makes it harder for them to become elected after serving a predetermined number of years.

Second, Section Three of the proposed amendment is similar to many of the state statutes that were enacted prior to the *Thornton* decision.¹⁶⁶ Many state laws on congressional term limits also barred an incumbent's name from appearing on a ballot after the maximum amount of terms had been served, but allowed for either write-ins or for the person to become eligible to reappear on the ballot after a certain number of years off the ballot.¹⁶⁷ Since

¹⁶¹ See THE FEDERALIST NO. 53, *supra* note 21 (James Madison); Longley, *supra* note 129; Vance, *supra* note 14, at 436.

¹⁶² 514 U.S. 779, 805 (1995).

¹⁶³ *Id.* at 783.

¹⁶⁴ See generally *id.*

¹⁶⁵ See *supra* Part III.B.

¹⁶⁶ Compare *supra* Part III.B. with ARK. CONST. amend. LXXIII, § 3.

¹⁶⁷ Iannicola, *supra* note 64, at 687–88.

the proposal outlined above also would allow a Congressman to be reelected via a write-in vote, it is at least consistent with many state understandings of the Qualifications Clauses and how congressional term limits should interact with them.

Furthermore, the ability for Congressmembers to subsequently win a write-in vote allows for elections to still serve as a place where voters choose who they want to represent them in Congress.¹⁶⁸ Elections and letting the voices of the people be heard are undoubtedly important aspects of the American democracy.¹⁶⁹ This proposed amendment takes that into consideration by not excluding the ability for a Senator or Representative to win their seat in Congress back by a write-in vote.

Lastly, the write-in approach taken in this proposed amendment takes the middle ground approach between the state laws on congressional term limits. This is because it is not as harsh as laws which imposed complete lifetime bans on service after reaching the maximum terms served.¹⁷⁰ And it does not simply place a time period a congressman would have to wait until their name could reappear on the ballot.¹⁷¹ First, not only would a harsh rule, like a lifetime ban, not likely get the needed support to pass a congressional term limit amendment, it also would severely impair the voter's right to elect whomever they want to represent them in Congress. Second, if the amendment were to allow the Congressman's name to reappear only a couple of years later, that would defeat the purpose of congressional term limits more than a write-in campaign would. This is because the Congressman would simply only have to bide their time before reappearing on the ballot and using all of their name recognition and power to get reelected. While this is true for write-in options as well to some extent, the write-in requires the extra step of a voter actually writing the candidate's name on their ballot, which presents an extra obstacle toward winning a write-in election. Therefore, allowing for a write-in option in a congressional term limits amendment represents the best way to achieve the goals of imposing term limits, while still remaining as faithful as possible to one of the many the hallmarks of our democracy—elections.

5. Diversity in Congress

Finally, this proposed amendment continues to advance the diversity goals of the term limits movement. One of the most attractive qualities about imposing congressional term limits, generally, is that the increased turnover of people will result in increased diversity among the people coming into

¹⁶⁸ Burgat, *supra* note 82.

¹⁶⁹ See, e.g., S. REP. NO. 104-158, at 10 (1995); Beckett, *supra* note 110.

¹⁷⁰ See MO. CONST. art. III, § 45

¹⁷¹ See, e.g., ARIZ. CONST. art. VII, § 18; OHIO CONST. Art. V, § 8.

office.¹⁷² Despite the 2018 midterm election being historically good for minorities and women, 78% percent of Congressmembers are white, and women are still heavily outnumbered by men.¹⁷³ Introducing congressional term limits would increase opportunities for historically underrepresented groups to have more representation in Congress.

In addition to the increased opportunities for diversity of representation that congressional term limits present, they also would foster an increase in the diversity of ideas. As new people come into political office, so too come different backgrounds, perspectives, and ideas. The difference of ideas that congressional term limits will bring to Congress will help it stay connected with the voter base and the issues that concern the public, rather than other groups.¹⁷⁴ In an age of diversity, Congress should be working towards representing the nation as a whole, not just the few. Congressional term limits would make Congress one step closer to returning its focus to the citizen base when making laws.¹⁷⁵ The amendment proposed above would continue to further these general diversity aims by presenting a way for more people to become active in the federal government; to remove the entrenched politicians; and to promote a revolving door of fresh ideas into the halls of Congress.

D. Alternative Approach to the Congressional Term Limit Amendment Process is Needed

Similar to the events leading up to the passage of the Seventeenth and Nineteenth Amendments, the status quo approach must be challenged in order to succeed in obtaining a congressional term limits amendment. While it is true that the states tried to simulate the successes of these amendments by implementing congressional term limits on their own Senators and Representatives, that progress was cut short by the Court's decision in *Thornton*.¹⁷⁶ However, this does not mean that creative problem-solving is no longer a valid option towards approaching the term limits debate. In fact, because of Congress's obvious interest in this issue, appealing to their concerns is likely to be the only way in which Congress will ever seriously consider a congressional term limit amendment. This newly formulated term limits along with supporting rationale might just be the change needed to spark a fire in Congress, or in the states, to get an amendment pushed through, whether it is via the normal amendment process or the states coming together

¹⁷² Iannicola, *supra* note 64, at 687; Wommack, *supra* note 76, at 1382–83.

