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A Government of the People, by the People, for the People? Revisiting Term Limits for Congress and *U.S. Term Limits v. Thornton*

Carey J. King

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A Government of the People, by the People, for the People? Revisiting Term Limits for Congress and *U.S. Term Limits v. Thornton*

ABSTRACT

*Term limits for government officials in this country have a long but inconsistent history. On both the federal level and state levels, proponents of term limits date back to colonial times and maintained an active presence in politics during the first years of the American Republic. The push for federal term limits faded for over a century but reemerged with the ratification of the Twenty-Second Amendment in 1951 and the movement for State-imposed term limits on Congress in the 1990s. While the constitutionality of presidential term limits was decided forty-three years earlier by amendment, the question of whether the States could impose term limits on their own congressional delegates remained unanswered in 1994. Then, the Supreme Court provided an answer in the negative when it decided *U.S. Term Limits v. Thornton* in 1995. This 5-4 decision held that the States were forbidden from imposing term limits for their own federal Senators and Representatives. Although the ability of the States to enact term limits on Congress appeared to have ended in 1995, paths remain open today for State-imposed congressional term limits to become a reality. This Comment explores several of these paths and the reasons why they should be considered. Both history and modern conditions provide sound justification for why congressional term limits should be revisited today.*

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INTRODUCTION

In November 1863, as the American Civil War had been raging for over two years, President Abraham Lincoln gave an oration in Gettysburg, Pennsylvania that still echoes through the minds of Americans today. President Lincoln stated “[i]t is rather for us to be here dedicated to the great task remaining before us . . . that this nation, under God, shall have a new birth of freedom—and that government *of the people, by the people, for the people*, shall not perish from the earth.”¹ The Preamble to the United States Constitution reads, “[w]e the People of the United States, in Order to form a more perfect Union . . . and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America.”² Finally, the Declaration of Independence, passed “[f]our score and seven years”³ before Lincoln’s famous quote, references “the people” of the United States ten times in its airing of grievances against King George III.⁴ While Lincoln in 1863 dealt with a brutal conflict to determine whether all people were to be included as part of “the People of the United States,”⁵ his speech at Gettysburg embodies an idea that dates back to the pre-Revolution colonial era as well as 1776 and 1788. This idea was that the Government of the United States should be “of the people, by the people, and for the people.”⁶ A government that matches this descriptions is not one ruled by a monarch across an ocean.⁷ Nor is it an aristocratic government led by nobles entrenched in seats of power.⁸ Reportedly, when asked what kind of government would be proposed at the end of the

1. Abraham Lincoln, The Gettysburg Address (Nov. 19, 1863) (emphasis added).

2. U.S. CONST. pmbl.

3. Lincoln, *supra* note 1.

4. See THE DECLARATION OF INDEPENDENCE (U.S. 1776).

5. U.S. CONST. pmbl.

6. Lincoln, *supra* note 1.

7. See THE DECLARATION OF INDEPENDENCE (U.S. 1776).

8. See U.S. CONST. art. I, § 9, cl. 8 (“No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.”).

Convention of 1787, Benjamin Franklin said, “a republic, if you can keep it.”⁹ A republic is defined as “a government in which supreme power resides in a body of citizens entitled to vote and is exercised by elected officers and representatives *responsible to them* and governing according to law.”¹⁰

At first glance, it appears that a republican form of government was adopted and has remained in place in the United States since the Constitution was ratified in 1788.¹¹ Two-thirds of the United States Government, Congress and the Presidency, was and still is made up of elected officers and representatives granted their positions by the vote of the citizenry.¹² Today, however, it is questionable whether these elected officers and representatives remain fully accountable to the franchised citizenry that grants them commissions.

As the President has been subject to a two-term limit since the Twenty-Second Amendment was ratified in 1951,¹³ term limits at the federal level are not an unknown concept. Elected presidents, for many reasons, may be voted out by the People after one four-year term.¹⁴ A president, even if popular with enough of the People to be reelected, may only serve one additional four-year term upon reelection.¹⁵ The President, whether beloved or despised, is constitutionally mandated to leave office after serving shortly under a decade.¹⁶

9. NEIL M. GORSUCH, *A REPUBLIC, IF YOU CAN KEEP IT* 8 (2019).

10. *Republic*, MERRIAM-WEBSTER, <https://www.Merriam-Webster.com/dictionary/republic> [<https://perma.cc/859V-Q3ZK>] (emphasis added).

11. *See Constitution of the United States*, U.S. SENATE, <https://www.Senate.gov/about/origins-foundations/senate-and-constitution/constitution.htm> [<https://perma.cc/4NJY-MUP4>].

12. *See* U.S. CONST. art. I, § 2, cl. 1; U.S. CONST. art. I, § 3, cl. 1 (amended 1913); U.S. CONST. amend. XVII, cl. 1; U.S. CONST. art. II, § 1, cls. 1–3. Members of the House of Representatives have been directly elected by the People of each State since ratification. Members of the Senate were originally elected by the State legislatures but have been elected directly by the People of each State since ratification of the Seventeenth Amendment. The President at the time of ratification and still today is indirectly elected by the People through their respective State electors in the Electoral College.

13. U.S. CONST. amend. XXII, § 1.

14. *See* U.S. CONST. art. II, § 1, cls. 1–3.

15. *See* U.S. CONST. amend. XXII, § 1.

16. *See id.*; *see also* U.S. CONST. amend. XXV. While most presidents are limited to eight years in office, the Twenty-Second Amendment contains an exception that allows a president to serve up to ten years in office. U.S. CONST. amend. XXII, § 1. If a person assumes the Presidency (through the Twenty-Fifth Amendment) after more than two years into another president’s term, the Twenty-Second Amendment allows that person to be reelected twice to full four-year terms. *Id.*; U.S. CONST. amend. XXV. While this scenario has never occurred, a hypothetical illustration may be helpful to readers. President George

It also seems simple enough that members of Congress can be removed via the ballot box if their interests no longer align with those of their constituents. But after over two hundred years of a two-party system that becomes more polarized by the day, it may not always be feasible to vote out members of Congress that have served many terms as part of a majority party in a State or district with strong support *for that party*.¹⁷ Obviously, members of Congress are voted in and thus can always be voted out.¹⁸ This Comment does not attempt to argue that Senators and Representatives cannot be voted out of office. Rather, this Comment discusses the difficulty of truly holding sitting members of Congress, and the political parties they align with, accountable and how allowing the States to enact term limits, if

W. Bush, and his Vice President Dick Cheney, were elected in 2000 and took office on January 20, 2001. This means that this four-year presidential term would expire on January 20, 2005. Suppose President Bush died, resigned, or was removed from office on February 20, 2003, with Vice President Cheney assuming the Presidency on that date. The hypothetical President Cheney (assuming he did not die, resign, or be removed from office) would finish out the 2001–2005 term, serving roughly one year and eleven months as the President. *See* U.S. CONST. amend. XXV. Since President Cheney did not serve more than two years as President, he would be eligible under the Twenty-Second Amendment for reelection to two additional four-year terms, potentially serving, if twice reelected, from February 20, 2003, until January 21, 2013, (Inauguration Day is not held on a Sunday so Inauguration Day in 2013 was held on January 21). *See* U.S. CONST. amend. XXII, § 1.

17. *See* Charlie Cook, *For More Voters Than Ever, It's the Party, Not the Person*, COOK POL. REP. (Sept. 18, 2020), <https://www.CookPolitical.com/analysis/national/national-politics/More-Voters-Ever-Its-Party-Not-Person> [<https://perma.cc/4JCM-3XRX>]. Strong political party support in a State or district may lead to a prevalence of what is known as straight-ticket voting, where voters vote for all candidates associated with a single party. *Id.* While straight-ticket voting is every American's right, it may disincentivize voters conducting research into each candidate, regardless of party, before casting votes. *Id.* In other words, people often vote for "the party, not the person." *Id.*; *see also* *Large Shares of Voters Plan to Vote a Straight Party Ticket for President, Senate and House*, PEW RSCH. CTR. (Oct. 21, 2020), <https://www.PewResearch.org/politics/2020/10/21/Large-Shares-of-Voters-Plan-to-Vote-a-Straight-Party-Ticket-for-President-Senate-and-House/> [<https://perma.cc/8XEX-NUZM>] [hereinafter *Large Share of Voters*]. In the 2020 General Elections, eight-in-ten voters claimed they voted straight-ticket in the Presidential and House Elections. *Id.* Additionally, just 4% of voters claimed they planned to vote for a Senate candidate of a different party than the party of their preferred candidate for President. *Id.* The 2016 General Elections showed a similar trend. *See In Presidential Contest, Voters Say 'Basic Facts,' Not Just Policies, Are in Dispute*, PEW RSCH. CTR. (Oct. 14, 2016), <https://www.PewResearch.org/politics/2016/10/14/In-Presidential-Contest-Voters-Say-Basic-Facts-Not-Just-Policies-Are-in-Dispute/#few-intend-to-split-ballots-between-democrats-and-republicans> [<https://perma.cc/M3EV-L8M8>].

