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ARTICLES

REPUBLICAN REVOLUTIONARIES AND TEA PARTY PATRIOTS: A PUBLIC CHOICE ANALYSIS OF CONGRESSIONAL TERM LIMITS

KEITH J. LARSON[†]

INTRODUCTION

James Madison warned that constitutional amendments rooted in the fleeting passions of the people, not their prudence, could undermine the stability of the Republic.¹ He feared that turning ordinary political disputes into constitutional crises would, “in great measure, deprive the government of that veneration which time bestows on everything, and without which perhaps the wisest and freest governments would not possess the requisite stability.”² Specifically, with regard to restricting who may seek election to Congress, Madison hoped that the few qualifications enumerated in the Constitution³ would remain unchanged and immune from political exploits. He insisted that “[t]he qualifications of electors and elected were fundamental

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¹ THE FEDERALIST NO. 49, at 310–14 (James Madison) (Clinton Rossiter ed., 2003).

² *Id.* at 311.

³ The Qualifications Clause regarding Representatives states, “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.” U.S. CONST. art. I, § 2, cl. 2. The Clause on Senators is the same, except that it sets a minimum age of thirty and a period of citizenship of nine years. *Id.* § 3, cl. 3.

articles in a Republican Gov[ernment] and ought to be fixed by the Constitution. If the Legislature could regulate those of either, it c[ould] by degrees subvert the Constitution."⁴

Between 1990 and 1994, more than two hundred years after Madison spoke these cautionary words, a furor of anti-incumbent sentiment⁵ stirred the voters of twenty-two states to pass legislation imposing term limits on members of Congress.⁶ Many legal scholars consider it to be the largest grassroots movement in recent American history.⁷ At the same time, leading up to the 1994 midterm elections, congressional term limits served as a key campaign issue in the Republican Revolution's "Contract with America."⁸ Then, in 1995, a narrow five-to-four majority of the United States Supreme Court held in *U.S. Term Limits, Inc. v. Thornton* that any changes with respect to congressional term limits may only be made through the amendment procedures set forth in the Constitution.⁹ If the qualifications listed in the Constitution¹⁰ are to be altered, the Constitution itself must be

⁴ Powell v. McCormack, 395 U.S. 486, 533-34 (1969) (quoting 2 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 249-50 (Max Farrand ed., 1911)).

⁵ See Martha Angle, *Initiatives: Vox Populi or Professional Ploy?*, 52 CONG. Q. WKLY. REP. 2982, 2982 (1994) (observing that the term limits movement of the early 1990s was fueled by anti-incumbent feelings towards members of Congress).

⁶ See Elizabeth Garrett, *Term Limitations and the Myth of the Citizen-Legislator*, 81 CORNELL L. REV. 623, 624 n.1 (1996) (listing the twenty-two state laws enacting federal term limits).

⁷ See, e.g., Walter M. Frank, *Individual Rights and the Political Process: A Proposed Framework for Democracy Defining Cases*, 35 S.U. L. REV. 47, 89 (2007) ("In terms of practical impact, it is hard to overstate the importance of *U.S. Term Limits, Inc. v. Thornton*, for it stopped in its tracks the movement for congressional term limits, perhaps the most significant grass roots democratic reform movement since the Progressive Era."); Jeffrey A. Karp, *Explaining Public Support for Legislative Term Limits*, 59 PUB. OPINION. Q. 373, 373 (1995) ("Not since the tax revolt swept across the country in the late 1970s has the United States witnessed such a swift and popular uprising.").

⁸ CONTRACT WITH AMERICA: THE BOLD PLAN BY REP. NEWT GINGRICH, REP. DICK ARMEY, AND THE HOUSE REPUBLICANS TO CHANGE THE NATION 157-61 (Ed Gillespie & Bob Schellhas eds., 1994) ("Our *Contract with America* will guarantee the first ever vote on a constitutional amendment for term limits."); Karen Foerstel, *Term Limits Movement Strikes Out in New Direction*, 58 CQ WKLY. 235, 235 (2000) (noting that term limits "dominated public discourse" in the 1990s and "helped sweep Republicans to power in Congress").

⁹ 514 U.S. 779, 837 (1995).

¹⁰ U.S. CONST. art. I, §§ 2, 3.

amended.¹¹ Accordingly, under Article V,¹² the fate of congressional term limits was to be determined by the members of Congress.¹³

Following *Thornton*, Republican members of Congress failed to deliver on their campaign promise to pass a term limits constitutional amendment.¹⁴ Also, nearly all reneged their own self-imposed limits.¹⁵ The movement appeared to have lost its momentum. However, fifteen years later, the issue has now resurfaced. During the 2010 congressional elections, the populist Tea Party tapped into widespread anti-incumbent feelings to revive public support for a proposed congressional term limits amendment.¹⁶

¹¹ *Thornton*, 514 U.S. at 837.

¹² Article V provides:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

U.S. CONST. art. V.

¹³ In theory, Article V provides two methods of offering an amendment to the Constitution: (1) proposal by two-thirds of both houses of Congress or (2) proposal by a national convention called by two-thirds of the state legislatures. *Id.* As a practical matter, congressional proposal by two-thirds of both houses is the likely means of offering an amendment, given that a national convention has not occurred since the original Constitutional Convention of 1787.

¹⁴ See Jennifer Babson, *House Rejects Term Limits; GOP Blames Democrats*, 53 CONG. Q. WKLY. REP. 918, 918 (1995); David S. Cloud, *Term Limits Stall in Senate; GOP Blames Democrats*, 54 CONG. Q. WKLY. REP. 1153, 1153 (1996) ("A vote to shut off debate on the term limits amendment (S[.]J[.] Res[.] 21) failed 58-42, two short of the 60 votes necessary to invoke cloture. All 53 Senate Republicans voted for cloture . . .").

¹⁵ See Shawn Zeller, *Term Limits: Paying To Overstay*, 67 CQ WKLY. 2568, 2568 (2009) (noting that sixty-eight of the seventy-three lawmakers who took term limits pledges broke them).

¹⁶ See Jay Newton-Small, *Term Limits: No Magic Pill for Washington's Woes*, TIME.COM (Feb. 23, 2010), <http://www.time.com/time/politics/article/0,8599,1967192,00.html#ixzz0y7LOZAfP> ("Once more, term limits has [sic] become a rallying cry from the Tea Party movement to dozens of state initiatives that will be on the ballot come November."); see also *infra* Part IV.

Legal academics and politicians have long analyzed and debated the desirability of a term limits amendment.¹⁷ Advocates argue that office rotation prevents lawmakers from becoming entrenched career politicians who are more interested in retaining their political power than in representing the people.¹⁸ Critics argue that compulsory term limits would waste legislative experience developed through years of lawmaking¹⁹ and would actually increase the influence of special interest lobbyists.²⁰ In addition, opponents maintain that constituents should be permitted to vote for whomever they wish.²¹

While there is a vast body of literature contemplating the impact term limits might have on the lawmaking process, little attention has been focused on why lawmakers would decide to

¹⁷ See, e.g., LEGISLATIVE TERM LIMITS: PUBLIC CHOICE PERSPECTIVES (Bernard Grofman ed., 1996) (compiling a collection of twenty articles written by legal scholars regarding term limits); LIMITING LEGISLATIVE TERMS (Gerald Benjamin & Michael J. Malbin eds., 1992); Linda Cohen & Matthew Spitzer, *Term Limits*, 80 Geo. L.J. 477, 479–83 (1992); Garrett, *supra* note 6, at 630–34.

¹⁸ CONTRACT WITH AMERICA: THE BOLD PLAN BY REP. NEWT GINGRICH, REP. DICK ARMEY, AND THE HOUSE REPUBLICANS TO CHANGE THE NATION, *supra* note 8, at 159 (“An entrenched body of politicians erodes Congress’s accountability and responsiveness. An enormous national debt, deficit spending, and political scandals are but a few of the results. Although enacting term limits would not be a panacea, it will be the first step to putting our legislative system back on track.”); GEORGE F. WILL, RESTORATION: CONGRESS, TERM LIMITS, AND THE RECOVERY OF DELIBERATIVE DEMOCRACY 200 (1993) (“Many Americans wish that a lot of legislators had a better sense of American life, and particularly of what it is like to be on the receiving end of the high-minded laws and regulations that gush like a cataract from Washington. Term limits, guaranteeing a steady rotation of offices, would help.”); Cleta Deatherage Mitchell, *Limiting Congressional Terms: A Return to Fundamental Democracy*, 7 J.L. & POL. 733, 739 (1991) (observing that term limits advocate desire to increase turnover in Congress and replace the “career orientation” of officeholders).

¹⁹ See Doug Bandow, *Real Term Limits: Now More Than Ever*, CATO INST. POL’Y ANALYSIS, March 28, 1995, available at <http://www.cato.org/pubs/pas/pa-221.html> (reporting that Republican House Speaker Newt Gingrich argued that “[a] six-year learning curve is just too short”).

²⁰ Gary S. Becker, *Reforming Congress: Why Limiting Terms Won't Work*, BUS. WK., Aug. 6, 1990, at 18 (concluding that members of Congress “will be tempted to favor groups that can provide employment or consulting fees when their careers on Capitol Hill are over.”); Cohen & Spitzer, *supra* note 17, at 510–19 (arguing that term limits force lawmakers to think about their careers after politics, which encourages them to provide legislative benefits to their prospective employers, such as lobbyists and governmental agencies).

²¹ *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 819 (1995) (“Our conclusion that States lack the power to impose qualifications vindicates the same ‘fundamental principle of our representative democracy’ . . . namely, that ‘the people should choose whom they please to govern them.’”).

back passage of this procedural tool. And yet this is the pivotal question, given that Congress is the only legislative body authorized to send a proposed constitutional amendment to the states for ratification.²² This Article attempts to fill this gap in the literature. Using public choice theory²³ and empirical data,²⁴ this Article develops a model that allows us to better predict when, if ever, members of Congress might act to pass a proposed term limits constitutional amendment.

Part I places the term limits movement of the 1990s in an historical context, recounting the underlying causes of the Republican Revolution, the Supreme Court's opinion in *Thornton*, and the eventual decline in lawmaker support for term limits. Part II analyzes the public choice models previously applied to the term limits discussion and their limitations and proposes a new model. The new model submits that politician support for term limits is strategic rather than sincere. It predicts that those seeking election or reelection to Congress will back term limits when both of two political circumstances exist. First, a politician will support term limits if he or she is a member of an historically underrepresented ideological political faction. For example, the term limits campaign of the 1990s was launched by conservative members of the GOP²⁵ in an effort to oust tenured Democrats and even moderate Republicans. In the decades leading up to the Republican Revolution of 1994, underrepresented conservatives grew frustrated because conservative voters continued to reelect liberal Democrats due to the many political advantages afforded incumbents.²⁶ Since term limits would eliminate the incumbency advantage, politicians who are members of an ideologically underrepresented group—such as conservative members of the GOP in the early 1990s—stand a better chance of winning election under a term limits regime. The GOP was confident that Democrats, stripped of the inherent advantages of incumbency, would lose seats to conservative Republicans—enough, they believed, to allow the GOP to retake control of the House of Representatives for the

²² *Supra* notes 9–13 and accompanying text.

²³ *See infra* Part II.

²⁴ *See infra* Part III.

²⁵ “GOP” is the nickname for the Republican Party and the two titles are used interchangeably. GOP originally stood for “Gallant Old Party.”

²⁶ *See infra* note 29 and accompanying text.

first time since 1953. The second condition has to do with voter dissatisfaction with Congress. Both the Republican Revolution of the 1990s and the Tea Party movement of 2010 used the term limits issue to capitalize on the anti-incumbent mood of the country.²⁷ It is not novel to suggest that voter support for term limits is directly correlated to the public's distrust and disapproval of members of Congress.²⁸ However, this Article is more concerned with legislator support for term limits. It argues that legislators will take public positions in favor of term limits to signal to voters that they are not part of the problem in Congress; rather, that they are attempting to fix the institution. Politicians will use the term limits issue to wrap anti-incumbent attitudes into a popular political platform. In short, politicians running for office will endorse term limits when public opinion of Congress is at its lowest.

Part III of this Article tests the validity of this strategic model with empirical data that has not yet been applied in this context. It also addresses the strengths and limitations of the captured data. Part IV applies the lessons learned from the analysis of the Republican Revolution to the current term limits movement led by the Tea Party. It concludes that this movement is likely to fail because the first condition of the strategic model—that conservatives feel historically underrepresented—does not exist.