¹⁷³ Kristen Bialik, *For the Fifth Time in a Row, the New Congress is the Most Racially and Ethnically Diverse Ever*, PEW RSCH. CTR. (Feb. 8, 2019), <https://www.pewresearch.org/fact-tank/2019/02/08/for-the-fifth-time-in-a-row-the-new-congress-is-the-most-rationally-and-ethnically-diverse-ever/>; Drew Desilver, *A Record Number of Women will be Serving in the New Congress*, PEW RSCH. CTR. (Dec. 18, 2018), <https://www.pewresearch.org/fact-tank/2018/12/18/record-number-women-in-congress/>.

¹⁷⁴ Wommack, *supra* note 76, at 1382.

¹⁷⁵ *See id.*

¹⁷⁶ *See supra* Part II.C.1.

and calling for an Article V convention.

If term limit advocates take the step towards meeting term limit opponents in the middle, as this proposed amendment seeks to do, it would signal a departure from the standard procedure in term limit debates. This departure may not be as grand or as loud as the efforts taken to secure the passage of the Seventeenth or Nineteenth Amendments, but that does not make it any less needed or important of a step towards the passage of a congressional term limits amendment.¹⁷⁷ In fact, taking the step to work toward a compromise may be the necessary step for Congress to seriously consider term limits, as something good for them, their constituents, and the country.

Clearly, the easiest way for this amendment to be passed is for Congress to have a change of heart and perform their constitutional duty to vote on an amendment proposal and send it to the states for ratification.¹⁷⁸ However, Congressmembers still might not readily support such an amendment, even if it is a compromised and well-reasoned version. Therefore, as an alternative, states can take this amendment proposal and petition Congress to call for an Article V national convention on congressional term limits.¹⁷⁹ To date, twenty-three states have congressional term limit statutes on the books.¹⁸⁰ If all twenty-three of these states support this proposal, then only a few more states would be needed in order to reach the two-thirds requirement to mandate Congress to call an Article V national convention.¹⁸¹ On the other hand, even if the requisite amount of states is not met, the pressure from states in calling for a convention might convince Congress to “deem it necessary” that congressional term limits be added as a constitutional amendment.¹⁸² If this is the case, then the pressure that the states put on Congress can ultimately result in Congress proposing a congressional term limits amendment, very similar to the paths taken for the Seventeenth and Nineteenth Amendments.¹⁸³ Whatever path is taken, this proposed amendment is the most likely amendment proposal to succeed in becoming an amendment due to all of the reasons explained above.¹⁸⁴

The path to obtaining a congressional term limits amendment may yet take time as it is likely that people—especially those already in Congress—will need to come around to the idea. But for all of the foregoing reasons, implementing congressional term limits is vitally important to the continuing

¹⁷⁷ See *supra* Part II.B.

¹⁷⁸ See U.S. CONST. art. V.

¹⁷⁹ *Id.*

¹⁸⁰ *About*, U.S. TERM LIMITS, *supra* note 88.

¹⁸¹ U.S. CONST. art. V. The required number of states to reach the two-thirds requirement in thirty-four states. *About*, U.S. TERM LIMITS, *supra* note 88.

¹⁸² U.S. CONST. art. V.

¹⁸³ See *generally* Kobach, *supra* note 9.

¹⁸⁴ See *supra* Part III.C.

growth and success of Congress and our nation as a whole. This proposal, as outlined and explained, provides what might be the best chance for a term limits amendment to be added to the Constitution. It represents what should be seen as a modern-day compromise to the congressional term limits debate and hopes to gain more support for implementing congressional term limits.

IV. CONCLUSION

Congressional term limits have been debated for decades and are extremely popular among the voting population.¹⁸⁵ Yet, no substantial effort has been made toward their enactment. A major missing piece as to why congressional term limits have not been enacted is a lack of informed discussion as to what term limit lengths are the most reasonable to impose. Because of this lack of information, the term limits that historically have been chosen seem to have been arbitrarily picked without any supporting rationale or concern for the anti-term limit supporters. This Comment shows that an amendment can be created that accounts for all issues surrounding the term limits debate, fairly responds to all of such issues, and yet still achieves the end goal of establishing a congressional term limits amendment. Hopefully, this Comment will reignite the term limits debate and spark Congress into performing their constitutional duties to propose an amendment to the states for ratification to the United States Constitution. If Congress fails, the States could alternatively enact their Article V powers and call for an amendment convention for the purpose of enacting this proposed term limit amendment. Congressional term limits are necessary to ensure the long-term stability and legitimacy of Congress, and this proposal gets congressional term limits one step closer to becoming a reality.

¹⁸⁵ McLaughlin & Davin, *supra* note 1.