18. *See* U.S. CONST. art. I, § 2, cl. 1; U.S. CONST. art. I, § 3, cl. 1–2. All members of the House of Representatives serve two-year terms and stand for election every two years. U.S. CONST. art. I, § 2, cl. 1. All members of the Senate serve six-year terms with a rotating third of Senate standing for election every two years. U.S. CONST. art. I, § 3, cl. 1–2.

they so choose, can help ease that difficulty. Members of Congress should be accountable to the States they represent and the People of those States above all else, not to any political party. After all, political parties did not create the United States Government, the People of each State did so upon ratifying the Constitution.¹⁹

First, this Comment will examine the early history of term limits as well as how they have functioned at the state and federal levels over the past 250 years. This historical background will provide the framework for how term limits could operate today. The thoughts of the Founders and other early politicians will show that term limits have long been viewed as a viable check on the power of government. Additionally, term limits for State executives, judges, and legislators, as well as the presidential term limit, will all be useful guidance for how term limits for Congress could be structured.

Next, this Comment will explore possible methods to enact term limits for Congress. One method is the Supreme Court overruling its decision in *U.S. Term Limits v. Thornton*, which would give the States the power to enact term limits on their own members of Congress.²⁰ Justice Thomas's dissent in *Thornton* provides sound reasoning for why the States should have this power.²¹ The current composition of the Supreme Court²² makes it reasonably possible that the Court would reconsider congressional term limits should the issue present itself again.²³ Another method includes

19. See U.S. CONST. pmb1.

20. *Contra* U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 783 (1995) (“Allowing individual States to adopt their own qualifications for congressional service would be inconsistent with the Framers’ vision of a uniform National Legislature representing the people of the United States.”).

21. See *id.* at 845–926 (Thomas, J., dissenting) (discussing why the States should have the power to add qualifications).

22. See *About the Court*, U.S. SUP. CT., <https://www.SupremeCourt.gov/about/justices.aspx> [<https://perma.cc/SK8X-AP5M>]. Attempting to predict how each justice will rule in a particular case is difficult and inconsistent at best. However, it is fair to say that the Court has somewhat shifted towards textualism in recent years. See, e.g., *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2242 (2022) (“The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision . . .”); *Students for Fair Admission, Inc. v. President and Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2177 (2023) (Thomas, J., concurring) (“[T]he Fourteenth Amendment—ensures racial equality with *no textual reference to race whatsoever*.”); *Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731, 1737 (2020) (“Only the written word is the law, and all persons are entitled to its benefit.”).

23. Overruling *Thornton* could be based on a textualist interpretation of the Qualifications Clauses of Art. I, §§ 2–3. Specifically, the Qualifications Clauses have no limiting language that textually prevents either Congress or the States from adding additional qualifications. See U.S. CONST. art. I, §§ 2–3. Had the Drafters wished for the three types of

Congress proposing and the States ratifying a constitutional amendment that allows the States to enact term limits for their own members of Congress.²⁴ It is unlikely, however, that Congress would ever pass an amendment limiting the tenure of its own members.

Lastly, under a third method, the States and People therein could take matters into their own hands by applying to Congress to call a National Convention of States, the Convention proposing a congressional term limits amendment, and the States subsequently ratifying that amendment.²⁵ Though this measure has never been used, congressional term limits are something that should transcend party lines, and it is entirely possible that the first National Convention of States²⁶ could be called to make congressional term limits a reality.

Finally, this Comment concludes by proposing a hypothetical term-limits amendment and discussing how it could be adopted by either Congress or a National Convention of States and subsequently ratified by the States.

I. HISTORY AND BACKGROUND

Term limits predate the federal Constitution by several years.²⁷ Not only were term limits imposed in the States, but even the Federal Government had a short history with term limits for legislators.²⁸ While *de jure* term limits at the federal level became a distant memory by the middle of the nineteenth century, a renewed interest in term limits reappeared in the twentieth century, first for the President, and later for members of Congress.

qualifications in Art. I, §§ 2–3 to be the only qualifications imposed on members of Congress, they could have easily included limiting language saying so. For example, Art. I, § 2, cl. 2 could have been written as, “No Person shall be a Representative . . . Neither Congress nor any State shall add to or subtract from these Qualifications.” *But see id.* (showing that the Drafters chose not to add limiting language to the Qualifications Clauses; the Supreme Court in the twentieth century inferred a non-textual limitation. *See Powell v. McCormack*, 395 U.S. 486, 489 (1969) (holding that the House could not add qualifications in an effort to exclude an elected member); *see U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 783 (1995) (holding that neither Congress nor the States possessed the ability to alter or add to the qualifications of Article I, except by federal constitutional amendment).

24. *See* U.S. CONST. art. V.

25. *See id.*

26. *See id.*

27. *See* THE FUNDAMENTAL ORDERS OF CONN. of 1639, https://Avalon.Law.Yale.edu/17th_century/order.asp [<https://perma.cc/78QL-HEJN>]; PENN. CONST. of 1776, § 8, https://Avalon.Law.Yale.edu/18th_century/pa08.asp [<https://perma.cc/MWJ8-NYY4>]; ARTICLES OF CONFEDERATION of 1781, art. V, para. 2.

28. *See* ARTICLES OF CONFEDERATION of 1781, art. V, para. 2.

Though the interest in term limits, especially for Congress, has fluctuated over time, the enumerated qualifications imposed on members of Congress have remained static since Article I came into force in 1788. This Comment treats and presumes that Congress, the States, and the Court would consider future term limit laws to be additional qualifications imposed on members of Congress.

A. History of Term Limits in the United States

Term limits in the United States date to the colonial era and revolutionary period that followed it. In 1639, the Fundamental Orders of Connecticut limited the Governor of Connecticut to serving no more than once every two years.²⁹ Pennsylvania's revolutionary-era constitution imposed several limits on its elected officials.³⁰ "No person shall be capable of being elected a member to serve in the house of representatives . . . of this commonwealth more than four years in seven."³¹ "No man shall sit in [the continental] congress longer than two years successively, nor be capable of reelection for three Years afterwards . . ."³² Section 19 of Pennsylvania's 1776 Constitution provides a very informative piece on rotation in office, enacted by term limits:

For the present the supreme[] executive council of this state shall consist of twelve persons chosen in the follow-in[] manner: The freemen of the city of Philadelphia, and of [several enumerated counties] shall choose by ballot one person for the city, and one for each county aforesaid *to serve for three years and no longer*, at the time and place for electing representatives in general assembly. The freemen of [several enumerated counties] shall, in like manner elect one person for each county respectively, to serve as counsellors *for two years and no longer*. And the [several enumerated counties] shall, in like manner, elect one person for each county, to serve as counsellors *for one year, and no longer*. And at the expiration of the time for which each counsellor was chosen to serve, the freemen of [other enumerated counties] shall elect one person to serve as counsellor *for three years and no longer*; and so on every third year forever. *By this mode of election and continual rotation, more men will be trained to public business, there will in every subsequent year be found in the council a number of persons acquainted with the proceedings of the foregoing Years, whereby*

29. THE FUNDAMENTAL ORDERS OF CONN. of 1639, *supra* note 27.

30. See PENN. CONST. of 1776, § 8, *supra* note 27.

31. *Id.*

32. *Id.* § 11.

*the business will be more consistently conducted, and moreover the danger of establishing an inconvenient aristocracy will be effectually prevented.*³³

America's first federal constitution, the Articles of Confederation, imposed term limits on the delegates to the Confederation Congress.³⁴ The Articles provided that "delegates shall be annually appointed in such manner as the legislature of each State shall direct . . . and no person shall be capable of being a delegate for more than three years, in any term of six years."³⁵

Although the Convention of 1787 did not adopt federal term limits,³⁶ the issue did not immediately dissipate from the minds of politicians. In a 1788 letter to Edward Rutledge, Thomas Jefferson wrote, "I apprehend too that the total abandonment of the principle of rotation in the offices of President and Senator will end in abuse."³⁷ In 1789, Representative Thomas Tucker of South Carolina³⁸ offered the first congressional term limits proposal: "a 1-year Senate term limited to 5 years in any 6-year period and a 2-year House term limited to 6 years in any 8-year period."³⁹ Tucker moved to refer his proposal to the Committee of the Whole,⁴⁰ but his motion was defeated.⁴¹ The congressional term limit movement lost traction in the nineteenth century, but *de facto* term limits existed for the President and his cabinet. President George Washington set an unofficial two-term precedent

33. *Id.* § 19 (emphasis added).

34. See ARTICLES OF CONFEDERATION of 1781, art. V, para. 2.

35. *Id.*

36. See U.S. CONST. arts. I–III.

37. Letter from Thomas Jefferson to Edward Rutledge (July 18, 1788), <https://Founders.Archives.gov/documents/Jefferson/01-13-02-0279> [<https://perma.cc/852Q-WECT>].

38. Thomas Tudor Tucker, BIOGRAPHICAL DIRECTORY OF THE U.S. CONGRESS, <https://bioguide.congress.gov/search/bio/T000403> [<https://perma.cc/U7ZP-WA83>].

39. S. REP. NO. 104-158, at 2 (1995) (examining the legislative history of congressional term limits).

40. *Committee of the Whole: An Introduction*, CONGRESSIONAL RESEARCH SERVICE, https://www.everycrsreport.com/files/20130515_RS20147_4f74c68b256cc2492e02046f879ee60da04b1545.pdf

[<https://perma.cc/J8A9-T5P8>] ("The Committee of the Whole House on the State of the Union, more often referred to as the 'Committee of the Whole,' is the House of Representatives operating as a committee on which every Member of the House serves. The House of Representatives uses this parliamentary device to take procedural advantage of a somewhat different set of rules governing proceedings in the Committee than those governing proceedings in the House. The purpose is to expedite legislative consideration.")