I. THE CONGRESSIONAL TERM LIMITS CAMPAIGN OF THE 1990S

In the early 1990s, conservatives believed that Congress was ideologically out of step with the American people. Career politicians were being reelected not because voters identified with their views, but because of the incumbency advantage. This advantage, which is well documented in political science literature,²⁹ includes the use of congressional staff and office

²⁷ See, e.g., Gary C. Jacobson, *The 1994 House Elections In Perspective*, 111 POL. SCI. Q. 203, 208 (1996) ("Republican[s] . . . offered themselves as vehicles for expressing antigovernment rage by taking up the banner of structural panaceas—term limits, a balanced budget amendment, cuts in congressional staff and perks—that were broadly popular . . ."); Angle, *supra* note 5; Newton-Small, *supra* note 16.

²⁸ See, e.g., JOHN R. HIBBING & ELIZABETH THEISS-MORSE, CONGRESS AS PUBLIC ENEMY: PUBLIC ATTITUDES TOWARD AMERICAN POLITICAL INSTITUTIONS 74–82, 121, 156 (1995).

²⁹ For a review of the institutional and electoral advantages of congressional incumbents, see JEFFREY M. STONECASH, REASSESSING THE INCUMBENCY EFFECT

resources to provide valuable services to constituents (voters), the franking privilege to finance mailings to constituents, increased name recognition and visibility, easier access to media coverage, and regular opportunities to provide legislative benefits to constituents.³⁰ In short, as Political Science Professor David R. Mayhew points out, “[a] vital advantage enjoyed by House incumbents is that they are much better known among voters than their November challengers.”³¹ Republican House Speaker Newt Gingrich went so far as to say that, systematically, “[t]he balance of power in favor of professional politicians as incumbents . . . has made a mockery of the process of open elections.”³² This Article posits that the GOP, the minority party in Congress for forty years, hoped that term limits would procedurally eliminate this electoral advantage by forcing incumbents from office.

This Section sets the stage for the discussion on term limits. It begins with an analysis of the development and downfall of the Democratic incumbency advantage. Specifically, it looks at how Republican frustration over nearly six decades of Democratic congressional majorities³³ and a reelection rate of ninety percent³⁴ triggered the term limits movement among conservative politicians. Next, it reviews the Supreme Court’s opinion in *Thornton*. Finally, with the Supreme Court holding that the only way to impose congressional term limits is through constitutional amendment, this Article analyzes how the GOP fared in its attempts to propose such an amendment.

(2008); WALTER J. OLESZEK, CONGRESSIONAL PROCEDURES AND THE POLICY PROCESS 33–34 (8th ed. 2011); DAVID R. MAYHEW, CONGRESS: THE ELECTORAL CONNECTION 36, 50–52, 84–85 (2d ed. 2004); and EARL BLACK & MERLE BLACK, THE RISE OF SOUTHERN REPUBLICANS 152 (2003) (“Incumbency is the most powerful resource in congressional elections.”).

³⁰ MAYHEW, *supra* note 29, at 50.

³¹ *Id.*

³² 141 CONG. REC. 9670 (1995) (statement of Rep. Gutierrez) (quoting Rep. Newt Gingrich).

³³ See NORMAN J. ORNSTEIN ET AL., VITAL STATISTICS ON CONGRESS 2008, at 46–47 (2008) (reporting that, between 1931 and 1995, the Democratic Party won the majority in the House for fifty-eight of the sixty-four years and in the Senate for fifty of the sixty-four years).

³⁴ *Id.* at 57–58.

A. *Republican Realignment and the "Contract with America"*³⁵

Nearly six decades of reigning Democratic majorities began in 1931.³⁶ The public blamed GOP President Herbert Hoover and the Republicans in Congress for the stock market crash of 1929.³⁷ As such, economic tragedy turned voters against the Republican Party in many congressional districts.³⁸ President Franklin D. Roosevelt's ensuing popular response to the Great Depression and World War II secured lasting political support, laying the base for a Democratic Party majority in the House for fifty-eight of the subsequent sixty-four years.³⁹ At the same time, reelection rates steadily increased,⁴⁰ essentially guaranteeing Democratic control of the country's legislative branch.

For the next sixty years, the incumbency advantage shielded Democrats from serious Republican challengers.⁴¹ Majority party status meant Democratic members could serve as committee chairs.⁴² Committee chairmanships in Congress provide the chair with the ability to move legislation.⁴³ Democratic incumbents could thus advertise to voters that they were in a far better position to provide legislative benefits than were their Republican contenders. Incumbent members took credit for popular governmental programs.⁴⁴ Reelection grew easier with

³⁵ For an extensive discussion and analysis of the changes in the composition of the Republican and Democratic parties in the 1970s and 1980s, see generally BARBARA SINCLAIR, *PARTY WARS: POLARIZATION AND THE POLITICS OF NATIONAL POLICY MAKING* (2006); GARY W. COX & MATHEW D. MCCUBBINS, *LEGISLATIVE LEVIATHAN: PARTY GOVERNMENT IN THE HOUSE 139-278* (2d ed. 2007); and BLACK & BLACK, *supra* note 29.

³⁶ See ORNSTEIN ET AL., *supra* note 33.

³⁷ See JEFFREY M. STONECASH, *POLITICAL PARTIES MATTER: REALIGNMENT AND THE RETURN OF PARTISAN VOTING 23* (2006).

³⁸ *Id.*

³⁹ See BLACK & BLACK, *supra* note 29, at 41-42, 56-57.

⁴⁰ See ORNSTEIN ET AL., *supra* note 33, at 57-58.

⁴¹ See *supra* note 29 and accompanying text.

⁴² See OLESZEK, *supra* note 29, at 108-11.

⁴³ *Id.* at 109 ("A chair who favors a bill can give it top priority by mobilizing [committee] staff resources, compressing the time for hearing and markups, and, in general, encouraging expeditious action by committee members.").

⁴⁴ See MAYHEW, *supra* note 29, at 53 ("The political logic of this, from the congressman's point of view, is that [a voter] who believes that a member can make pleasing things happen will no doubt wish to keep him in office so that he can make pleasing things happen in the future."); BLACK & BLACK, *supra* note 29 ("As members of the majority party, often serving on key committees that handled legislation vital to their districts, southern Democrats could represent their constituents far better than Republicans could plausibly claim to do.").

time as prospective Republican candidates deemed it senseless to run for office against Democrats who had won landslide majorities in the past.⁴⁵ Defeating Democratic incumbents had become all but impossible.⁴⁶

This Democratic dominance was strongest in the southern states.⁴⁷ Immediately after the Civil War, southerners aligned themselves with the Democratic Party because the GOP's Reconstruction economic agenda tended to benefit northern industry at the expense of the more agrarian South.⁴⁸ Dubbed, the "Solid South,"⁴⁹ electoral support of Democratic candidates endured until the 1980s.⁵⁰ By the early 1940s, however, public support for the New Deal had faded. Conservative southern Democrats began caucusing with Republicans who opposed the New Deal.⁵¹ This bipartisan coalition began to divide along party lines in the mid-1960s.⁵² The GOP's opposition to the Civil Rights Act,⁵³ and the nomination of Barry Goldwater as the GOP's presidential candidate—a man who "reveled in the title 'Mr. Conservative'"⁵⁴—attracted conservative southern Democrats to the Republican Party. Despite losing at the national level to President Lyndon B. Johnson, Goldwater had effectively advanced the conservative Republican agenda throughout the South.⁵⁵ Conservative voters who had previously aligned with southern Democrats were now backing Republicans.⁵⁶ The Democratic Party became more liberal,⁵⁷

⁴⁵ See BLACK & BLACK, *supra* note 29, at 152–71.

⁴⁶ *Id.*

⁴⁷ *Id.* at 152. For the purposes of this Article, the "southern states" include Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

⁴⁸ *Id.* at 11–12.

⁴⁹ *Id.* at 11.

⁵⁰ *Id.* at 13.

⁵¹ See STONECASH, *supra* note 37, at 24–26.

⁵² *Id.*

⁵³ See BLACK & BLACK, *supra* note 29, at 76.

⁵⁴ See Julie Cart, *Arizona, Washington Memorialize Goldwater*, L.A. TIMES, June 4, 1998, at A20 ("Goldwater reveled in the title 'Mr. Conservative' and has been given credit for reviving and reshaping the Republican Party. His ideas about less government and a strong military helped launch the political career of Ronald Reagan, among others.")

⁵⁵ See BLACK & BLACK, *supra* note 29, at 33, 127; Cart, *supra* note 54.

⁵⁶ See STONECASH, *supra* note 37, at 28–31.

⁵⁷ *Id.*

while the GOP grew more conservative.⁵⁸ At the same time, conservatism was growing, both regionally and at the national level, as significantly more Americans identified themselves as more conservative than liberal.⁵⁹ Unfortunately for the GOP, this swell in conservatism did not change results at the congressional ballot box. As late as 1984, more than sixty-two percent of southerners voted for the GOP's conservative presidential candidate Ronald Reagan while fewer than forty percent of those same voters backed the GOP's congressional candidates.⁶⁰

Republican frustration over their isolation from power came to a head when Reagan's landslide presidential wins in 1980 and 1984 failed to yield a Republican majority in the House.⁶¹ Political science professors Earl and Merle Black argue that:

Once in office, most House Republicans could make incumbency work for them. Their principal frustration was that—as far ahead as anyone could see—Republicans were bound to remain the minority party in the House of Representatives. No matter how much seniority any of them might acquire and no matter how able or energetic any of them might be, they could not realistically expect to chair a House committee or become part of a majority leadership team.⁶²

Republicans wanted a change. A revolution was brewing.

The will for change came from the younger, more conservative Republican members led by Representative Newt Gingrich of Georgia.⁶³ In the Ninety-eighth Congress (1983–1985), Gingrich and other junior Republicans organized the Conservative Opportunity Society⁶⁴ to challenge House

⁵⁸ *Id.*

⁵⁹ See *infra* fig.2 and accompanying text.

⁶⁰ JERROLD G. RUSK, A STATISTICAL HISTORY OF THE AMERICAN ELECTORATE 140, 234 (2001).

⁶¹ See BLACK & BLACK, *supra* note 29, at 167.

⁶² *Id.*

⁶³ SINCLAIR, *supra* note 35, at 113–16, 120.

⁶⁴ For a chronological account of the Conservative Opportunity Society, see ERIC SCHICKLER, DISJOINTED PLURALISM 242–46 (2001) (“Gingrich played the role of entrepreneur, aligning ideological, partisan, and power base interests behind creation of a new type of congressional power base: an organization explicitly dedicated to shaping public debate and sharpening partisan distinctions rather than directly influencing House outcomes.”).

Democrats on procedural issues and resist liberal legislation.⁶⁵ Minnesota Representative Vin Weber, a leading member of the Conservative Opportunity Society, noted that the GOP had “been too reluctant to confront in the past. A party that has been in the minority has a tendency to become a little bit cowed . . . but I’m hard-pressed to see where compromise has advanced the Republican agenda.”⁶⁶

The House Republicans later elected Gingrich as their minority whip, bypassing the more moderate and more senior minority leader, Representative Bob Michel of Illinois.⁶⁷ This was a sign that conservatism was on the rise. Gingrich centered the GOP’s 1994 campaign strategy on a conservative national agenda, the “Contract with America.”⁶⁸ The Contract outlined what bills the Republicans would attempt to pass if the voters awarded them a majority in the House, including tax cuts, term limits, social security reform, tort reform, and welfare reform.⁶⁹ United behind the Contract, conservative Republican incumbents and challengers achieved the first election of a GOP majority in the House since 1953.⁷⁰ In 1994, the nation ousted a record number of senior Democratic incumbents in favor of Republican rookies.⁷¹

B. U.S. Term Limits, Inc. v. Thornton

By the end of the 1994 elections, nearly half of the states had imposed term limits on their United States Representatives and Senators.⁷² Perhaps the most notable of these states, Arkansas,

⁶⁵ See Jason M. Roberts & Steven S. Smith, *Procedural Contexts, Party Strategy, and Conditional Party Voting in the U.S. House of Representatives, 1971–2000*, 47 AM. J. POL. SCI. 305, 307 (2003) (“Vote no and sharpen the criticism was the theme—a ‘rule or ruin’ strategy, it was dubbed by one House Republican.”).

⁶⁶ Diane Granat, *Splits in Style, Substance: Deep Divisions Loom Behind House GOP’s Apparent Unity*, 43 CONG. Q. WKLY. REP. 535, 536 (1985).

⁶⁷ See BLACK & BLACK, *supra* note 29, at 398 (describing the rise of House Speaker Newt Gingrich within the GOP House leadership).

⁶⁸ *Id.*; see CONTRACT WITH AMERICA: THE BOLD PLAN BY REP. NEWT GINGRICH, REP. DICK ARMEY, AND THE HOUSE REPUBLICANS TO CHANGE THE NATION, *supra* note 8, at 398.

⁶⁹ See generally CONTRACT WITH AMERICA: THE BOLD PLAN BY REP. NEWT GINGRICH, REP. DICK ARMEY, AND THE HOUSE REPUBLICANS TO CHANGE THE NATION, *supra* note 8.

⁷⁰ See ORNSTEIN ET AL., *supra* note 33, at 46–47.

⁷¹ *Id.* at 54 (reporting that Republicans experienced a net party gain of fifty-two House seats, which was the GOP’s greatest gain since 1946).

⁷² See Garrett, *supra* note 6.

adopted Amendment 73 to its State Constitution.⁷³ Amendment 73 prohibited the name of a candidate for Congress from appearing on the ballot if that candidate had already served three terms in the House or two terms in the Senate.⁷⁴ The measure also placed term limits on state executives⁷⁵ and legislators.⁷⁶ The people of Arkansas had declared:

[E]lected 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.⁷⁷

On November 13, 1992, Bobbie Hill, on behalf of herself and similarly situated Arkansas citizens, residents, taxpayers, and registered voters, and the League of Women Voters of Arkansas, filed a complaint for declaratory judgment seeking to invalidate Amendment 73.⁷⁸ Hill alleged, in part, that the amendment violated the United States Constitution.⁷⁹ The issues eventually presented to the Supreme Court were "whether the Constitution forbids States [from] add[ing] to or alter[ing] the qualifications specifically enumerated in the Constitution"⁸⁰ and "if the Constitution does so forbid, whether the fact that Amendment 73 is formulated as a ballot access restriction rather than as an outright disqualification is of constitutional significance."⁸¹

Writing for the majority, Justice Stevens addressed three main points: (1) whether the Constitution's Qualifications Clauses⁸² set forth the exclusive qualifications for membership in Congress;⁸³ (2) whether states have constitutional authority to

⁷³ ARK. CONST. amend. 73.

⁷⁴ *Id.* amend 73, § 3.

⁷⁵ *Id.* amend 73, § 1(b).

⁷⁶ *Id.* amend 73, § 2.

⁷⁷ *Id.* amend 73, pmbl.

⁷⁸ See *U.S. Term Limits, Inc. v. Hill*, 872 S.W.2d 349, 352 (Ark. 1994), *aff'd sub nom.* *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

⁷⁹ *Id.*

⁸⁰ *Thornton*, 514 U.S. at 787.

⁸¹ *Id.*

⁸² U.S. CONST. art. I, § 3, cls. 2, 3.

⁸³ See *Thornton*, 514 U.S. at 789, 796, 798 (reaffirming the Court's holding in *Powell v. McCormack*, 395 U.S. 486 (1969)).

amend said qualifications;⁸⁴ and (3) whether term limits are in fact a “qualification” as defined by the Qualifications Clauses.⁸⁵ The majority opinion resolved the first issue using both an historical analysis of the Framers’ intent⁸⁶ and what the Court referred to as a “[r]eliance on [d]emocratic [p]rinciples.”⁸⁷ It concluded “that, with respect to Congress, the Framers intended the Constitution to establish fixed qualifications.”⁸⁸ Stevens looked to the Framers’ debates to determine their intent. His opinion recognized “that the post-Convention ratification debates confirmed that the Framers understood the qualifications in the Constitution to be fixed and unalterable by Congress.”⁸⁹ The Constitutional Convention itself expressly rejected proposals to allow Congress to unilaterally amend qualifications.⁹⁰ It also expressly refused to impose “rotation,” which would have required that incumbents abstain from running for reelection for a term before running again.⁹¹ The majority opinion also rested on democratic principles. The Supreme Court emphasized that “the opportunity to be elected [should be] open to all.”⁹² The Court observed the “‘fundamental principle of our representative democracy’ . . . [is] that ‘the people should choose whom they please to govern them.’”⁹³ As such, the Supreme Court decided that the Constitution’s Qualifications Clauses set forth the sole qualifications for membership in Congress. These qualifications could only be altered if the text of the Constitution itself was amended.

Second, the Court resolved that, under the Tenth Amendment, the states did not have the authority to add to or alter the qualifications already provided in the Constitution.⁹⁴ The Tenth Amendment provides: “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.”⁹⁵

⁸⁴ *Id.* at 806, 808, 816, 818–22, 827.

⁸⁵ *Id.* at 828–36.

⁸⁶ *Id.* at 792–93.

⁸⁷ *Id.* at 793.

⁸⁸ *Id.* at 792–93.

⁸⁹ *Id.* at 791.

⁹⁰ *Id.* at 790, 811–13, 825–27.

⁹¹ *Id.* at 812–14.

⁹² *Id.* at 794.

⁹³ *Id.* at 783 (quoting *Powell v. McCormack*, 395 U.S. 486, 547 (1969)).

⁹⁴ *Id.* at 798, 800–06, 814–16, 822, 827.

⁹⁵ U.S. CONST. amend. X.

In *Thornton*, the majority pointed out that a power is not reserved to the states simply because it is not expressly delegated to the federal government. Rather, "the states can exercise no powers whatsoever, which exclusively spring out of the existence of the national government."⁹⁶ "With respect to setting qualifications for service in Congress, no such right existed before the Constitution was ratified."⁹⁷ Therefore, "the power to add qualifications is not within the 'original powers' of the States, and thus is not reserved to the States by the Tenth Amendment."⁹⁸ Consequently, states do not have the ability to add to or alter the qualifications enumerated in the federal Constitution.⁹⁹

Third, the Supreme Court rejected the petitioners' argument that "even if States may not add qualifications, Amendment 73 is constitutional because it is not such a qualification."¹⁰⁰ The petitioners submitted that congressional term limits were not a "qualification" because they d[id] not expressly prohibit a congressional candidate from being elected.¹⁰¹ Section three of Amendment 73 "provide[d] that certain Senators and Representatives shall not be certified as candidates and shall not have their names appear on the ballot. They [could] run as write-in candidates and, if elected, they [could] serve."¹⁰² Those who supported term limits "contend[ed] that only a legal bar to service creates an impermissible qualification, and that Amendment 73 [was] therefore consistent with the Constitution."¹⁰³

The Supreme Court rejected this reasoning because the "intent and the effect of Amendment 73 [were] to disqualify congressional incumbents from further service."¹⁰⁴ In the Court's

⁹⁶ *Thornton*, 514 U.S. at 802 (quoting 1 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 627 (3d ed. 1858)).

⁹⁷ *Id.* at 803.

⁹⁸ *Id.* at 800.

⁹⁹ *Id.*

¹⁰⁰ *Id.* at 828.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 786 (quoting *U.S. Term Limits, Inc. v. Hill*, 872 S.W.2d 349, 357 (Ark. 1994), *aff'd sub nom. Thornton*, 514 U.S. 779).

view, "Amendment 73 [was] an indirect attempt to accomplish what the Constitution prohibits Arkansas from accomplishing directly."¹⁰⁵

A dissenting opinion was submitted by Justice Thomas, Chief Justice Rehnquist and Justices O'Connor and Scalia.¹⁰⁶ Justice Thomas, writing the dissent, likewise relied on "democratic principles."¹⁰⁷ "It is ironic," Justice Thomas observed, "that the [majority] base[d its] decision on the right of the people 'to choose whom they please to govern them.'"¹⁰⁸ The Constitution does not deny the states "the power to prescribe eligibility requirements for the candidates who seek to represent them in Congress. The Constitution is simply silent on this question. And where the Constitution is silent, it raises no bar to action by the States or the people."¹⁰⁹ The Arkansas electorate, Thomas stated, "believe[d] that incumbents would not enjoy such overwhelming success if electoral contests were truly fair—that is, if the government did not put its thumb on either side of the scale."¹¹⁰ He pointed out that the majority opinion—based upon its own democratic principles—had overturned sixty percent of the voters in Arkansas who had approved the ballot initiative.¹¹¹

Thornton effectively struck down state-mandated term limits in nearly half of the states. If the requisite qualifications of members of Congress are to be changed, the text of the Constitution must be changed. Advocates for term reform would now have to turn their attention toward passing a constitutional amendment.

C. *From Campaigns to Congress*

In the 1990s, political pressure was mounting and the American people wanted term reform. A poll conducted at the time found that seventy-three percent of Americans supported a measure that would impose term limits on members of Congress.¹¹² The Republican leadership had promised to honor

¹⁰⁵ *Id.* at 829.

¹⁰⁶ *Id.* at 845 (Thomas, J., dissenting).

¹⁰⁷ *Id.* at 866.

¹⁰⁸ *Id.* at 845.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* at 924.

¹¹¹ *Id.* at 845.

¹¹² See Robert D. Novak, *Term Limits: The Will of the People?*, SAN DIEGO UNION-TRIB., Aug. 31, 1995, at Opinion 1.

this support by holding a vote on term limits.¹¹³ In fact, the GOP had won its majority status in 1994 based, in part, upon their promise to the people that they would deliver on this issue.¹¹⁴ Nonetheless, passing term limits was the only promise the signatories of the "Contract with America" were unable to keep.¹¹⁵

Amending the Constitution requires that two-thirds of both the House of Representatives and the Senate vote in favor of a proposed amendment.¹¹⁶ On March 29, 1995, the House fell short and voted 227-204 to approve a proposed constitutional amendment limiting members to twelve years in each chamber.¹¹⁷ This was sixty-one votes short of the two-thirds margin necessary. Congressional journalist Jennifer Babson observed that throughout the floor debate, "Democrats were joined by a cadre of senior Republicans who chastised their younger colleagues for embracing what they dubbed as a poll-driven effort."¹¹⁸ The Republicans who opposed the amendment were those who stood the most to lose by the enactment of term limits. Thirty of the forty Republicans who opposed the bill were either chairs of a committee or a subcommittee, which are positions of coveted power reserved for the most senior members of the majority party.¹¹⁹

In the Senate, a vote to end debate and hold a vote on the term limits amendment failed 58-42, two short of the sixty votes necessary.¹²⁰ Every Senate Republican voted to end the debate and bring the amendment to the floor for a vote.¹²¹ Republican Senators outwardly acknowledged that they were voting in favor of the amendment knowing that it would fail.¹²² They cast their votes strategically, in order to win favor among their constituents

¹¹³ CONTRACT WITH AMERICA: THE BOLD PLAN BY REP. NEWT GINGRICH, REP. DICK ARMEY, AND THE HOUSE REPUBLICANS TO CHANGE THE NATION, *supra* note 8 157-59.

¹¹⁴ See *supra* note 8 and accompanying text.

¹¹⁵ See *Assessing the 104th Congress: What Passed and What Didn't*, 54 CONG. Q. WKLY. REP. 3120, 3120-21 (1996).

¹¹⁶ See *supra* notes 9-13 and accompanying text.

¹¹⁷ See Babson, *supra* note 14.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ See Cloud, *supra* note 14.

¹²¹ *Id.*

¹²² *Id.*

who strongly backed the measure.¹²³ Some, like Senate Majority Leader Bob Dole, voted in favor of the bill, despite later admitting his opposition to term limits.¹²⁴

Republican members blatantly flip-flopped on the issue. The highest ranking member of the GOP, House Speaker Gingrich, called term limits a "terrible idea"¹²⁵ in 1991, championed the issue during the 1994 elections,¹²⁶ and then opposed term limits in 1995, saying "a six-year learning curve is just too short."¹²⁷ Likewise, sixty-eight of the seventy-three lawmakers who took term limits pledges, promising their constituents that they would serve a set number of terms, broke them.¹²⁸ Refusing to honor their promise suggests that lawmakers never truly intended to do so. Moreover, the openly strategic voting calls into question whether lawmakers who publicly backed the measure ever hoped it would become law. The focus of the next section of this Article is to further explain these seemingly inconsistent political positions. Part II applies the tenets of public choice theory to shed important new light on why lawmakers took such contrary positions on whether to weave this politically divisive issue into the fabric of the Constitution.

II. PUBLIC CHOICE THEORY, THE PRISONERS' DILEMMA, AND TERM LIMITS

This Part uses public choice theory to try to explain why politicians adopted disjointed positions on an issue that the Supreme Court feared could have "trivialize[d] the basic principles of our democracy."¹²⁹ It begins with an overview of the relevant public choice tools. Then, it analyzes the strengths and weaknesses of the public choice models previously applied to the term limits discussion. Finally, it offers a new model, which

¹²³ *Id.*

¹²⁴ *Id.* ("[Senator] Dole himself conceded that 'I've been lukewarm to the idea for some time.' But he added that he was willing to send the amendment to the states for ratification, which requires the assent of three-quarters of the state legislatures.").