41. See S. REP. NO. 104-158, at 2.

in 1796 when he decided not to run for a third term.⁴² Washington's precedent remained strong until the People granted President Franklin Roosevelt a third term in 1940.⁴³ Presidents Grant, Cleveland, Wilson, and Theodore Roosevelt all aspired to third terms, but none were successful in overcoming the *de facto* two-term limit.⁴⁴ Most presidents, however, between 1796 and 1940 followed in Washington's footsteps and did not seek third terms.⁴⁵ Presidents Polk, Buchanan, and Hayes even promised to serve only one term in office and all three kept their promises.⁴⁶ Washington's precedent was likely upheld for so long because of Washington's strong opposition to political parties and his acknowledgement of the dangers they posed.⁴⁷ In his Farewell Address, the first President provided a stark warning to future generations:

However [political parties] may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men will be enabled to subvert the power of the people, and to usurp for themselves the reins of government; destroying afterwards the very engines, which have lifted them to unjust dominion.⁴⁸

42. See NCC Staff, *On this Day: Term Limits for American Presidents*, NAT'L CONST. CTR.: CONST. DAILY BLOG (Feb. 27, 2023), <https://ConstitutionCenter.org/blog/how-we-wound-up-with-the-constitutions-only-term-limits-amendment> [<https://perma.cc/YS93-KFEA>].

43. See *1940 Electoral College Results*, NAT'L ARCHIVES, <https://www.archives.gov/electoral-college/1940> [<https://perma.cc/7QY4-KLK5>].

44. See NCC Staff, *supra* note 42.

45. See generally History.com Eds., *Presidential Elections*, HISTORY (Jan. 20, 2021), <https://www.History.com/topics/us-presidents/Presidential-Elections-1> [<https://perma.cc/G4SJ-SKTF>] (discussing the history of Presidential elections).

46. *The Napoleon of the Stump*, LIBR. OF CONG., <https://www.loc.gov/item/Today-in-History/November-05/> [<https://perma.cc/UMZ3-GG6D>] (discussing Polk's promise to serve one term); William Cooper, *James Buchanan: Domestic Affairs*, UNIV. OF VA. MILLER CTR., <https://MillerCenter.org/President/Buchanan/Domestic-Affairs> [<https://perma.cc/HF3Z-W5AW>]; Scott Bomboy, *Rutherford B. Hayes: Controversial and Little Remembered*, NAT'L CONST. CTR. (Oct. 4, 2022), <https://ConstitutionCenter.org/blog/Rutherford-B-Hayes-a-mis-understood-president> [<https://perma.cc/3NMV-4P2U>].

47. See George Washington, *Farewell Address* (Sept. 17, 1796), https://www.MountVernon.org/education/primary-sources-2/article/Washington-s-Farewell-Address-1796/?gclid=Cj0KCQjw-fmZBhDtARIsAH6H8qjlf-PYzFAZ0easxhKStZv2gszS_5BO3v3E1ZnErMzJ4FOU9_gVmes4aAhU_EALw_wcB [<https://perma.cc/B6CM-2LH5>].

48. *Id.*

President Andrew Jackson echoed Washington's sentiments on political "engines"⁴⁹ when speaking on rotation in office. President Jackson stated, "[t]here has been a great noise made about removals. . . . It is rotation in office that will perpetuate our liberty."⁵⁰ Though Jackson never spoke directly on term limits for Congress and the President, he embodied the same ideals of term limits in that "new blood" is needed every so often to ensure that liberty survives. Jackson, in his first annual message to congress, further discussed rotation and why it is necessary:

In a country where offices are created solely for the benefit of the people[,] no one man has any more intrinsic right to official station than another. Offices were not established to give support to particular men at the public expense. No individual wrong is, therefore, done by removal, since neither appointment to nor continuance in office is a matter of right. The incumbent became an officer with a view to public benefits, and when these require his removal they are not to be sacrificed to private interests. It is the people, and they alone, who have a right to complain when a bad officer is substituted for a good one. He who is removed has the same means of obtaining a living that are enjoyed by the millions who never held office. The proposed limitation would destroy the idea of property now so generally connected with official station, and although individual distress may be some times produced, it would, by promoting that rotation which constitutes a leading principle in the republican creed, give healthful action to the system.⁵¹

These words, taken together with Jackson's earlier statements and Washington's warning about political parties, explain how term limits can be an effective method to ensure "continuance in office is [not] a matter of right,"⁵² and power is not held solely by parties of political candidates, but rather by those it was always intended to belong to, the States and the People therein.

A renewed interest in term limits began in the mid-twentieth century. After President Franklin Roosevelt was elected to an unprecedented fourth

49. *Id.*

50. *Presidency*, ANDREW JACKSON'S HERMITAGE, <https://thehermitage.com/learn/Andrew-Jackson/president/presidency/> [<https://perma.cc/ABT2-5T92>].

51. Andrew Jackson, First Ann. Message to Cong. (Dec. 8, 1829), <https://Miller-Center.org/the-presidency/Presidential-Speeches/December-8-1829-First-Annual-Message-Congress> [<https://perma.cc/Y4HE-D4A6>].

52. *Id.*

term in 1944,⁵³ a subcommittee of the Senate Judiciary Committee held term limit hearings in 1945 to consider a resolution limiting service of the President, Vice President, and members of Congress to six years.⁵⁴ Congress later passed what became the Twenty-Second Amendment, limiting the President to two terms.⁵⁵ Before the finalized Twenty-Second Amendment proposal was sent to the States in 1947, Senator W. Lee O'Daniel of Texas introduced a congressional term limit amendment to the House's proposed presidential term limit amendment.⁵⁶ O'Daniel's amendment failed considerably by a vote of eighty-two to one.⁵⁷

In 1978, the Senate Subcommittee on the Constitution considered two resolutions imposing two-term limits on Senators and seven-term and six-term limits on Representatives, respectively.⁵⁸ These proposals were never voted upon by the whole Senate.⁵⁹ The 1990s saw two attempts in the Senate to limit the use of public funds in campaign financing for members of Congress who serve an aggregate of more than twelve years in Congress.⁶⁰ The first attempt failed in 1991 and was tabled by a vote of sixty-eight to thirty.⁶¹ The second attempt in 1993 also failed and was tabled by a vote of fifty-seven to thirty-nine.⁶² Interestingly, Senators Strom Thurmond, who served over thirty-five years at that point and would end up serving forty-seven years, and Chuck Grassley, who would later serve over forty years, voted against tabling both proposals,⁶³ indicating their desire to have the entire Senate consider congressional term limits. In 1995, Senator Patrick Leahy, who would later serve over forty-five years, proposed a change to a later-proposed term limits amendment that would make term

53. See *1944 Electoral College Results*, NAT'L ARCHIVES, <https://www.archives.gov/Electoral-College/1944> [<https://perma.cc/JR5L-S59D>].

54. See S. REP. NO. 104-158, at 2 (1995).

55. 22nd Amendment Signing Details, NAT'L CONST. CTR., <https://Constitution-Center.org/the-constitution/amendments/amendment-xxii> [<https://perma.cc/355Q-MLDX>].

56. See S. REP. NO. 104-158, at 2.

57. *Id.*

58. *Id.*

59. See *id.*

60. *Id.*

61. *Id.*

62. *Id.* at 3.

63. *Id.* at 2-3; *Longest Serving Senators*, U.S. SENATE (Aug. 25, 2022), https://www.Senate.gov/senators/Longest_Serving_Senators.htm [<https://perma.cc/5RPK-7F8T>]. Senators Thurmond and Grassley are mentioned in *infra* note 80.

limits apply retroactively in addition to prospectively.⁶⁴ Leahy's amendment, however, was voted down eleven to five in committee.⁶⁵

The House also considered several term limits amendments in the 1990s, but like the Senate, none of these proposals resulted in a constitutional amendment approved by Congress and sent to the States for ratification.⁶⁶ Congressional attempts to impose term limits on its members or allow the States the power to do so ceased in 1995 with the Supreme Court's decision in *Thornton*.⁶⁷ As a result, the current qualifications that remain in effect for members of Congress are those enacted in 1788.⁶⁸

B. Current Qualifications for Congress

The Qualifications Clauses are set forth in Article I of the U.S. Constitution:

No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.⁶⁹

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.⁷⁰

Both clauses include requirements pertaining to age, citizenship, and residency. Each House of Congress judges these three qualifications.⁷¹ So long as a candidate satisfies these three requirements and another law does not bar them from holding public office,⁷² that candidate must be seated in

64. S. REP. NO. 104-158, at 3; *Longest Serving Senators*, *supra* note 63. Senator Leahy is mentioned in *infra* note 80.

65. S. REP. NO. 104-158, at 3.

66. *See id.* at 3-4 (describing the legislative history of proposed term limits amendments in the House, all of which failed by votes of 135 to 297, 114 to 316, and 164 to 265).

67. *See U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995) (holding that neither Congress nor the States possessed the ability to alter or add to the qualifications of Article I, except by federal constitutional amendment).