¹²⁵ See Bandow, *supra* note 19.

¹²⁶ CONTRACT WITH AMERICA: THE BOLD PLAN BY REP. NEWT GINGRICH, REP. DICK ARMEY, AND THE HOUSE REPUBLICANS TO CHANGE THE NATION, *supra* note 8, at 181-96.

¹²⁷ See Bandow, *supra* note 19.

¹²⁸ See Zeller, *supra* note 15.

¹²⁹ U.S. Term Limits, Inc. v. Thornton, 514 U.S. 779, 831 (1996).

posits that congressional support for term reform during the Republican Revolution was strategic and not sincere. It submits that certain political conditions prompt politicians to back term limits. Absent these conditions, legislators lack sufficient incentive to support self-imposed term restrictions.

A. *Public Choice Theory*¹³⁰

Professors Maxwell L. Stearns and Todd J. Zywicki define public choice theory as “a discipline that marries the tools of economics with the subject of political science.”¹³¹ It has “emerged a dominant force in modern legal scholarship and jurisprudential analysis.”¹³² Stearns notes that public choice draws on economics principles “to predict the types of legislation likely to result if certain assumptions are made about the participants in the legislative process.”¹³³

The central precept of public choice theory is the assumption that all public actors—legislators, voters, bureaucrats, and judges—behave rationally to maximize their own self-interests.¹³⁴ It applies the basic behavioral assumption of economics—that actors are rational utility maximizers—to the study of governmental institutions.¹³⁵ Public decisionmaking is thus studied through a microeconomic lens whereby laws are made by individuals who are seeking to advance their own personal interests.¹³⁶

¹³⁰ For a comprehensive analysis of the study of public choice theory and its applications to public law, see DENNIS C. MUELLER, *PUBLIC CHOICE III* (2003); *RESEARCH HANDBOOK ON PUBLIC CHOICE AND PUBLIC LAW* (Daniel A. Faber & Anne Joseph O'Connell eds., 2010); and MAXWELL L. STEARNS & TODD ZYWICKI, *PUBLIC CHOICE CONCEPTS AND APPLICATIONS IN LAW* (2009).

¹³¹ STEARNS & ZYWICKI, *supra* note 130, at vii.

¹³² *Id.*

¹³³ Maxwell L. Stearns, *The Public Choice Case Against the Item Veto*, 49 WASH. & LEE L. REV. 385, 399 (1992).

¹³⁴ See, e.g., LISA HEINZERLING & MARK V. TUSHNET, *THE REGULATORY AND ADMINISTRATIVE STATE: MATERIALS, CASES, COMMENTS* 683 (2006) (“[T]he premise [of public choice theory] is that the kind of self-interested behavior one sees in markets can also be seen in the political realm.”).

¹³⁵ See, e.g., GARY S. BECKER, *THE ECONOMIC APPROACH TO HUMAN BEHAVIOR* 5 (1978) (“Everyone recognizes that the economic approach assumes maximizing behavior more explicitly and extensively than other approaches do, be it the utility or wealth function of the household, firm, union, or government bureau that is maximized.”).

¹³⁶ *Id.* at 33–38.

While decisions made by actors do not always produce their desired result, they are assumed to be made rationally.¹³⁷ This means that actors make reasoned decisions based upon their goals. However, where economics focuses on how markets manipulate those decisions, public choice hones in on how collective decisionmaking among self-interested public actors (for example, legislators and voters) can create inefficient outcomes for both the public and the actors themselves.¹³⁸ In fact, when faced with certain incentives, actors may decide not to cooperate even when it is in their interest to do so.¹³⁹ For example, voters who support term limits could theoretically cooperate with each other by simultaneously voting out all incumbents. No district would then stand to lose out on the legislative skills of its senior representative, as all members would be ousted at the same time. Yet, without coordination, each voter has an incentive to defect from this mutually beneficial strategy and instead vote to reelect his or her own representative with the hope that other voters will oust their respective incumbent.¹⁴⁰ Public choice draws on basic economic tools, like the prisoners' dilemma game, to offer solutions to such collective action problems.

Critics of public choice argue it is overly simplistic, myopic, and cynical.¹⁴¹ The excessive focus on narrow, self-interest limits its usefulness because more altruistic motives also shape public policy.¹⁴² Politicians sometimes support measures against their

¹³⁷ See James D. Gwartney & Richard E. Wagner, *Public Choice and the Conduct of Representative Government*, in PUBLIC CHOICE AND CONSTITUTIONAL ECONOMICS 7 (James D. Gwartney & Richard E. Wagner eds., 1988). Gwartney and Wagner state:

[T]he men and women working in government as politicians and bureaucrats are pretty much like their counterparts in the private sector. If pursuit of such rewards as personal wealth, power, and prestige motivates people in the marketplace, there is every reason to believe that these same elements will motivate them in the political arena.

Id.

¹³⁸ FABER & O'CONNELL, *supra* note 130, at 2 ("Individual choices in the political sphere can create two core quandaries: lack of cooperation and problematic group decision.") (footnote omitted).

¹³⁹ *Id.*

¹⁴⁰ Einer Elhauge, *Are Term Limits Undemocratic?*, 64 U. CHI. L. REV. 83, 85-86 (1997).

¹⁴¹ See generally Daniel A. Farber & Philip P. Frickey, *The Jurisprudence of Public Choice*, 65 TEX. L. REV. 873 (1987).

¹⁴² For an alternative and critical scrutiny of public choice theory, see generally DONALD P. GREEN & IAN SHAPIRO, *PATHOLOGIES OF RATIONAL CHOICE THEORY: A CRITIQUE OF APPLICATIONS IN POLITICAL SCIENCE* (1994).

own personal electoral interests in support of the "greater good." Political scientist Steven Kelman argues: "There is the elementary fact that political decisions apply to the entire community. That they do so encourages people to think about others when taking a stand. This is in contrast to making personal decisions, when people think mainly of themselves."¹⁴³

Even so, the usefulness of public choice does not turn entirely on the premise that individuals are solely motivated by personal interests. Voters and lawmakers certainly value other goals, such as making sound public policy. To assume otherwise would be naïve. For this reason, however, public choice proves to be all the more useful because turning even the most altruistic ideas into sound policy necessitates an understanding of the incentives and collective action constraints facing those who craft policy. Therefore, here I briefly outline a few relevant assumptions about key political players—legislators and voters—and consider the collective action problems they may face in attempting to enact term limits.

1. Legislators as Rational Actors

Legislators are principally motivated by reelection.¹⁴⁴ The pursuit of this single goal is attained by pleasing prospective voters.¹⁴⁵ Politicians may pursue additional goals, such as gaining influence and making sound public policy, but these goals are consistent with their reelection goals.¹⁴⁶ In fact, a member is unable to achieve influence or craft public policy if he or she is not reelected.¹⁴⁷ Thus, lawmakers make decisions, such as backing or opposing legislation, based upon how those decisions will impact their likelihood of being reelected.

Professor Mayhew argues that the electoral goal "has to be the *proximate* goal of everyone, the goal that must be achieved over and over if other ends are to be entertained."¹⁴⁸ Legislators

¹⁴³ STEVEN KELMAN, MAKING PUBLIC POLICY: A HOPEFUL VIEW OF AMERICAN GOVERNMENT 22 (1987).

¹⁴⁴ See MAYHEW, *supra* note 29, at 13.

¹⁴⁵ *Id.* at 39.

¹⁴⁶ See RICHARD F. FENNO, JR., HOME STYLE: HOUSE MEMBERS IN THEIR DISTRICTS 137 (1978) (arguing that members of Congress have three goals—reelection, power in Congress, and crafting sound public policy—and that securing the first goal, reelection, allows them to attain their other two goals).

¹⁴⁷ *Id.*

¹⁴⁸ MAYHEW, *supra* note 29, at 16.

undoubtedly have strong policy preferences on particular matters. Yet, they also have a diverse body of constituents with multifaceted agendas. A legislator's position on a particular issue must always consider its effect on the chance of electoral loss, as defeat would foil all future attempts to produce sound policy in other areas. Legislators seek to curry favor with their constituents who, in turn, vote according to their own self-interests and reelect their incumbent members.¹⁴⁹

Representatives pursue their goal of reelection through several avenues. Three are relevant to this Article. First, members strategically take positions on issues, through roll call votes and public statements, to signal to voters their support of or opposition to a measure.¹⁵⁰ This position-taking is strategic and not necessarily sincere.¹⁵¹ For instance, a member who sincerely opposes term limits, because she wants to remain in office, may publicly support term limits if she believes such a position will win support from her constituents and thereby help her bid for reelection.

Second, members desire to be in the majority party. Majority status confers certain institutional advantages.¹⁵² Obviously, passing legislation requires a majority of legislators to vote in favor of it. Other advantages include: control over the congressional agenda; the selection of all institutional leaders (speaker, committee, and subcommittee chairs); greater influence within all committees; and control of a disproportionate share of staff and other legislative resources.¹⁵³ Most importantly, the

¹⁴⁹ For a comprehensive discussion on the electoral incentives facing politicians and how those incentives shape legislator behavior, see MORRIS P. FIORINA, REPRESENTATIVES, ROLL CALLS, AND CONSTITUENCIES 31 (1974) ("Reelection, legislative influence, prestige, policy, higher office, public service—all may play their part. But we would argue that reelection is the primary goal that the constituency controls: the district gives and the district can take away."); and MAYHEW, *supra* note 29, at 13–77.

¹⁵⁰ MAYHEW, *supra* note 29, at 61–73 (discussing strategic "position taking").

¹⁵¹ *Id.* at 65, 70.

¹⁵² See OLESZEK, *supra* note 29, at 9, 11.

¹⁵³ See *id.*; William D. Anderson et al., *The Keys to Legislative Success in the U.S. House of Representatives*, 28 LEGIS. STUD. Q. 357, 371–72 (2003) (showing quantitatively that being in the majority party is the only statistically significant institutional factor that increases the number of bills a lawmaker may successfully pass).

majority party makes the rules for the entire institution.¹⁵⁴ Political science professors Gary W. Cox and Matthew D. McCubbins maintain that:

Possession of this rule-making power leads to two main consequences. First, the legislative process in general—and the committee system in particular—is stacked in favor of majority-party interests. Second, because members of the majority party have all the structural advantages, the key players in most legislative deals are members of the majority party¹⁵⁵

Thus, the extent to which a member is able to strike legislative deals in an effort to provide benefits to his or her constituency—which is needed for reelection—turns directly on the ability of his or her own party to win a majority. It would thus follow that Democrats, the party in control of Congress, would have greater success in enacting legislation than Republicans during that time period. The roles should reverse when the GOP wins majority status.

Third, members desire seniority for electoral purposes. The congressional seniority system affords privileges to members who have served the longest, including choice of leadership positions and committee assignments.¹⁵⁶ More senior members are better able to land positions on committees that deal with the issues important to their constituents. They choose committee assignments that facilitate their need to take strategic positions and claim credit for congressional action. This, in turn, wins support amongst their electorate. Senior members are also in a better position to help draft legislation such that it confers benefits to their constituents.¹⁵⁷

2. Voters as Rational Actors

This Article incorporates two assumptions about voters found in the public choice literature. First, constituents make voting decisions based upon a retrospective evaluation of a candidate's performance in office.¹⁵⁸ Public choice literature

¹⁵⁴ See OLESZEK, *supra* note 29, at 10–17.

¹⁵⁵ See COX & MCCUBBINS, *supra* note 35, at 2.

¹⁵⁶ See OLESZEK, *supra* note 29, at 90–91.

¹⁵⁷ *Id.* at 89–91.

¹⁵⁸ See generally MORRIS P. FIORINA, *RETROSPECTIVE VOTING IN AMERICAN NATIONAL ELECTIONS* (1981) (submitting that voters do not contemplate how a member will behave following an election, but, rather, constituents vote based upon their perceptions of what candidates and parties have done in the past).

refers to this phenomenon as “retrospective voting.”¹⁵⁹ Voters want legislative benefits delivered to their own districts. They want to know that their tax dollars are being spent in their communities, as opposed to other parts of the country. Retrospective voting is based upon reward-punishment theory, meaning voters hold the incumbent member and his or her political party responsible for what the voter deems within the realm of governmental control.¹⁶⁰

Second, this Article assumes that voters use votes to express their opinions.¹⁶¹ Much like legislators who signal their preferences to constituents with roll call votes, constituents express their preferences to legislators by voting for the candidate who promises them their highest utility payoff after the election. If candidate X promises to do more for voter A than candidate Y, it makes sense that voter A would support X. This is rational because voting for candidate X might help X win the election, which is likely to bring voter A more utility than if candidate Y were to win. Voting for X also signals support for the issue or issues voter A supports.