68. *See U.S. CONST. art I, § 2, cl. 2; U.S. CONST. art. I, § 3, cl. 3.*

69. U.S. CONST. art. I, § 2, cl. 2.

70. U.S. CONST. art. I, § 3, cl. 3.

71. U.S. CONST. art. I, § 5, cl. 1.

72. *See generally* U.S. CONST. amend. XIV, § 3 (authorizing disqualifications for holding public office for acts of rebellion); U.S. CONST. art. I, § 3, cl. 7 (authorizing

Congress upon a victorious election.⁷³ Currently, no additional qualifications may be imposed by Congress other than those of Article I.⁷⁴ The States are also currently forbidden from imposing additional qualifications on members of Congress.⁷⁵ As term limits are not expressly mentioned in the Constitution, they are treated as an additional qualification outside the scope of Article I, and the Supreme Court affirmed this in *Thornton*.⁷⁶ Thus, neither Congress itself, using federal statutory law, nor the States, using state statutory or state constitutional law, may impose term limits on Congress.⁷⁷

II. PROPOSALS

In the modern era, even with advanced communications and technology, it seems that members of Congress are unreachable by many citizens. Each member represents over 700,000 people⁷⁸ in districts (members of the House) or 580,000 to almost 40,000,000 people in States (members of the Senate).⁷⁹ Even those in Congress who put forth a good-faith effort to respond to their constituents simply cannot answer directly to hundreds of thousands of people. This lack of direct accountability can lead to members of Congress staying in office for decades, whether by popularity or prevalence of straight-ticket voting, especially in States or districts where one party has a firm majority.⁸⁰ While it is likely that some of these elected

disqualification of any person convicted after being impeached); U.S. CONST. art. I, § 6, cl. 2 (disqualifying those holding any Office under the United States from being a member of Congress).

73. See *Powell v. McCormack*, 395 U.S. 486, 548 (1969) (determining that an individual elected to Congress could not be excluded solely on allegations of criminal activity and that Congress may only exclude pursuant to the three standing qualifications of Article I).

74. *Id.*; see U.S. CONST. art. I, § 2, cl. 2; U.S. CONST. art. I, § 3, cl. 3.

75. See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 827 (1995).

76. See generally *id.* (holding that a *de facto* term limit preventing one's name from appearing on the ballot was an additional qualification that could be imposed neither by Congress nor a State).

77. See *id.*; see also *Powell*, 395 U.S. at 486 (holding that the framer's intent was that the House did not have exclusionary powers beyond those expressly enumerated in Art. I § 2)

78. See *Proportional Representation*, U.S. HOUSE OF REPRESENTATIVES, <https://history.house.gov/Institution/Origins-Development/Proportional-Representation/> [<https://perma.cc/U2EG-WV3Q>].

79. See *U.S. States Ranked by Population 2022*, WORLD POPULATION REV., <https://WorldPopulationReview.com/states> [<https://perma.cc/GYU4-3GR6>].

80. See *Longest Serving Senators*, U.S. SENATE (Aug. 25, 2022), https://www.senate.gov/senators/Longest_Serving_Senators.htm [<https://perma.cc/5RPK-7F8T>]. Senators Robert Byrd (D-WV) and Strom Thurmond (D, later R-SC) served roughly fifty years each

officials deserve the longevity they have received, others may remain in office merely because they are the only choice on a ballot for voters of that majority party. Even for those deserving longevity in office, it is difficult to expect that a thirty-year veteran of Congress will be able represent a constituency with the same energy and passion or feel the same pressure as one who is new to Washington, especially compared to one who knows his or her time is limited there.⁸¹ “Those who make the worst use of their time are the first to complain of its shortness.”⁸²

Primaries are one way to get new blood into Congress, but it is no easy task to overcome an incumbent who has been in office for decades and has name-recognition. Also, the political party conducting the primary may have its own preferred candidate, putting the unpreferred candidate at an inherent disadvantage. The reality is that there are voters of all ideologies who do very little research before casting a ballot. Though it is the right of all Americans to vote as they wish, regardless of how informed they are, minimal engagement with the electoral process could be another cause of members of Congress staying in office for decades and having few, if any, real challengers. Instead of candidates being chosen because they best

in the Senate; as of 2022, Senators Patrick Leahy (D-VT) and Chuck Grassley (R-IA) are both still in Congress and have each served over forty years; *see also Members With 40 Years or More House Service*, U.S. HOUSE OF REPRESENTATIVES (Jan. 3, 2023), <https://history.house.gov/Institution/Seniority/40-Years/> [<https://perma.cc/P3LF-MLN2>]. Representatives John Dingell (D-MI) and Donald Young (R-AK) both served roughly sixty and fifty years, respectively. These statistics are not an attack on these individuals; the data are presented to illustrate the point that members of Congress from both major political parties have and continue to spend decades in office.

81. *See* Rachel Treisman, *As Congress Gets Older, One Lawmaker Makes the Case for More ‘Generational Diversity’*, NPR (Sep. 14, 2023), <https://www.npr.org/2023/09/14/1199434381/congress-old-politicians-age-term-limits> [<https://perma.cc/SJ58-HCZA>] (“Phillips, for his part, says it’s not about ageism. ‘I just believe that we are seeing too many circumstances of people who happen to be both old and also facing sometimes debilitating health issues, being in positions of power, influence in the highest levels of government,’ Phillips says. ‘And I do think we should be having those conversations about whether that’s in the best interests of both the Congress and the country.’ He says while he may be more vocal about this than many of his colleagues, he’s not alone in his beliefs. And he thinks many Americans who pay attention would agree that ‘there are probably too many people who are hanging on for personal reasons.’”). This article refers to the words of Representative Dean Phillips (D-Minnesota), aged fifty-four. *See id.* Representative Phillips is currently serving his third term in the House of Representatives. *See Representative Dean Phillips*, congress.gov/member/dean-phillips/P000616?q=%7B%22subject%22%3A%22Congress%22%7D [<https://perma.cc/Y2Q2-PWMA>].

82. Jean de La Bruyère, *Jean de La Bruyère Quotes*, BRAINYQUOTE, https://www.BrainyQuote.com/quotes/Jean_de_La_Bruyere_104446 [<https://perma.cc/HFV6-JVQE>].

represent a constituency, many multi-term members of Congress are often elected by the letter preceding their names on the ballot. With the approval rating of Congress consistently remaining below 40% for the past fifteen years,⁸³ despite both parties holding majorities,⁸⁴ it is apparent that Americans are frustrated with those sent to the Capitol. Low congressional approval is not a new phenomenon, but it is concerning that in recent years, Congress's approval rating hovers around 25%.⁸⁵ This low approval rating can be blamed on both parties, given the almost 50-50 splits in the House and Senate.⁸⁶ As there is no indication of Congress's approval significantly increasing on its own through widespread removal of members at the ballot box, this Section proposes several methods to enact term limits—a one-time process the States and People therein could use to potentially combat low congressional approval. Instead of voters having no choice on the ballot but the dominant party's same preferred candidate, term limits, at the very least, would prevent long-term entrenched incumbency in those States so-enacting. In essence, congressional term limits would ensure that those members of Congress currently contributing to low congressional approval would only do so for a limited amount of time.

Nearly thirty years have passed since the Supreme Court affirmed that neither Congress, nor the States and People therein, possess the ability to add qualifications outside of those in Article I.⁸⁷ National surveys conducted since 2000, however, indicate significant support for a constitutional amendment to place term limits on Congress.⁸⁸ It is no surprise that broad

83. See *Congress and the Public*, GALLUP, <https://news.Gallup.com/poll/1600/Congress-Public.aspx> [<https://perma.cc/Q8M8-89VK>]; *Congressional Job Approval*, REALCLEAR POLITICS, https://www.realclearpolitics.com/epolls/other/congressional_job_approval-903.html [<https://perma.cc/NT7T-SA2V>].

84. See *Party Divisions of the House of Representatives, 1789 to Present*, U.S. HOUSE OF REPRESENTATIVES, <https://history.house.gov/Institution/Party-Divisions/Party-Divisions/> [<https://perma.cc/RF46-NQFM>]; *Party Division*, U.S. SENATE, <https://www.senate.gov/history/partydiv.htm> [<https://perma.cc/NJ92-ZDCY>].

85. See *Congress and the Public*, *supra* note 83; *Congressional Job Approval*, *supra* note 83. These statistics reflect the 2022 composition of Congress.

86. See *Party Divisions of the House of Representatives*, *supra* note 84; *Party Division*, *supra* note 84.

87. See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 827 (1995); U.S. CONST. art. I § 2, cl. 2; U.S. CONST. art. I, § 3, cl. 3.

88. See *Five in Six Americans Favor Constitutional Amendment on Term Limits for Members of Congress*, PROGRAM FOR PUB. CONSULTATION, SCH. OF PUB. POL'Y, UNIV. OF MD. (Mar. 21, 2023), <https://publicconsultation.org/united-states/congressional-term-limits/> [<https://perma.cc/T33C-3DBX>]; McLAUGHLIN & ASSOC., NATIONAL CONGRESSIONAL TERM LIMITS POLL, U.S. TERM LIMITS (2021); Lydia Saad, *Americans Call for Terms Limits, End to Electoral College*, GALLUP tbl. 1 (Jan. 18, 2013)

support for term limits coincides with Congress's low approval ratings.⁸⁹ While amending the Constitution to allow the States the ability to enact term limits is a clear path forward, it is not the only way the States and People therein can lawfully acquire the ability to impose term limits on their own members of Congress.

The first method explored in this Section discusses how the Supreme Court, if a new term limits case came before it, could overrule its decision in *Thornton*. A favorable holding by the Court in such a case would likely grant the States and People therein the power to impose term limits on their members of Congress. Justice Thomas's dissent in *Thornton* provides strong bases for why the case should be overruled. Additionally, should *Thornton* remain binding precedent, two other methods examined in this Section discuss how the States and People therein could be given the right to impose term limits on their own members of Congress through a constitutional amendment. One of these methods involves a hypothetical term limits amendment proposed by Congress to then be sent to the States for ratification.⁹⁰ The other method involves a hypothetical term limits amendment proposed by the never-before-used National Convention of States to then be sent to the States for ratification.⁹¹ The two constitutional amendment methods would both comport with the *Thornton* majority's discussion on how to "properly" impose congressional term limits⁹² while also overruling the case using the Article V procedures.⁹³

A. Overrule U.S. Term Limits v. Thornton to Allow the States the Ability to Enact Their Own Term Limits

The Supreme Court overruling *Thornton* is one possible way the States and People therein can acquire the ability to impose term limits on their members of Congress. The litigation in *Thornton* began after Arkansas imposed a *de facto* term limit on its candidates for Congress. Arkansas placed a prohibition on former or current members of Congress, who had previously served a certain number of terms, from appearing on the general

<https://news.gallup.com/poll/159881/americans-call-term-limits-end-electoral-college.aspx> [<https://perma.cc/TG3H-95MN>].

89. See *Congress and the Public*, *supra* note 83; *Congressional Job Approval*, *supra* note 83.

90. See U.S. CONST. art. V.

91. See *id.*

92. See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 783 (1995) ("If the qualifications set forth in the text of the Constitution are to be changed, that text must be amended.").

93. See U.S. CONST. art. V.

election ballot.⁹⁴ The People of Arkansas enacted this legislation through a state constitutional amendment—Amendment 73.⁹⁵ Amendment 73’s pre-
amble read:

The people of Arkansas find and declare that elected officials who remain in office too long become preoccupied with reelection and ignore their duties as representatives of the people. Entrenched incumbency has reduced voter participation and has led to an electoral system that is less free, less competitive, and less representative than the system established by the Founding Fathers. Therefore, the people of Arkansas, exercising their reserved powers, herein limit the terms of elected officials.⁹⁶

The first two sections of Amendment 73 imposed term limits for the Arkansas executive and legislative branches while the third section, the one at issue in *Thornton*, applied to the Arkansas Congressional Delegation.⁹⁷ Section 3 of Amendment 73 limited Arkansas’s federal Representatives to three terms and its federal Senators to two terms.⁹⁸ Although candidates exceeding these thresholds were not explicitly barred from holding a seat in Congress, Amendment 73 was a *de facto* term limit because it prevented these candidates from being certified and having their names on the ballot for election to Congress.⁹⁹

Ten days after Amendment 73 was adopted by Arkansas voters in November 1992, and before its provisions came into force in January 1993, a suit was filed in the Arkansas Circuit Court seeking a declaratory judgement that Amendment 73 was unconstitutional.¹⁰⁰ The Arkansas Circuit Court granted summary judgement in favor of the plaintiffs and held that “[section] 3 of Amendment 73 violated Article I of the Federal Constitution.”¹⁰¹ The Arkansas Supreme Court affirmed the trial court’s ruling in a 5-2 decision.¹⁰² A three-justice plurality of the Arkansas Supreme Court “concluded that [section 3 was] unconstitutional because the States have no authority ‘to change, add to, or diminish’ the requirements for congressional service

94. *Thornton*, 514 U.S. at 783.

95. *Id.* at 783–84.

96. *Id.* at 784.

97. *Id.*

98. *Id.*

99. *See id.*

100. *Id.* at 784–85.

101. *Id.* at 785 (footnote omitted).

102. *Id.* (citing *U.S. Term Limits, Inc. v. Hill*, 872 S.W.2d 349, 351 (Ark. 1994)).

enumerated in the Qualifications Clauses.”¹⁰³ Additionally, Amendment 73 was found not to be “merely a ballot access amendment.”¹⁰⁴ While the U.S. Supreme Court later agreed that the amendment was unconstitutional for being more than a mere a ballot access amendment,¹⁰⁵ that issue is not discussed here as it is closer to an Elections Clause issue rather than a Qualifications Clause issue.

The relevant issue addressed by the U.S. Supreme Court in *Thornton* was “whether the Constitution forbids States to add to or alter the qualifications specifically enumerated in the Constitution.”¹⁰⁶ A five-Justice majority of the Court said yes, holding that States could not alter or add to the qualifications set forth in Article I.¹⁰⁷ Specifically, the majority determined that the qualifications enumerated in Article I could not be added to by Congress through statute, nor by the States through statute or state constitution, because these qualifications were fixed in the U.S. Constitution.¹⁰⁸ The Court also held that additional qualifications could only be enacted through the amendment procedures of Article V because adding qualifications are “fundamental change[s] in the constitutional framework.”¹⁰⁹ Thus, the majority invalidated Arkansas’s state constitutional Amendment 73 and foreclosed the possibility of States imposing an additional qualification of term limits on their own members of Congress absent a federal amendment.¹¹⁰

Justice Thomas came to a different conclusion in his *Thornton* dissent. The dissent’s primary argument focuses on the fact that nothing in the U.S. Constitution deprives the States from prescribing additional qualifications for their own members of Congress.¹¹¹ Essentially, Justice Thomas read the Qualifications Clauses as doing no more than they say.¹¹² He believed that the Constitution’s silence on the ability of the States to impose additional

103. *Id.* (quoting *U.S. Term Limits, Inc. v. Hill*, 872 S.W.2d 349, 356 (Ark. 1994)).

104. *Id.* at 786 (quoting *U.S. Term Limits, Inc. v. Hill*, 872 S.W.2d 349, 356–57 (Ark. 1994)).

105. *Id.* at 836. On the second issue, the Court specifically held that the state amendment was unconstitutional because it had the likely effect of handicapping a class of candidates and has the sole purpose of creating additional qualifications indirectly. *Id.*

106. *Id.* at 787.

107. *Id.* at 783; see U.S. CONST. art. I, § 2, cl. 2; U.S. CONST. art. I, § 3, cl. 3.

108. *Thornton*, 514 U.S. at 826–27.

109. *Id.* at 837.

110. *Id.* at 837–38.

111. *Id.* at 845 (Thomas, J., dissenting).

112. See *id.* at 926.

qualifications indicates that this power was reserved to the States or People by the Tenth Amendment.¹¹³

To allow the States the power to enact term limits for their own members of Congress without a federal amendment would require the Supreme Court to reconsider the issue faced in *Thornton*.¹¹⁴ Given that the Court in recent 6-3 rulings has shown its willingness to grant the States and People therein power to decide other constitutional issues,¹¹⁵ it is reasonably possible that if reconsidered, *Thornton* could be overruled. While the controversial *Dobbs* decision dealt with the issue of abortion and held it was a right not present in the U.S. Constitution, the Court's basic reasoning in *Dobbs* was that neither the Fourteenth Amendment nor any other provision of the Constitution *explicitly* protected abortion at the federal level.¹¹⁶ In other words, the majority in *Dobbs* took a strict textualist approach to the Constitution and concluded that where the Constitution is silent, and a right is not “deeply rooted in this Nation’s history and tradition,”¹¹⁷ any right or power must inherently be within the purview of the States and the People therein rather than the Federal Government.¹¹⁸

The *Dobbs* majority’s approach in the 2022 decision is similar to the argument advanced by Justice Thomas in his *Thornton* dissent. In his dissent, Justice Thomas found that the Constitution was silent on whether additional qualifications could be imposed by the States on members of Congress.¹¹⁹ Thus, Justice Thomas reasoned that since the power to add qualifications—in the form of congressional term limits—was never delegated to the United States by the Constitution, it was necessarily reserved to the States or to the People therein by the Tenth Amendment.¹²⁰ Essentially, Justice Thomas determined that the text of the Tenth Amendment makes clear that “powers reside at the state level except where the

113. See *id.* at 847–48 (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” (quoting U.S. CONST. amend. X)).

114. See *id.* (The issue being “whether the Constitution forbids States to add to or alter the qualifications enumerated in the Constitution”).

115. See, e.g., *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2248 (2022).

116. See *id.* at 2242.

117. *Id.* (citing *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997)).

118. See *id.* at 2242–43.

119. See *Thornton*, 514 U.S. at 845 (Thomas, J., dissenting) (“Nothing in the Constitution deprives the people of each State of the power to prescribe eligibility requirements for the candidates who seek to represent them in Congress. The Constitution is simply silent on this question.”).

120. *Id.* at 847–48; see also U.S. CONST. amend. X (“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”).

Constitution removes them from that level.”¹²¹ Conversely, the majority in *Thornton* concluded that the Tenth Amendment can only reserve powers to the States which existed before the Tenth Amendment was passed.¹²² Justice Thomas’s view makes more sense given that the States and People therein possessed the power to impose their own qualifications in the form of term limits under both the Continental and Confederation Congresses.¹²³ Though these bodies no longer exist, the Constitution failed to expressly take this power away from the States and People therein. As such, the Tenth Amendment preserved this power of the States as one predating the Constitution in line with Justice Thomas’s view in the *Thornton* dissent.

The majority also reasoned that the Qualifications Clauses¹²⁴ as combined with the explicit power of each House “[to] be the Judge of the Elections, Returns and Qualifications of its own Members”¹²⁵ meant the Framers intended the only qualifications for members of Congress to be those of Article I.¹²⁶ Textually, however, the majority in *Thornton* misinterprets Article I, Section 5.¹²⁷ Section 5 of Article I does not specify that the qualifications to be judged for those elected to Congress are limited only to those found in the Qualifications Clauses.¹²⁸

The fact that Article I, Section 5 states that both qualifications alongside elections are to be judged by each House of Congress,¹²⁹ also provides evidence that the *Thornton* majority inappropriately broadened the scope of the Qualifications Clauses.¹³⁰ The U.S. Constitution expressly grants the States the power to prescribe the methods used for electing members of

121. *Id.* at 848.