This sort of “expressive voting” is particularly helpful in explaining why a voter might decide to vote even when she believes her single vote will not have an impact on the outcome of the election.¹⁶² Instead of voting for the outcome, the constituent is expressing her opinion about an issue. For example, a voter who is extremely distrustful of Congress may strongly support imposing term limits. Realizing that her single vote for either candidate in her district will not alone win the election for either candidate, she may rationally choose to throw her vote behind the candidate who has supported term limits throughout the campaign.¹⁶³

¹⁵⁹ See generally *id.*

¹⁶⁰ *Id.* at 20–43.

¹⁶¹ See generally Morris P. Fiorina, *The Voting Decision: Instrumental and Expressive Aspects*, 38 J. POL. 390 (1976).

¹⁶² *Id.* at 391, 393.

¹⁶³ *Id.* at 391–93.

3. Collective Action and the Prisoners' Dilemma Game

The prisoners' dilemma game¹⁶⁴ is an economic tool of analysis for situations in which two parties might rationally choose not to cooperate, even if it is in both of their interests to do so.¹⁶⁵ If both parties could commit to cooperating, each would be better off. Yet, due to the particular incentives facing the parties, maintaining ongoing cooperation proves tricky.

The prisoners' dilemma helps to explain critical aspects of the politics surrounding the term limits debate. There are two prisoners' dilemma games addressed in the existing literature on term limits: (1) the game between legislators and their constituents¹⁶⁶ and (2) the game among the states.¹⁶⁷ This Article analyzes these games and then posits that there is a third, more relevant, game played among the legislators themselves.¹⁶⁸

The theory behind the prisoners' dilemma game is straightforward. Two players may each "cooperate" with or "defect" from a collaborating strategy with the other player. Each is solely concerned with maximizing his or her own utility. For illustrative purposes, Player X and Player Y are detained by the police. Each is interrogated in separate cells. They are unable to communicate with each other. Each wants to minimize his time in jail. Both are informed of the following by the interrogating detective:

If you both confess, you will each receive a four year sentence.

If neither of you confesses, the police will charge you each with a lesser included offense, and you will each receive a lesser two year sentence.

If one of you confesses and agrees to testify against the other non-confessing individual, the confessor will be released while the other will receive the statutory maximum ten year sentence.

¹⁶⁴ For a brief account on the history of the prisoners' dilemma and practical illustrations of its use in the public choice discipline, see STEARNS & ZYWICKI, *supra* note 130, at 171–196. See also ROBERT AXELROD, *THE EVOLUTION OF COOPERATION* 3–26 (rev. ed. 2006).

¹⁶⁵ See AXELROD, *supra* note 164; see also Manuel A. Utset, *Reciprocal Fairness, Strategic Behavior & Venture Survival: A Theory of Venture Capital-Financed Firms*, 2002 WIS. L. REV. 45, 118 ("A prisoner's dilemma game is one in which both parties would be better off agreeing to cooperate; however, the parties, for whatever reason, cannot reach an enforceable agreement to cooperate.").

¹⁶⁶ See *infra* Part II.B.

¹⁶⁷ See *infra* Part II.C.

¹⁶⁸ See *infra* Part II.D.

Figure 1 illustrates these payoffs.

FIGURE 1

	Y stays silent "cooperates"	Y betrays X "defects"
X stays silent "cooperates"	X: serves 2 years Y: serves 2 years	X: serves 10 years Y: is released
X betrays Y "defects"	X: is released Y: serves 10 years	X: serves 4 years Y: serves 4 years

The best case scenario for each individual is to defect when the other party cooperates. The result is a ten-year sentence for the cooperating party and release for the defector. In contrast, the worst outcome is to cooperate when the other party defects. Regardless of whether Y cooperates or defects, X is always better off defecting. The same is true for Y. Thus, each party is better off defecting. This mutual defection leads to a scenario in which both X and Y are each sentenced to four years. Had the parties been able to coordinate a cooperative strategy, these sentences would have been reduced to two years. However, since each prisoner increases his individual payoff by defecting regardless of what the other party does, rational actors will both choose to defect. The rules of the game therefore produce an inefficient result for both actors.

This inefficiency can be avoided through repeated play.¹⁶⁹ Repetition encourages the prisoners to cooperate by providing each with the opportunity to either punish or reward the other party's previous play. For instance, if X cooperates on a round of play, Y can reward this behavior by cooperating in the next round. If, however, X cooperates and Y refuses to reward X with cooperation, X can punish Y in the following round by defecting. This repeated play deters defection and encourages cooperation.

¹⁶⁹ See AXELROD, *supra* note 164, at 27–54 (focusing on how infinite repetition of prisoners' dilemma game encourages cooperation).

Game theorists surmise that if the game is played repeatedly without a known end period, parties will eventually begin to cooperate.¹⁷⁰

Still, with a known end period, the prisoners end up back where they started, with mutual defection. An iterated prisoners' dilemma with a known end period results in what public choice theorists refer to as "unraveling."¹⁷¹ The defection actually begins with the final iteration of the game. Recall that cooperation is triggered by the anticipated retribution from the opposing player. Without the possibility of future punishment, the players are encouraged to defect in the final round just as they did in the single iterated game. Since the parties now anticipate defection in the final round, there is no longer an incentive to cooperate in the next-to-last round. As a result, defection is the dominant strategy in the second to last round. The same scenario continues for the preceding rounds, "unraveling" all the way back to the first period. Thus, a known end period changes the iterated prisoners' dilemma, such that mutual defection becomes the dominant strategy. Predetermined iteration does not resolve the prisoners' dilemma in the same way infinite repetition does.

Two frequently cited law review articles apply the classic prisoners' dilemma story to the term limits discussion. First, Professors Linda Cohen and Matthew Spitzer¹⁷² use the unraveling concept to analyze how term limits impact the electoral game played between voters and legislators. Second, Professor Einer Elhauge looks at the game as played among the states.¹⁷³ After evaluating both models, this Article will illustrate that there was a different "game" being played that more accurately describes what was happening during the Republican Revolution. Building upon the lessons learned from the term limits movement of the 1990s, as described in Part I, this new model allows us to better predict under what conditions subsequent movements might succeed or fail.

¹⁷⁰ See *id.*

¹⁷¹ See, e.g., ROBERT COOTER & THOMAS ULEN, LAW AND ECONOMICS 216–17 (6th ed. 2012) (also referring to "unraveling" as the "endgame problem").

¹⁷² See generally Cohen & Spitzer, *supra* note 17.

¹⁷³ See generally Elhauge, *supra* note 140.

B. The Cohen and Spitzer Model: Explaining Interaction Between Voters and Legislators

Cohen and Spitzer use the prisoners' dilemma to predict legislator behavior following the adoption of term limits. Recall the basic assumptions that (1) legislators desire reelection and (2) voters want their representatives to procure legislative benefits for the district. Based upon these two assumptions, the Cohen and Spitzer model shapes the interaction between legislators and voters as a prisoners' dilemma game whereby voters cooperate by reelecting incumbents and defect by withholding their electoral support. Incumbent lawmakers cooperate with voters by providing legislative benefits and defect by ignoring voters and pursuing their own personal interests.¹⁷⁴

Cohen and Spitzer argue that voters and lawmakers will both cooperate—incumbents provide “pork”¹⁷⁵ and constituents reelect incumbents—when the prisoners' dilemma is repeated infinitely.¹⁷⁶ As in the basic prisoners' dilemma game, repeat play encourages cooperation because cooperation can be rewarded and defection can be punished.¹⁷⁷ In the voter-legislator game, mutual cooperation is the dominant strategy because lawmakers seek to please their constituents in order to secure future votes. Constituents then reward representatives with reelection. If, instead, an incumbent “defects” by serving her own personal interests at the expense of voters, constituents will “defect” from the cooperative strategy and punish her by withdrawing their support in future rounds of the game (elections).¹⁷⁸ Hence, legislators are encouraged to cooperate and deliver pork so long as the game is repeated infinitely. This cooperation will continue into the foreseeable future until the legislator decides not to run for office. Cohen and Spitzer point out that the players will cooperate so long as the prisoners' dilemma is repeated infinitely because “failure to cooperate can always be punished in the future.”¹⁷⁹

¹⁷⁴ Cohen & Spitzer, *supra* note 17, at 498–99.

¹⁷⁵ “Pork” or “pork-barrel” is the pejorative label for a governmental spending project whose total costs spread across all congressional districts, but whose benefits are to a small, concentrated population.

¹⁷⁶ Cohen & Spitzer, *supra* note 17, at 504.

¹⁷⁷ *Id.* at 500, 504.

¹⁷⁸ *See id.*

¹⁷⁹ *Id.* at 504.

However, just as in the prisoners' dilemma illustrated previously, a known end period changes the game. Mandatory office rotation reduces a legislator's incentive to invest political resources into securing pork in the final term.¹⁸⁰ No longer facing the possibility of electoral defeat in their final term, legislators are encouraged to defect from the strategy of mutual cooperation.¹⁸¹ They instead pursue their personal goals and not the desires of voters. As a result, rational voters will anticipate this defection and decide not to elect a legislator to his or her final term.¹⁸²

The game begins to unravel. Legislators will anticipate voters withdrawing support. Thus, they will presume that their next-to-last term is, in fact, their true final term. And, again, knowing that their next-to-last term is really their final term, they will behave differently than if they were facing the prospect of a legitimate campaign for reelection. Legislators will spend their next-to-last term in office pursuing their own personal goals. Voters will anticipate this behavior and defect in the preceding election, and so on, until legislators are only serving a single term.¹⁸³ In short, term limits could encourage legislators to ignore their constituents' interests.

Cohen and Spitzer argue that single-term unaccountable members are an unintended drawback of term limits. According to their model, term limits yield geographically neutral legislators unresponsive to constituent pressure. They assume that there is an important distinction between legislation that benefits district voters and legislation that helps special interests.¹⁸⁴ Providing legislative benefits to constituents should be encouraged because the government exists to serve the public. On the other hand, pandering to special interests should be deterred as a waste of communal resources. Term limits, they argue, result in less of the former and more of the latter. They conclude that term limits are undesirable because they force legislators to ignore the electorate.

¹⁸⁰ *See id.* at 508.

¹⁸¹ *See id.*

¹⁸² *See id.*

¹⁸³ *See id.* at 498-99.

¹⁸⁴ *See id.* at 500-02.

Yet, what Cohen and Spitzer underestimate is that those who desire term limits want to restrict both special interest legislation *and* localized constituent benefits.¹⁸⁵ Advocates believe that Congress provides too much parochial pork to constituents instead of addressing more important national issues.¹⁸⁶ Consider a classic example: a bridge is built in one district in order to benefit the individuals living in that district, but it is funded by taxes collected from all districts. Term limits supporters oppose such federal spending.¹⁸⁷ While Cohen and Spitzer posit that a legislature full of nonresponsive delegates is an unintended consequence of term limits, it is precisely the intended effect their supporters hope to achieve.

Still, if voters collectively want less pork, why don't they elect legislators who produce less of it? In other words, why is it that seventy-three percent of voters supported term limits,¹⁸⁸ yet those same voters reelected ninety percent of incumbents?¹⁸⁹ Voters reelected the incumbents who were producing the pork they so vehemently opposed. Professor Einer Elhauge addresses this seemingly paradoxical dilemma.

C. *The Einer Elhauge Model: The Voter Paradox Across State Lines*

Professor Einer Elhauge employs a prisoners' dilemma model to resolve why voters support term limits and cast votes for senior incumbents.¹⁹⁰ Elhauge reasons that "there is no inconsistency between the two votes . . . [V]oters who wish to oust incumbents face a collective action problem."¹⁹¹ Voters know that they will receive a greater share of legislative benefits if their state or district is represented by a more senior representative.¹⁹² Voters may prefer term limits as a means to reduce pork globally, but they also know that they get more legislative benefits when they are represented by a more senior

¹⁸⁵ See WILL, *supra* note 18, at 16; Elhauge, *supra* note 140, at 119 (asserting that term limits would reduce the amount of pork-barrel legislation).

¹⁸⁶ See WILL, *supra* note 18, at 18 ("Today's national legislature lards the budget with spending for parochial projects . . .").

¹⁸⁷ See Elhauge, *supra* note 140, at 117–19.

¹⁸⁸ See Novak, *supra* note 112.