122. *Id.* at 802 (majority opinion) (“Contrary to petitioners’ assertions, the power to add qualifications is not part of the original powers of sovereignty that the Tenth Amendment reserved to the States. Petitioners’ Tenth Amendment argument misconceives the nature of the right at issue because that Amendment could only ‘reserve’ that which existed before.”).

123. See PENN. CONST. of 1776, § 11, *supra* note 27; ARTICLES OF CONFEDERATION of 1781, art. V, para. 1–3. The Articles of Confederation imposed a uniform term limit on members of the Confederation Congress, but also allowed the State legislatures to appoint their delegates as they saw fit.

124. See U.S. CONST. art. I, § 2, cl. 2; U.S. CONST. art I, § 3, cl. 3.

125. U.S. CONST. art. I, § 5, cl. 1.

126. See *Thornton*, 514 U.S. at 812 (“The Constitution’s provision for each House to be the judge of its own qualifications thus provides further evidence that the Framers believed that the primary source of those qualifications would be federal law.”).

127. See U.S. CONST. art. I, § 5, cl. 1.

128. See *id.* (“Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members. . . .”); U.S. CONST. art. I, § 2, cl. 2; U.S. CONST. art. I, § 3, cl. 3.

129. See U.S. CONST. art. I, § 5, cl. 1.

130. See U.S. CONST. art. I, § 2, cl. 2; U.S. CONST. art. I, § 3, cl. 3.

Congress, *but this power is subject to alteration by Congress*.¹³¹ Thus, it is apparent that the Framers felt the need to expressly limit the States' power to enact rules on the *elections* of their members of Congress,¹³² yet did not include any explicit provisions establishing a similar congressional supervisory power over the States for their *qualifications* of members of Congress.¹³³

Given that qualifications and elections appear together in Article I, Section 5 as both being judged by Congress itself,¹³⁴ questions arise as to why the Framers felt the need to expressly delegate prescriptive and supervisory election powers to the States and Congress, respectively,¹³⁵ but chose not to do so regarding qualifications.¹³⁶ Had the Framers intended the States' power to add qualifications be limited or subject to the supervision of Congress, the Framers would have simply included a provision analogous to the election powers provisions of Article I, Section 4.¹³⁷ No such provision was included, however, and this fact lends support to the idea that the Framers intended no such limit be placed on the States and no such supervisory power be granted to Congress regarding additional qualifications.

While the intent of the Framers can be helpful in determining what the law is, this intent must be combined with what the text of the Constitution explicitly says. The words of the Constitution were specifically drafted and placed within the document by the Framers so that those words, and not their intent, would ultimately govern.¹³⁸ This in turn means that words absent from the document should not be read into it. The Framers' decision

131. See U.S. CONST. art I, § 4, cl. 1 (“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.”).

132. See *id.*

133. See U.S. CONST. art. I, § 2, cl. 2; U.S. CONST. art. I, § 3, cl. 3. There is no language in either Section 2, clause 2, or Section 3, clause 3, that gives Congress power to “at any time by Law make or alter such Regulations.” U.S. CONST. art. I, § 4, cl. 1. The Qualifications Clauses simply state three constitutional qualifications and nothing more. See U.S. CONST. art. I, § 2, cl. 2; U.S. CONST. art. I, § 3, cl. 3.

134. See U.S. CONST. art. I, § 5, cl. 1.

135. See U.S. CONST. art. I, § 4, cl. 1.

136. See U.S. CONST. art. I, § 2, cl. 2; U.S. CONST. art. I, § 3, cl. 3.

137. See U.S. CONST. art. I, § 4, cl. 1.

138. See Oliver Wendell Holmes, *The Theory of Legal Interpretation*, 12 HARV. L. REV. 417, 419 (1899) (“We do not inquire what the legislature meant; we ask only what the statute means.”); Antonin Scalia, *Common-Law Courts in a Civil-Law System: The Role of United States Federal Courts in Interpreting the Constitution and Laws*, Lecture at Princeton University (Mar. 8–9, 1995) in TANNER LECTURES ON HUM. VALUES, at 92 (“It is the *law* that governs, not the intent of the lawgiver.”).

to expressly limit the States' powers over congressional elections and expressly provide supervisory election powers to Congress,¹³⁹ while failing to do the same regarding additional member qualifications,¹⁴⁰ provides evidence the Framers intended no limits be placed on the States' power to add qualifications. The only express limitation on the Qualifications Clauses is that Congress shall judge whether its members meet those qualifications in Article I and those newly created by the States.¹⁴¹ This single limitation on qualifications in Article I, Section 5¹⁴² also shows Congress has no supervisory power to reject, add, or alter any qualifications the States may impose on their own members of Congress. Unlike powers over congressional elections,¹⁴³ since the Constitution failed to expressly delegate the power to impose additional qualifications to the United States, nor expressly prohibited the States' power over the same, the States and People therein necessarily possess this power under the Tenth Amendment.¹⁴⁴

The majority in *Thornton* also argued that the Framers intended Congress to be “a uniform National Legislature representing the people of the United States.”¹⁴⁵ They point to the language of the Arkansas Supreme Court affirming the trial court's decision as support.¹⁴⁶

If there is one watchword for representation of the various states in Congress, it is uniformity. Federal legislators speak to national issues that affect the citizens of every state The uniformity in qualifications mandated in Article [I] provides the tenor and the fabric for representation in the Congress. Piecemeal restrictions by [the] State would fly in the face of that order.¹⁴⁷

While this is an understandable way to view Congress as a whole, the individual members of Congress are supposed to represent the States and People therein who elect them. This Comment does not propose to allow the States to add qualifications by imposing a uniform term limit on all 535 members of Congress at once. Instead, this Comment proposes allowing

139. See U.S. CONST. art. I, § 4, cl. 1.

140. See U.S. CONST. art. I, § 2, cl. 2; U.S. CONST. art. I, § 3, cl. 3.

141. See U.S. CONST. art. I, § 5, cl. 1.

142. See *id.*

143. See *id.*; U.S. CONST. art. I, § 4, cl. 1.

144. See U.S. CONST. amend. X.

145. *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 783 (1995).

146. *Id.* at 785.

147. *Id.* at 785–86 (quoting *U.S. Term Limits, Inc. v. Hill*, 872 S.W.2d 349, 356 (Ark. 1994)).

the States to enact term limits on their own members of Congress in their individual and representative capacities to that body. Even if one considers the whole Congress to represent the People of the United States collectively, this view does not require that each individual member of Congress be considered as representing the People of every State collectively. A Senator from California represents Californians and their interests in Congress to the same extent that a Senator from North Carolina represents North Carolinians. A Representative from New York should put New Yorkers' interests in Congress first before the interests of Texans—that is the job for a Representative from Texas.

The idea that each member of Congress represents every American citizen in all domestic matters conflicts with the premise behind “no taxation without representation.”¹⁴⁸ This famous phrase countered the British Parliament's assertion of “virtual representation.”¹⁴⁹ Virtual representation meant that every member of Parliament represented every British subject, including those without actual representation like the American Colonies.¹⁵⁰ American colonists sternly rejected the idea of virtual representation and argued that they could not be taxed by Parliament without electing their own members representing their own interests to it.¹⁵¹ This idea holds true today albeit in a slightly different form. If the States and People therein cannot impose additional qualifications, either term limits or otherwise, for their own members of Congress, do their own members really represent them in that body, or do they only represent the interests of the People of the United States collectively?

Congress surely owes duties to the People of the United States collectively, as the laws passed by Congress affect all Americans regardless of the State each one lives in. Despite this collective duty, however, members of Congress still owe individual duties to the States and People therein that

148. *The Stamp Act and the American Colonies 1763–67*, UK PARLIAMENT, <https://www.Parliament.UK/About/Living-Heritage/evolutionofParliament/legislativescrutiny/parliament-and-Empire/Parliament-and-the-American-colonies-before-1765/The-Stamp-Act-and-the-American-colonies-1763-67/> [https://perma.cc/RNL4-74QH].

149. *See id.*

150. *See id.* (“MPs in the Commons, it said, legislated for all British subjects everywhere.”).

151. *See id.* (“To this the colonists replied that they were already represented in their own colonial assemblies, elected law-making bodies which had been voting the laws and taxes for each colony from the time of their foundations. To the colonists these assemblies were the equivalent of Parliament, where they were represented and whose taxes they paid. They did not feel they should pay another unrepresentative tax on top.”).

elected them.¹⁵² Given that members of Congress are elected by the States and People therein individually,¹⁵³ and not in nationalized at-large elections, it is inherent that members of Congress owe some representative responsibilities to the States and People therein that elected them, in addition to their national responsibilities owed to the People of the United States collectively. Like the Electoral College used to elect the President,¹⁵⁴ individual State elections for members of Congress show that the individual States and People therein elect their own members of Congress, not the People of the United States or the States collectively.

Justice Thomas still serves on the Supreme Court in 2023 and will likely remain on the bench for at least a few more years. His *Thornton* dissent¹⁵⁵ could very well become the basis of a reversal of that case.¹⁵⁶ Justice Thomas's continued presence combined with the Court's recent approvals of textualism,¹⁵⁷ means that it is reasonably possible the Court would reverse *Thornton* if given the chance. If such a reversal occurs, the Court will have sanctioned the power of the States and People therein to impose additional qualifications in the form of term limits on their respective members of Congress.

152. See *Thornton*, 514 U.S. at 870 (Thomas, J., dissenting) (“Accordingly, the fact that the Constitution specifies certain qualifications that the Framers deemed necessary to protect the competence of the National Legislature does not imply that it strips the *people of the individual States of the power to protect their own interests* by adding other requirements for their own representatives.” (emphasis added)).