¹⁸⁹ See ORNSTEIN, ET AL., *supra* note 33, at 57–58.

¹⁹⁰ Elhauge, *supra* note 140, at 85.

¹⁹¹ *Id.*

¹⁹² See generally OLESZEK, *supra* note 29, at 90–91.

member. Any attempt to coordinate by voting out all incumbents at once would fail because voters have an incentive to “defect” and support an incumbent to ensure that their own state receives a greater share of government benefits. Elhauge reasons that term limits would effectively solve this prisoners’ dilemma by forcing voters to elect new representatives. In sum, term limits eliminate the “collective action pressures to vote for a senior incumbent to gain a higher share of legislative clout.”¹⁹³

Elhauge posits that even if federal term limits are desirable as a means to correct this collective action problem, the Supreme Court’s opinion in *Thornton* “makes their adoption rather hopeless.”¹⁹⁴ The Constitution may be amended if proposed by two-thirds of both houses of Congress or by a constitutional convention proposed by two-thirds of the state legislatures.¹⁹⁵ Realistically, a proposal through Congress would appear to be the more likely route considering the states have never united to call for a constitutional convention. Members of Congress, Elhauge argues, would be unwilling to impose term limits on themselves: “If incumbent legislators have a veto on term limits, the likelihood of getting them adopted seems as high as getting university professors to voluntarily give up tenure.”¹⁹⁶

This Article takes issue with two of Elhauge’s assumptions. First, Elhauge assumes that incumbent legislators would never support adopting term limits. At first glance, this assumption makes perfect sense because we assume that legislators desire reelection.¹⁹⁷ But, it is difficult to reconcile Elhauge’s assumption with the fact that, in 1994, more than 300 congressional candidates supported such a constitutional amendment.¹⁹⁸ Further, more than half of the members of the House voted in support of the constitutional amendment in 1994.¹⁹⁹ Now, in 2010, the issue has resurfaced with those seeking congressional

¹⁹³ Elhauge, *supra* note 140, at 193.

¹⁹⁴ *Id.* at 111.

¹⁹⁵ See *supra* notes 12–13 and accompanying text.

¹⁹⁶ Elhauge, *supra* note 140, at 111–12.

¹⁹⁷ See *supra* Part II.A.

¹⁹⁸ See Holly Idelson & Kelly St. John, *Candidates Seeing Term Limits As a Top Vote-Getting Tactic*, 52 CONG. Q. WKLY. REP. 2969, 2969 (1994) (“[M]ore than 300 Republican House incumbents and challengers signed a highly publicized ‘Contract With America’ that included a pledge to bring term limits to the House floor for a vote in the form of a constitutional amendment.”).

¹⁹⁹ See Babson, *supra* note 14.

office vowing to propose a term limits amendment if elected.²⁰⁰ Does this mean that members actually do not desire reelection? The next part of this Article tackles this matter, suggesting that support for term limits among politicians is strategic and not sincere.

Second, Elhauge assumes that the relevant players are the states. The states face a collective action problem that Elhauge believes is resolved by term limits. The procedural tool frees states—which are no longer bound to reelect incumbents due to the rewards of seniority—to support the candidate who is ideologically in-line with their preferences. However, in viewing the term limits movement of the 1990s in the context of the broader Republican Revolution, it becomes apparent that the relevant players might have been the politicians who so emphatically supported the measure. Federal term limits were not, in fact, intended to free voters to record more accurate preferences. Rather, they were proposed as a measure to redistribute power from the Democratic majority to the conservative GOP minority. This Article conceives a new strategic model whereby congressional candidates did not support term limits because they thought the country would benefit from ousting all senior members. Instead, advocates saw it as means to oust the members whose removal from office would most benefit their own personal political careers.

D. A New Strategic Model: Who Are the Pertinent Prisoners?

This Article submits that the GOP supported term limits in the 1990s for two main reasons. First, they hoped to use term limits as a tool to oust Democrats and even more liberal entrenched incumbents within their own party. For decades, conservatives felt they had been underrepresented in Congress. They hoped that term limits would resolve this situation in their favor. Second, politicians supported term limits to capitalize on rampant political cynicism. It was a simple way to convert public dissatisfaction with Congress into a politically popular platform. In both cases, support for term limits was strategic.

²⁰⁰ See Newton-Small, *supra* note 16; *infra* Part IV.B.

1. Thwarting the Incumbency Advantage

Political self-interest is the logic behind the strategic model. Recall that legislators are self-interested rational actors interested in reelection and crafting public policy that comports with their own personal ideological views.²⁰¹ To accomplish these goals, it is helpful for legislators to be in the majority party because members of the minority party face significant procedural and political obstacles.²⁰² The creation of the Conservative Opportunity Society in 1983 by Newt Gingrich illustrates how institutional privileges that favor one group over another can incite political unrest.²⁰³ Up until 1995, Republicans felt shut out from the congressional power structure.

In the late 1980s and early 1990s, conservative Republicans grew frustrated with a national ideological shift in their favor that failed to yield success in congressional elections. Americans were increasingly identifying themselves as conservative²⁰⁴ while simultaneously reelecting incumbent liberal Democrats.²⁰⁵ The GOP reasoned that this was a result of the incumbent advantage.²⁰⁶ Voters were not reelecting members based upon their ideological platforms. Rather, voters supported incumbents because more senior members are better equipped to bring pork home to the district.²⁰⁷ Conservative challengers were consequently discouraged from running for office. Even though voters identified with a conservative ideology, prospective challengers would have been outmatched by seasoned politicians.

Term limits would eliminate the incumbent advantage. They would level the electoral playing field. The GOP was confident that Democrats, stripped of their incumbent advantage through mandated term limits, would lose numerous seats to conservative Republicans.

As the 1994 election grew close, the conservative wing of the GOP was emboldened by a growing electorate that favored its views. Many members of the Conservative Opportunity

²⁰¹ See *supra* notes 144–49 and accompanying text.

²⁰² See *supra* notes 152–55 and accompanying text.

²⁰³ See SCHICKLER, *supra* note 64, at 242.

²⁰⁴ See *infra* fig.2 and app. A.

²⁰⁵ See *infra* fig.3 and app. B.

²⁰⁶ 141 CONG. REC. 9670 (1995) (statement of Rep. Gutierrez) (quoting Rep. Newt Gingrich).

²⁰⁷ See *supra* notes 156–57 and accompanying text.

Society—led by Representative Gingrich—arrived in Washington with stronger loyalties to their conservative supporters and policies than to the more moderate Republican national leadership.²⁰⁸ As more and more conservative members were elected to Congress, the movement grew. Still, the newly elected conservatives repeatedly failed to constitute a majority. They aimed to use term limits as a means to oust Democrats. This conservative block also hoped that by ejecting even its own senior members with term limits, it could fill those seats with more conservative GOP legislators. This strategy would result in a more conservative legislative body, which would generate more conservative public policy. In sum, limiting terms would ensure turnover, which Republicans believed would lead to an increase in the number of GOP members elected to Congress.

2. Capitalizing on General Dissatisfaction with Congress

It is hardly an original concept to claim that dissatisfaction with Congress can lead to voters supporting term limits.²⁰⁹ Certainly, voters who are dissatisfied with Congress can oust their own representatives on Election Day, but they are powerless to cast out members from other congressional districts and states. Term limits provide a means to eject all members. This Article offers new insight by looking at these voter preferences through the lens of *Thornton*. Regardless of public support for a constitutional amendment, the Supreme Court effectively took the issue out of the voters' hands and placed it squarely with the members of Congress.²¹⁰

Elhauge fears that legislators will never vote to impose term limits upon themselves.²¹¹ Like Mayhew, he assumes that lawmakers are rational actors who desire reelection.²¹² From this basic assumption, Elhauge supposes that one who desires reelection will never support term limits. Yet, Mayhew also states that members will engage in strategic “position taking.”²¹³

²⁰⁸ See SCHICKLER, *supra* note 64, at 242–43.

²⁰⁹ See, e.g., HIBBING & THEISS-MORSE, *supra* note 28, at 74–82.

²¹⁰ *Supra* notes 9–13 and accompanying text.

²¹¹ Elhauge, *supra* note 140, at 111.

²¹² See *id.*

²¹³ MAYHEW, *supra* note 29, at 61 (arguing that in order to earn voter support, congressmen engage in “position taking” or “the public enunciation of a judgmental statement on anything likely to be of interest to political actors. The statement may take the form of a roll call vote.”).

Members will take positions publicly on issues for strategic reasons rather than for sincere reasons. They do this symbolically to signal support of an issue to their constituents with the hope that it will earn votes in the upcoming election.²¹⁴ Individuals running for office in the early 1990s supported a term limits amendment, not because they genuinely believed it embodied sound public policy, but because they knew it would earn support from their constituents at a time when many Americans wanted term limits.

The Senate's voting on term limits is especially indicative of this sort of strategic voting. In the Senate, the general consensus was that a proposed constitutional amendment limiting congressional terms to twelve years would not receive the sixty votes to end floor debate on the issue.²¹⁵ Nonetheless, the Republican leadership insisted on having a vote, so Republicans could use their support of the measure to elicit support among voters in future elections.²¹⁶ Senator Fred Thompson noted that senators "need to go on record . . . I think a lot of people who support term limits are going to be real active in the next election."²¹⁷ This tactical position taking is precisely the sort contemplated by the strategic model.

3. Summation

In short, the thesis of this Article is that politicians will support congressional term limits when both of two conditions are met: (1) they are members of an historically underrepresented political faction and (2) they see a political opportunity to package anti-incumbent sentiment into a popular platform among voters. These two observations would be of limited value if they only explained a brief time in American politics between 1990 and 1994. The recent Tea Party support for term limits, however, provides an opportunity to test the validity of the strategic model. The model allows us to predict how the current term limits movement might play out. This next section uses empirical data to further evaluate the strategic model. Part IV will then apply the lessons learned from the strategic model to the Tea Party's support of the measure.

²¹⁴ *Id.* at 70.

²¹⁵ *See* Cloud, *supra* note 14.

²¹⁶ *Id.*

²¹⁷ *Id.*

III. AN EMPIRICAL ANALYSIS OF THE STRATEGIC MODEL

Despite the wide-ranging literature on the normative implications of term limits,²¹⁸ there has been relatively little positive analysis of the factors that influence legislative preferences on the issue. Thus far, this Article has been an exercise in positive theory. Following the methodological tradition of public choice theory, it has employed a formal model to predict legislator behavior. To make the model more precise, this Section reduces reality to numbers. The data compiled here further informs the strategic model's predictions about legislator behavior.

This first part of the strategic model presumes that, in the early 1990s, the GOP felt underrepresented in Congress. Testing this notion involves a three step analysis. The first phase requires quantitatively analyzing whether there was indeed a conservative realignment among the electorate. Part of the concept behind underrepresentation is that conservatives believed that the electorate as a whole was more conservative than the collective body of representatives they had elected. The second stage of this analysis necessitates a determination as to whether the ideological national realignment failed to translate into GOP success in congressional races. In other words, did the conservative public elect conservative members? The final piece of the empirical analysis requires an investigation of support for term limits in Congress after the GOP finally achieved a House majority. If politicians sincerely believed that representatives should serve a limited number of terms, we might expect to see them voluntarily step aside after serving several terms. If, however, their actual goal was to replace liberal and moderate incumbents with conservative newcomers, we should expect to see support for the measure to fizzle once the public elected a more conservative Congress.

The second part of the model posits that Republicans used term limits to capitalize on anti-incumbent sentiment. Testing this part of the strategic model entails an analysis of congressional approval ratings in the years leading up to the Republican Revolution. These data will allow us to better determine whether politician support for term limits was fueled by sincere support or by GOP members who capitalized on the

²¹⁸ See *supra* note 17 and accompanying text.

anti-incumbent mood in the early 1990s. Were they sincere or were they taking a strategic position to curry favor with their constituents?

A. *The GOP Push for Term Limits*

1. Republican Realignment

A great deal has been written about the Republican Realignment of the 1990s.²¹⁹ Realignment arises when a political group grows in population while remaining a minority within the country's legislative body.²²⁰ Realignment, favoring Republicans, began in the 1950s.²²¹ As discussed in Part I of this Article, realignment took place for a variety of reasons, commencing in the South.²²² In the 1960s, the small-government fiscal conservatives began to organize with social conservatives to oppose the New Deal programs and the growing influence of the federal government.²²³ GOP membership constituted an alliance of fiscally conservative northern Republicans and Southern conservatives who resisted governmental intrusion on social issues.²²⁴ The GOP became known as an inclusive party, embracing both social and fiscal conservatives.²²⁵ This movement culminated with the election of President Ronald Reagan.²²⁶ Political science professor Jeffrey M. Stonecash observed that "[t]he election of Ronald Reagan was an indicator that

²¹⁹ For a comprehensive summary on Republican realignment, see STONECASH, *supra* note 37.

²²⁰ See, e.g., Charles S. Bullock III, *Regional Realignment from an Officeholding Perspective*, 50 J. POL. 553, 554 (1988) ("In the South, for example, the Republican party could enjoy a forty percentage point gain in the share of offices held between 1950 and 1980, yet be the minority.").

²²¹ *Id.* at 570-71 ("The clearest evidence of realignment in the South comes from presidential elections where the South has joined other regions in rejecting northern liberals nominated by the Democratic Party. . . . Republican presidential success in the 1950s begat steady gains in House delegations and growth in Senate delegations during the 1960s and 1980s.").

²²² See *supra* Part I.A.

²²³ See *supra* Part I.A.

²²⁴ See STONECASH, *supra* note 37, at 29.

²²⁵ *Id.*

²²⁶ *Id.* at 29-31.

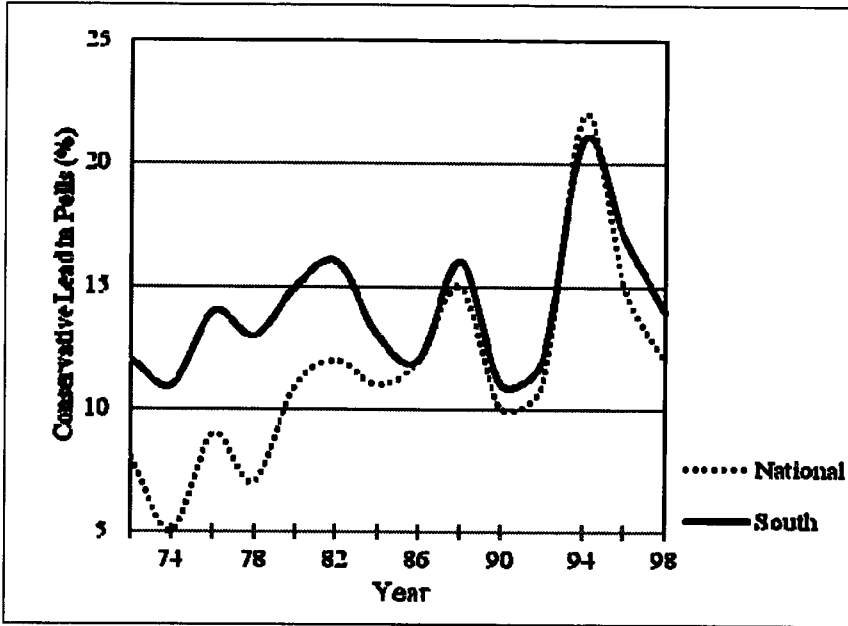
antigovernment conservatives were gaining influence within the party. Reagan thought government was too big and too intrusive, and it took too much of the people's money."²²⁷

The data tell a similar story. Figure 2 charts the growth of conservatism using results from the American National Election Study.²²⁸ In 1972, only eight percent more Americans identified themselves as either "slightly conservative," "conservative," or "extremely conservative" than those who identified as "slightly liberal," "liberal," or "extremely liberal." By 1994, that conservative advantage nearly tripled to twenty-two percent. As expected, this development was also evident in the South. In 1972, twelve percent more southerners identified themselves as either "slightly conservative," "conservative," or "extremely conservative" than those who identified as "slightly liberal," "liberal," or "extremely liberal." By 1994, that difference grew to twenty-one percent. The data show that the electorate was growing increasingly more conservative both in the South and nationally. By 1994, the typical American voter was considerably more conservative than liberal. However, this advantage in self-identification did not yield electoral wins for conservative congressional candidates.

²²⁷ *Id.* at 31.

²²⁸ *Liberal-Conservative Self-Identification 1972–2008*, AM. NAT'L ELECTION STUDIES (Aug. 5, 2010), http://www.electionstudies.org/nesguide/toptable/tab3_1.htm. This is the leading academic national survey of voters in the United States. It is based at the University of Michigan and is run in partnership with Stanford University. The data presented in this Article were compiled from *The American National Election Studies Guide to Public Opinion and Electoral Behavior*, AM. NAT'L ELECTION STUDIES, <http://www.electionstudies.org/nesguide/gd-index.htm> (last visited June 1, 2013). The conservative lead in the polls is calculated by subtracting the sum of those who identify as either "slightly liberal," "liberal," or "extremely liberal" from the sum of those who identify as either "slightly conservative," "conservative," or "extremely conservative." These data are fully set forth in Appendix A.

FIGURE 2²²⁹
 CONSERVATIVE ADVANTAGE IN SELF-IDENTIFICATION POLLING,
 1972 – 1998



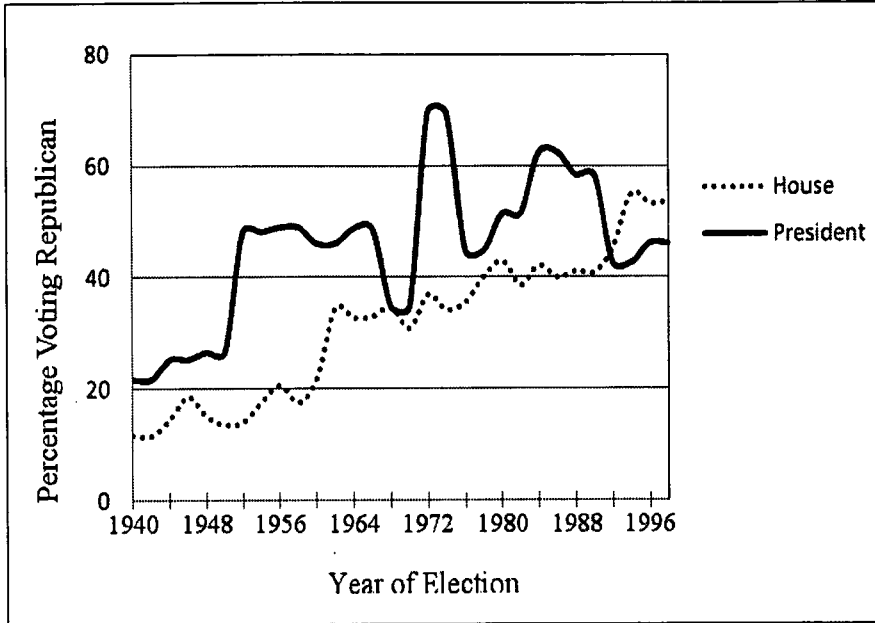
2. The Failure of Realignment To Translate into Congressional Wins for the GOP

While there was a national and regional ideological shift among voters, there was no major shift electorally until 1994. Figure 3 reveals that the growth of conservatism yielded success for Republican presidential candidates, yet failed to translate to GOP support in congressional races. In 1972, Republican presidential nominee Richard M. Nixon received seventy percent of the popular vote in the South while Republican candidates for Congress received almost half that total. At the same time, the number of southerners who identified themselves as conservative was twelve percent greater than the amount that self-identified as liberal. Despite this significant advantage in ideological

²²⁹ See *Liberal-Conservative Self-Identification 1972–2008*, *supra* note 228; see also *infra* app. A.

identification and presidential support, a mere thirty percent of Southern voters cast votes for Republican congressional candidates in 1972.

FIGURE 3²³⁰
OVERALL VOTE PERCENTAGE WITHIN THE SOUTH,
REPUBLICAN HOUSE AND PRESIDENTIAL CANDIDATES,
1940 - 1998



Even during the Reagan landslide election of 1984, voters remained loyal to Democratic incumbents in congressional races. In 1984, a remarkable 62.4% of southerners voted for Ronald Reagan, yet only 42.2% cast their ballots for a Republican member of Congress. Undoubtedly, members of the Conservative Opportunity Society were puzzled. Southerners—and even Americans generally—were identifying themselves as conservative and then acting upon those conservative views by casting ballots for a conservative Republican president. And yet, they continued to reelect liberal incumbent members to Congress. Due to presidential term limits, candidates for the

²³⁰ The data reported were compiled from RUSK, *supra* note 60 and are fully set forth in Appendix B.

executive branch do not possess the same incumbent advantages as members of Congress. We therefore see conservative voters electing conservative presidents. As one scholar has pointed out, "All of the arguments for term limits are premised on the costs of incumbency advantage."²³¹

There was clearly an emerging shift in the underlying political preferences of voters²³² that failed to yield success for conservatives seeking congressional seats.²³³ The Republican members felt underrepresented within Congress as conservatives continued to reelect liberal Democrats. As early as 1972, the GOP held the ideological advantage among voters, yet constituents continued to elect Democratic incumbents.

That said, simply tallying the number of votes cast for Republican candidates is an imperfect measure of whether conservative interests had been underrepresented in Congress. Fortunately, there is a more sophisticated measure of member ideology in the form of the "DW-NOMINATE" scores created by Professors Poole and Rosenthal.²³⁴ Political scientists employ these data as a measure of lawmaker ideology. The DW-NOMINATE scores assess the ideological position of each legislator based upon roll call voting records. Scores typically range from the most conservative at +1 to the most liberal at -1. A score at or around zero is considered moderate.

Figure 4 displays the DW-NOMINATE scores from 1930–2010 for the members of the House of Representatives. It presents the average scores for each party and for the chamber as a whole.²³⁵ Figure 5 charts the same calculations for the

²³¹ Alexander Tabarrok, *A Survey, Critique, and New Defense of Term Limits*, 14 CATO J. 333, 333 (1994), available at <http://www.cato.org/sites/cato.org/files/serials/files/cato-journal/1994/11/cj14n2-9.pdf>.

²³² See *supra* fig.2.

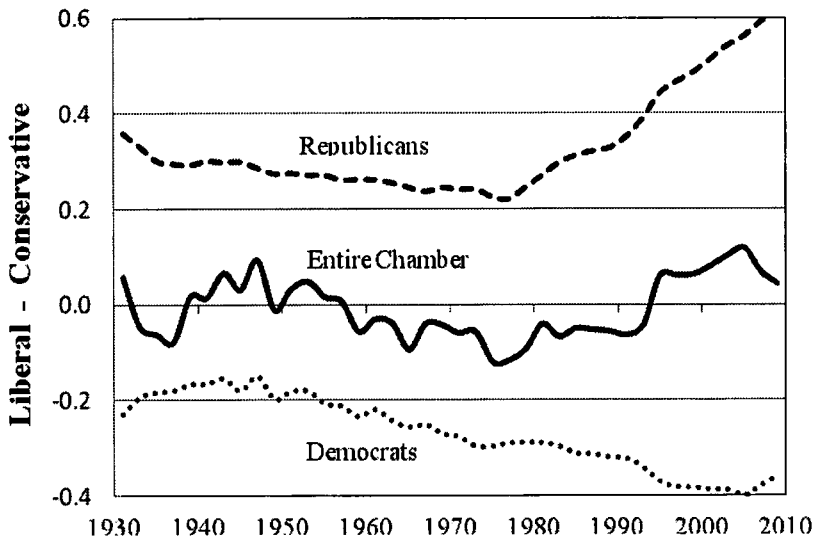
²³³ See *supra* fig.3.

²³⁴ See Royce Carroll et al., *DW-NOMINATE Scores with Bootstrapped Standard Errors*, VOTEVIEW.COM, <http://voteview.com/dwnominate.asp> (last updated Feb. 3, 2011). DW-NOMINATE scores measure the ideology of members of congress along a liberal-conservative spectrum based upon their roll call votes. *Id.*

²³⁵ These two sets of scores are available for download from Nolan McCarty, Keith T. Poole & Howard Rosenthal, *Political Party Means 46th to 111th Houses*, VOTEVIEW.COM, ftp://voteview.com/junkord/hmeans3_46_111.txt (last visited June 1, 2013).