153. See U.S. CONST. art. I, § 2, cl. 1 (“The House of Representatives shall be composed of Members chosen . . . by the People of the several States . . .”); U.S. CONST. art. I, § 3, cl. 1 (“The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof . . .”) (*amended by* U.S. Const. amend. XVII in 1913). The direct election of Senators by the People of each State became effective with the ratification of the Seventeenth Amendment. See U.S. CONST. amend. XVII.

154. See U.S. CONST. art. II, § 1, cl. 2 (“Each State shall appoint, in such Manner as the Legislature thereof may direct, a Number of Electors, equal to the whole Number of Senators and Representatives to which the State may be entitled in the Congress . . .”).

155. See *Thornton*, 514 U.S. at 845–926 (Thomas, J., dissenting) (discussing why the States should have the power to add qualifications).

156. See *generally id.* at 782–845 (holding that the only qualifications allowed for Congress are those found in Article I).

157. See, e.g., *Dobbs v. Jackson Women’s Health Org.*, 142 S. Ct. 2228, 2242 (2022) (“The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision . . .”); *Students for Fair Admission, Inc. v. President and Fellows of Harvard Coll.*, 143 S. Ct. 2141, 2177 (2023) (Thomas, J., concurring) (“[T]he Fourteenth Amendment—ensures racial equality *with no textual reference to race whatsoever.*”); *Bostock v. Clayton Cnty., Ga.*, 140 S. Ct. 1731, 1737 (2020) (“Only the written word is the law, and all persons are entitled to its benefit.”).

B. Amend the U.S. Constitution to Allow the States the Power to Impose Term Limits on Their Own Members of Congress

As it is uncertain whether the Supreme Court would reverse or even reconsider the issue of *Thornton*, other ways of allowing congressional term limits must be examined. The most obvious methods for doing so, already blessed by the *Thornton* majority,¹⁵⁸ are the procedures for amending the Constitution. Article V sets forth the procedures for proposing and ratifying constitutional amendments.¹⁵⁹ The amendment process is broken down into two distinct phases: (1) the proposal phase, where would-be amendments are drafted, debated, and proposed; and (2) the ratification phase, where proposed amendments become part of the Constitution after being sufficiently ratified in the States.¹⁶⁰

During the first phase of the amendment process, two distinct methods exist for an amendment to be proposed to the States for ratification.¹⁶¹ Under the first method, amendments may be proposed in Congress with a two-thirds majority in each House¹⁶² (290 Representatives; 67 Senators). Under the second method, upon the application of two-thirds of the State legislatures (thirty-four States),¹⁶³ amendments may be proposed during a National Convention of States.¹⁶⁴ The words “shall call a Convention”¹⁶⁵ seem to imply that Congress has no discretion once the requisite number of State legislatures have applied for a National Convention of States to be held.¹⁶⁶ However, it is up for debate whether Congress may block a Convention during the application phase under a “single-subject theory.”¹⁶⁷ This

158. See *Thornton*, 514 U.S. at 783.

159. See U.S. CONST. art. V.

160. *Id.*

161. See *id.*

162. *Id.* A two-thirds majority in the Senate is currently sixty-seven Senators. A two-thirds majority in the House is currently 290 Representatives. Both numbers apply to fully-seated chambers and do not account for any members of Congress being absent during voting.

163. *Id.* A two-thirds majority of State legislatures is currently thirty-four State legislatures.

164. *Id.*

165. *Id.*

166. Congress appears to have no authority to reject a Convention so long as the required number of applications from State legislatures are submitted.

167. See Michael B. Rappaport, *Reforming Article V: The Problems Created by the National Convention Amendment Method and How to Fix Them*, 96 VA. L. REV. 1509, 1527 (2010) (“If different states apply for limited conventions covering marginally different subjects, then it is quite possible that Congress will use its discretion to determine that the requisite number of states have not agreed on a single subject to apply for a convention.”)

single-subject theory is not discussed here, as this Comment presumes a congressional term limits amendment would cover only the subject of State-imposed term limits for Congress.

During the second phase, there are two distinct methods for the States to ratify proposed amendments.¹⁶⁸ Either three-fourths of the State legislatures or three-fourths of State Ratifying Conventions (thirty-eight States in either case) must ratify the proposed amendment for it to become part of the Constitution.¹⁶⁹ Congress has the sole authority to decide which method is used during the ratification phase.¹⁷⁰

Before discussing each of these methods to amend the Constitution, this Comment will set forth a hypothetical congressional term limits amendment (hereinafter “Proposed Amendment”) to the U.S. Constitution to show what a potential amendment could look like. The Proposed Amendment provides:

§ I. Continual rotation-in-office, being necessary to ensure the perpetual accountability of the Congress of the United States to the States and the People therein rather than to any political party or group, is readily accomplishable through the imposition of term limits on federal Senators and Representatives.

§ II. Under this Constitution, the States existing as dual sovereigns in a system of federalism, and the People therein, from whom all federal and state powers ultimately derive, are nationally represented in the Congress of the United States. As such, the States and People therein shall have the power to prescribe term limits for their respective federal Senators and Representatives, in accordance with the laws of each respective State.

§ III. Each State and the People therein shall have the power to adopt term limits, provided that no state law term limit shall alter the lengths of the six-year and two-year terms for federal Senators and

Similarly, even if two-thirds of the states applied for the same limited convention, Congress might use its discretion to determine that limited conventions are not allowed.”). *But see* Morris D. Forkosch, *The Alternative Amending Clause in Article V: Reflections and Suggestions*, 51 MINN. L. REV. 1053, 1079 (1967) (“Congress has its own independent machinery to propose amendments in the first alternative, and to give Congress the power to review the proposals necessarily deprives the [state convention method] of its independence.”).

168. *See* U.S. CONST. art. V.

169. *See id.*

170. *See id.* (“[A]s the one or the other Mode of Ratification may be proposed by Congress.”); *United States v. Sprague*, 282 U.S. 716, 730 (1931).

Representatives, respectively, as established in the First Article of this Constitution.

§ IV. Each State and the People therein shall also have the power to not adopt term limits for their respective federal Senators and Representatives.

§ V. The Congress of the United States shall not, by its own act, adopt any national term limit for federal Senators and Representatives applicable to any or all of the States, except by the amendment procedures established in the Fifth Article of this Constitution.

While an amendment's length does not alter its force as supreme law, the Proposed Amendment would not be the shortest to the U.S. Constitution,¹⁷¹ and would be comparable to the longer amendments.¹⁷² The Proposed Amendment, however, is long enough to explicitly allow the States and People therein the power to impose term limits on their members of Congress, while also limiting the chance that this power is abused or misinterpreted.

Section I is prefatory and sets forth the reasons why the Amendment is being proposed. Political parties are mentioned specifically given that long-term incumbency is often caused by a political party's strong grasp on a congressional seat. Sections II–V form the operative provisions of the Proposed Amendment, with each Section either granting or limiting powers regarding congressional term limits. Section II grants the States and the People therein the power to impose term limits on their respective members of Congress through state law. Section II also includes language reminding readers that the People are the source of all powers in the United States at both the state and federal levels.

Section III is a limiting provision that expressly guarantees that no State can use its term limit power to alter the length of the individual terms served by members of Congress. This limit, while likely not being entirely necessary due to the language of Article I,¹⁷³ is included to ensure elected federal Senators and Representatives will still be entitled to a minimum of at least six years and two years in office, respectively, despite any term limit a State may impose.

Section IV explicitly ensures that any State or the People therein that do not wish to impose term limits on their members of Congress are not required to do so. Section V prevents Congress from imposing term limits

171. See U.S. CONST. amend. VIII (containing sixteen words).

172. See U.S. CONST. amend. XIV (containing five sections).

173. See U.S. CONST. art. I, § 2, cl. 2; U.S. CONST. art. I, § 3, cl. 3.

on any members whether by statute or a House or Senate rule. This limit was included as a check on a vindictive Congress imposing term limits on some States while refusing to apply the same term limit on other States. It also prevents Congress from applying a blanket term limit to all its members. This Proposed Amendment does not claim perfection, and if it were considered by Congress or a Convention of States, the expectation is that it would be debated or altered before being officially proposed to the States for ratification. However, if the Proposed Amendment never passes the proposal phase of the amendment procedure,¹⁷⁴ or fails to be subsequently ratified by the States,¹⁷⁵ the text of the Proposed Amendment and any debate on it or alterations to it are all for naught.

1. *Proposed Amendment to the Constitution Introduced in Congress*

English historian and politician John Dalberg-Acton once said, “[e]verybody likes to get as much power as circumstances allow, and nobody will vote for a self-denying ordinance.”¹⁷⁶ While Lord Acton’s quote has not held entirely true regarding congressional term limits proposed by Congress itself,¹⁷⁷ the theory behind the Baron’s words probably still holds true for most members of Congress today. Power is a temptation that is difficult to turn away from, especially when wielding that power is sanctioned by voters. The development of mass media and the twenty-four-hour news cycle has given members of Congress a far-reaching platform to show the public the power they utilize in the Capitol. Congress’s power has steadily increased since the beginning of the nineteenth century,¹⁷⁸ and it is difficult to imagine that the requisite two-thirds of the members of Congress would be willing to give up their voter-sanctioned power by proposing a congressional term limits amendment.

Money is another temptation that would likely prevent Congress from ever proposing to limit the terms of its members. While it should be presumed that members of Congress seek their office to serve their constituency, the job they hold provides an ample living. Members of Congress

174. See U.S. CONST. art. V.

175. See *id.*

176. John Dalberg-Acton, *Lord Acton Quote Archive*, ACTON INST., <https://www.Acton.org/research/Lord-Acton-Quote-Archive> [<https://perma.cc/L5A6-NNAM>].

177. See generally S. REP. NO. 104-158 (1995) (describing multiple attempts in both Houses of Congress to enact congressional term limits amendments in the twentieth century).

178. See Randy E. Barnett & Andrew Koppelman, *Interpretation & Debate: The Commerce Clause*, NAT’L CONST. CTR., <https://ConstitutionCenter.org/the-constitution/articles/article-i/clauses/752> [<https://perma.cc/LD8S-UHZH>].

make a comfortable \$174,000 per year with leadership positions making even more.¹⁷⁹

Taking advantage of their increased fame also provides members of Congress with other financial opportunities for outside income such as book royalties.¹⁸⁰ Though limiting one's time to be a physician, manager, teacher, or other job would seem irrational, a seat in Congress should not be looked upon as a comparable job even if it pays like one. Members of Congress are supposed to be public servants and their salaries are provided to ensure they can devote adequate time towards serving those that elected them. A seat in Congress should not be used as a social ladder to climb the ranks of society.

Even though the Proposed Amendment expressly protects the States' power to not enact congressional term limits for their respective members and ensures no alteration can be made to the length of congressional terms, the likelihood that the Proposed Amendment or a similar one would ever be proposed in Congress is low. While there has historically been some effort to propose a congressional term limits amendment in Congress,¹⁸¹ these efforts fell well short of the required thresholds.¹⁸² It can be presumed that unless Congress undergoes a drastic change and becomes willing to impose a limit on itself, the Proposed Amendment or one like it would probably not pass the two-thirds majority needed in Congress.¹⁸³

2. *Proposed Amendment to the Constitution Introduced by a Convention of States*

The other method by which the Proposed Amendment or a similar one can be introduced under Article V is during a National Convention of

179. See *Salaries*, U.S. HOUSE OF REPRESENTATIVES PRESS GALLERY, <https://PressGallery.house.gov/member-data/Salaries> [<https://perma.cc/X4KK-P7AP>]; *Senate Salaries*, U.S. SENATE, <https://www.senate.gov/senators/SenateSalariesSince1789.htm> [<https://perma.cc/VTQ6-X4GQ>].

180. See Mark Strand & Tim Lang, *How Much Do Members of Congress Get Paid?*, CONGR. INSTITUTE (Feb. 21, 2019) <https://www.CongressionalInstitute.org/2019/02/21/How-Much-do-Members-of-Congress-Get-Paid-2/> [<https://perma.cc/5S7Q-QZ7F>]; Kimberly Leonard, *Reading Pays for Members of Congress: They Just Made \$1.8 Million in Book Advances and Royalties*, INSIDER (Dec. 15, 2021) <https://www.BusinessInsider.com/Members-of-Congress-made-18-Million-as-Book-authors-in-2020-2021-12> [<https://perma.cc/9X3Y-33ZV>].

181. See S. REP. NO. 104-158, at 2 (examining the legislative history of congressional term limits).

182. See U.S. CONST. art. V.

183. See *id.*

States.¹⁸⁴ This procedure would be unprecedented as it has never been used to propose any amendments to the Constitution. Although never used, as of the time of this Comment, there are currently nineteen active State applications calling for a National Convention to propose amendments.¹⁸⁵ Thus, currently, only fifteen more State applications must be passed to reach the thirty-four required to call the Convention.¹⁸⁶ While fifteen more applications seem difficult to attain, seven States have passed Convention applications in one chamber of their State legislatures and only five States currently do not have any active legislation considering a Convention application.¹⁸⁷ Therefore, it is reasonably possible that the requisite number of State applications for a National Convention could be reached in the near future.

While most States that have passed Convention applications would be considered “red” or “purple” States, active legislation exists in many north-eastern States as well as Colorado and Hawaii, all of which are often considered “blue.”¹⁸⁸ A likely reason that a National Convention should not be considered a “blue” or “red” issue is because there is no limit on how many amendments can be proposed at a National Convention.¹⁸⁹ A National Convention, while hopefully used to enact the Proposed Amendment for congressional term limits or one similar, would likely be one of several amendments that would be debated and potentially passed. In theory, a National Convention could lead to multiple amendments being passed and sent to the States for ratification.¹⁹⁰ Although some may consider congressional term limits to be a “conservative” idea,¹⁹¹ there is no inherent reason that the “liberal” voter base, recently including many younger voters,¹⁹² would be opposed to congressional term limits given the average age of recent

184. *See id.*

185. *Progress Map: States That Have Passed the Convention of States Article V Application*, CONVENTION OF STATES ACTION, <https://ConventionofStates.com/States-that-have-passed-the-Convention-of-States-Article-v-Application> [<https://perma.cc/77C4-TU3Y>].

186. *See id.*

187. *Id.* As of the drafting of this Comment, only California, Nevada, Oregon, Idaho, and Michigan, do not have active legislation considering a Convention application. *Id.*

188. *Id.*; *see Party Affiliation by State*, PEW RSCH. CTR., <https://www.PewResearch.org/religion/religious-landscape-study/compare/Party-Affiliation/by/State/> [<https://perma.cc/HC9V-8QYW>].

189. *See* U.S. CONST. art. V (“[S]hall call a Convention for proposing *Amendments* . . .” (emphasis added)).

190. *See id.*

191. This Comment strongly discourages viewing congressional term limits as conservative or liberal, rather, it should be considered bipartisan for the reasoned discussed *supra*.

192. *See* Janice Kai Chen et al., *How Different Groups Voted According to Exit Polls and AP VoteCast*, WASH. POST (Nov. 10, 2022), <https://www.WashingtonPost.com/politics/2022/11/08/Exit-Polls-2022-elections/> [<https://perma.cc/JV8A-3BKT>].

Congresses hovers between fifty and sixty years old,¹⁹³ likely because of widespread incumbency.

If a National Convention is called, it will be interesting to see what amendments come out of it to be potentially ratified by the States. It is the hope of this Comment that the Proposed Amendment or a similar one allowing the States to impose congressional term limits on their own members of Congress would be passed at a Convention. It is also the hope of this Comment that the requisite number of States would ratify the Proposed Amendment or one similar to it. While the use of the National Convention to pass the Proposed Amendment is uncertain, there is a reasonable chance that it could become a reality, and it is reasonably likely that the Convention would pass such an amendment more willingly than Congress itself.

III. CONCLUSION

Allowing the States the power to impose term limits on their own members of Congress would push the United States closer to the Nation it was intended to be—one of dual sovereigns where the Federal Government is properly held accountable by the States and People therein. Rampant long-term incumbency has led to members of Congress becoming unreachable by most citizens, and thus Congress today is a kind of “elected aristocracy.”

A revolution was fought to ensure that no legal aristocracy existed in this country, and a civil war was fought to ensure that no social aristocracy existed either. Even if State-imposed congressional term limits do nothing to reduce the power and influence of members of Congress, term limits will guarantee that this power and influence cannot be wielded for a lifetime or period that is essentially a lifetime. Three possible routes remain open to allow the States the power to impose term limits on their members of Congress. The first requires the Supreme Court to overrule itself, something the Court has done many times throughout its history. The second and third involve passing a constitutional amendment allowing the States and People therein the power to enact term limits for their own members of Congress.

193. See *How Old Is Congress: Age of the 118th Congress*, QUORUM, <https://www.Quorum.us/data-driven-insights/the-current-congress-is-among-the-oldest-in-history/> [<https://perma.cc/3MJ8-UY77>]; Geoffrey Skelley, *Congress Today Is Older Than It's Ever Been*, FIVETHIRTYEIGHT (Apr. 3, 2023) <https://fivethirtyeight.com/features/aging-congress-boomers/> [<https://perma.cc/KT7Y-DKYT>]; *How Americans View Proposals to Change the Political System*, PEW RSCH. CTR. (Sep. 19, 2023), <https://www.PewResearch.org/politics/2023/09/19/How-Americans-View-Proposals-to-Change-the-Political-System/> [<https://perma.cc/9AW7-MYTC>] (showing that 86% of Democrats/Democrat-leaning voters support term limits for Congress).

The beauty of the hypothetical amendment proposed by this Comment is the fact that it allows the States the power to choose whether they enact congressional term limits or not. They are not forced into enacting term limits and would have full discretion not to do so. A Supreme Court reversal of *U.S. Term Limits v. Thornton* could provide the same right of each State and the People therein to choose.

In conclusion, allowing the States and People therein to enact term limits on their own members of Congress will bring “a new birth of freedom” to the United States, and return the Federal Government to what it was designed to be: not one of elected aristocrats holding office for decades, but one “of the [P]eople, by the [P]eople, for the [P]eople,” and accountable to the People.¹⁹⁴

*Carey J. King**

194. Lincoln, *supra* note 1.

* J.D. Candidate, 2024, Campbell University School of Law; B.A. Exercise & Sport Science, Anthropology, 2020, University of North Carolina at Chapel Hill. First and most importantly, I thank the Lord for putting me in the position to have this Comment published. I also thank my parents, Keith and Lesley, and my sister, Mary George, for all their love and support throughout the drafting process. Additionally, I thank the rest of my family and friends, too numerous to individually name, for their encouragement throughout. Finally, a special thank you to the entirety of Volume 46 of the Campbell Law Review for the hard work that went into preparing this Comment for publication.