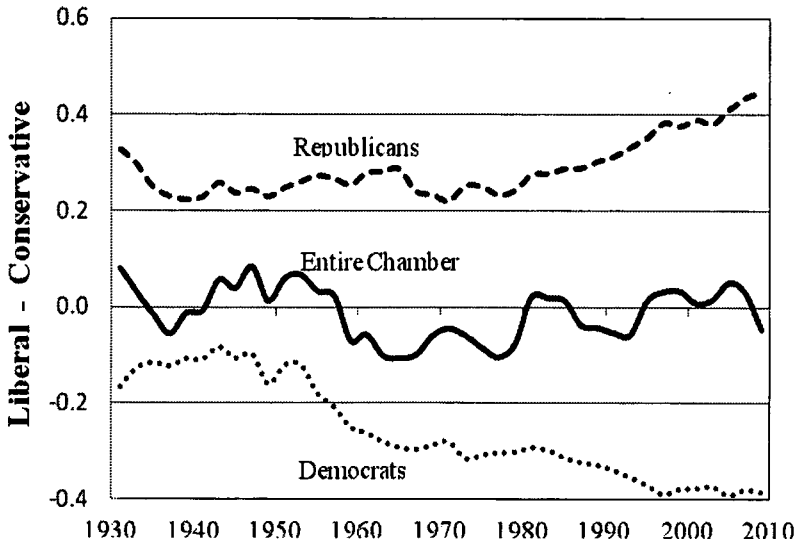
Senate.²³⁶ These graphs show that between 1930 and 1980, the House and Senate each grew more liberal. During that time period, the Republican Party experienced limited ideological variance, whereas the Democratic Party veered noticeably to the left. This trend reversed in the 1980s as voters elected more conservative members. This movement coincides with the voting records of the Conservative Opportunity Society. Both the House and Senate remained more liberal until the Republican landslide elections of 1995. As expected, Congress as a whole shifted rightward following the 1994 elections.

FIGURE 4. U.S. HOUSE 1930–2010:
PARTY AND CHAMBER MEANS ON LIBERAL – CONSERVATIVE
SPECTRUM



²³⁶ Nolan McCarty, Keith T. Poole & Howard Rosenthal, *Political Party Means 46th to 111th Senates*, VOTEVIEW.COM, ftp://voteview.com/junkord/smeans3_46_111.txt (last visited June 1, 2013).

FIGURE 5. U.S. SENATE 1930–2010:
PARTY AND CHAMBER MEANS ON LIBERAL – CONSERVATIVE
SPECTRUM



These findings support the strategic model's underlying logic. Figure 2 clearly demonstrates that between 1970 and 1998, voters were more conservative than liberal. And yet, voters continued to elect liberal Democrats to Congress.²³⁷ The Democrats elected by the conservative electorate were casting liberal roll call votes.²³⁸ The strategic model posits that conservative politicians believed that voters faced a dilemma. Constituents wanted to cast their ballots for candidates who embodied their own conservative ideological views. However, these challengers were running against sitting incumbents. Ousting an incumbent meant losing out on all of the legislative benefits senior incumbents are equipped to deliver to their constituents.²³⁹ The cost of losing out on seniority outweighed the benefit of electing an individual who was closer in ideology.

²³⁷ See *supra* fig.3.

²³⁸ See *supra* figs.4 & 5.

²³⁹ See *supra* notes 156–57 and accompanying text.

Each district therefore reelected its senior member. Conservatives believed that term limits offered one way to solve this dilemma.

3. The Fading of GOP Support for Term Limits After Republicans Won the House

Following the 1994 election, House Majority Leader Dick Armey said, "If the Republicans can straighten out the House, I think Americans will find their enthusiasm for term limits waning quite a bit."²⁴⁰ This part of the Article focuses on whether politician support was strategic or sincere. An individual who sincerely believes in the mission of term limits would likely not seek reelection after serving a predetermined number of terms. The data tell a different story.²⁴¹

Roll call votes provide one quantitative means of identifying which members publicly supported term limits. Of the 227 Representatives who voted in support of H.J. Res. 73 in 1995, which would have limited tenure in each chamber to twelve years, 144 (63.4%) went on to serve more than twelve years.²⁴² Seventy served twenty years or more, twelve served thirty years or more, and two served forty years or more.²⁴³ Of the eighty-three Representatives who served fewer than twelve years, only five did so to honor a self-imposed term limits pledge.²⁴⁴ The others either ran for a different political office, lost a bid for reelection, died while in office, resigned, or decided not to run for reelection for other reasons.²⁴⁵ A significant majority of those who served fewer than twelve years did not voluntarily step down; rather, they were defeated in bids for reelection.²⁴⁶

The results were similar in the Senate. Senator Bill Frist was the only Senator who voted in support of term limits and likewise honored a self-imposed pledge to serve two terms.²⁴⁷ Forty-eight of the term limits supporters in the Senate completed

²⁴⁰ 141 CONG. REC. 9116 (1995) (statement of Rep. Gutierrez) (quoting Jim Abrams, *Some Republicans Are Having Second Thoughts About Term Limits*, ASSOCIATED PRESS, Nov. 21, 1994 (quoting Rep. Dick Armey)).

²⁴¹ See *infra* apps. D–H.

²⁴² See *infra* app. F.

²⁴³ See *infra* app. F.

²⁴⁴ See *infra* app. D.

²⁴⁵ See *infra* app. E.

²⁴⁶ See *infra* app. E.

²⁴⁷ See *infra* app. G.

more than twelve years. In fact, thirty-eight served twenty years or more, eighteen served thirty years or more, three served forty years or more, and Senator Strom Thurmond of South Carolina served fifty years even though he voted in favor of term limits.²⁴⁸

Congressman Bill McCollum, who sponsored the House term limits amendment, said, "What the American people have seen, that many in Congress have not admitted to in recent years, is the fact that we really have become very career-oriented . . . [term limits would] mitigate the career orientation of too many Members of Congress . . ." ²⁴⁹ McCollum served twenty years in the House.²⁵⁰ He later ran unsuccessfully as a candidate for the United States Senate in 2000 and 2004.²⁵¹ In 2006, he was elected Attorney General for the State of Florida and was a candidate in the 2010 Florida gubernatorial election.²⁵²

Most of the freshman members who pledged they would only serve three terms have since reneged their own self-imposed limits.²⁵³ Republican George Nethercutt broke his pledge to serve only three terms.²⁵⁴ Three representatives who stepped aside to abide by their pledge later successfully ran for the Senate: Tom Coburn of Oklahoma, Jim DeMint of South Carolina, and John Thune of South Dakota.²⁵⁵ Moreover, some members expressly renounced their self-imposed pledges, including Representatives Martin T. Meehan, Scott McInnis, and George Nethercutt.²⁵⁶

It appears that the GOP—now the majority party—had adopted their Leader Dick Armey's view that enthusiasm for term limits would wane. The GOP was no longer concerned with

²⁴⁸ See *infra* app. H.

²⁴⁹ 141 CONG. REC. 7088 (1995) (statement of Rep. McCollum).

²⁵⁰ See *infra* app. F.

²⁵¹ See *McCollum, Ira William, Jr. (Bill), (1994-)*, BIOGRAPHICAL DIRECTORY U.S. CONGRESS, <http://bioguide.congress.gov/scripts/biodisplay.pl?index=M000350> (last visited June 1, 2013).

²⁵² Michael C. Bender, *Rick Scott Turns To Top Lobbyist to Help Finance Inauguration*, TAMPA BAY TIMES (Nov. 15, 2010), <http://www.tampabay.com/blogs/the-buzz-florida-politics/content/rick-scott-turns-top-lobbyist-help-finance-inauguration>; Dan Dewitt, *He Was Born to Be Serious*, HERNANDO TIMES, Nov. 19, 2006, at 1.

²⁵³ See Zeller, *supra* note 15.

²⁵⁴ Andrea Stone, *Term-Limit Pledges Get Left Behind*, USA TODAY, Apr. 13, 2006, at 5A, available at http://www.usatoday.com/news/washington/2006-04-12-term-limits_x.htm.

²⁵⁵ *Id.*

²⁵⁶ See Kristin Brainerd, *Several Term Limit Supporters Recant Vows To Leave House, Saying Their Work Is Not Yet Done*, CQ WKLY., June 19, 1999.

the electoral advantages of incumbency. As New York Representative Michael Forbes put it, “Candidly, [the Republican] leadership didn’t want them any more than the old leadership did.”²⁵⁷ It is perhaps possible to conclude that support for term limits in the early 1990s was strategic and not sincere. Congressional voting records show that the Republican Revolution yielded a conservative congress.²⁵⁸ Thus, conservative lawmakers were no longer as interested in ousting sitting incumbents.

B. Support for Term Limits Energized by Anti-Incumbent Mood

Anti-incumbent zeal feeds support for term limits.²⁵⁹ When the electorate is dissatisfied with the direction in which the country is heading, its instinct is to show anger toward the government. In the early 1990s, politicians tapped into this rage on the campaign trail by promising to fix Congress with term limits.

Figure 6 graphs data compiled from a Gallup Poll conducted over the past eighteen years.²⁶⁰ When asked, “Do most members of Congress deserve reelection?”, the fewest number of Americans said “Yes” in 1992 and in 2010. Figure 6 demonstrates that general public approval was at record lows in 1992 and 1994 with more than half of the population stating that members do not deserve reelection. That number eventually fell to 36.5% in 1996, 28% in 1998, 30.5% in 2000, and 26.5% in 2002. As expected, during those times of higher approval ratings, there was not a large public outcry for term limits.

In the early 1990s, voter hostility pressured members of Congress to support legislation designed to reign in the perceived corruption of the federal government.²⁶¹ “It’s a sign of the continuing distrust of government,” said Don Linky, president of

²⁵⁷ Doug Bandow, *The Political Revolution That Wasn't: Why Term Limits Are Needed Now More Than Ever*, CATO POLY ANALYSIS INST. (Sept. 5, 1996), <http://www.cato.org/pubs/pas/pa-259.html>.

²⁵⁸ See *supra* figs.4 & 5.

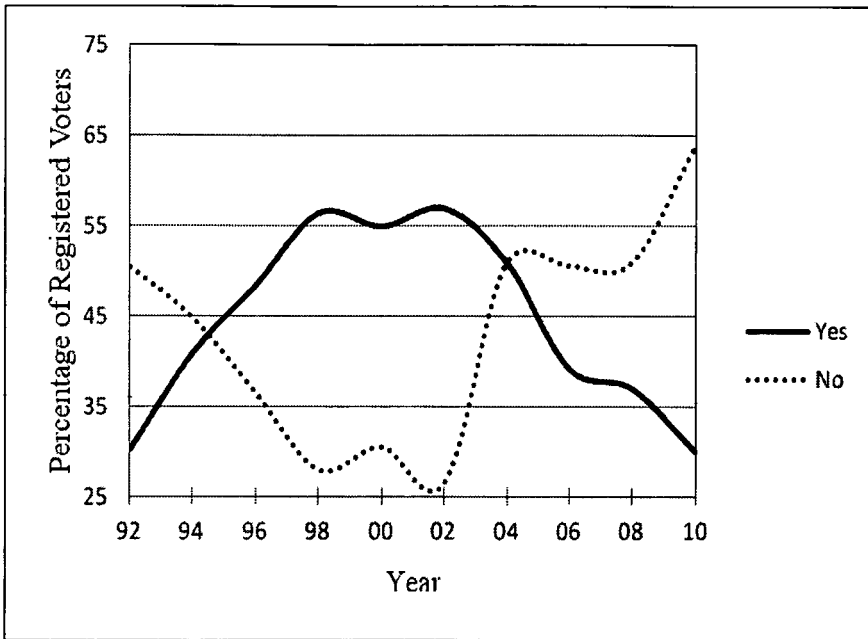
²⁵⁹ See, e.g., HIBBING & THEISS-MORSE, *supra* note 28, at 74–82.

²⁶⁰ Jeffrey M. Jones, *U.S. Voters Favor Congressional Newcomers Over Incumbents*, GALLUP (June 8, 2010), <http://www.gallup.com/poll/139409/Voters-Favor-Congressional-Newcomers-Incumbents.aspx>.

²⁶¹ See Janet Hook, *Voters' Hostility Is Shaping the Business of Congress*, 52 CONG. Q. WKLY. REP. 785, 785–89 (1994).

the Public Affairs Research Institute of New Jersey in 1994.²⁶² "Anybody in office now should be worried about the mood of the country . . ."²⁶³ That said, we might expect to see significant support for term limits in 2010, given the record high sixty-three percent of Americans who believe most members of Congress do not deserve reelection.²⁶⁴ This is the subject of Part IV.

FIGURE 6²⁶⁵
GALLUP POLL: DO MOST MEMBERS OF CONGRESS DESERVE
REELECTION?



C. Limitations of the Captured Data

This section has called into question the sincerity with which lawmakers cast roll call votes in favor of term limits. Yet, it is possible for legislators to have supported term limits for sincere reasons while simultaneously serving thirty to forty years in

²⁶² Karen Foerstel, *Term Limits Are Top Initiative for Disgruntled Electorate*, 52 CONG. Q. WKLY. REP. 3139, 3139 (1994).

²⁶³ *Id.*

²⁶⁴ Jones, *supra* note 260.

²⁶⁵ *See id.*

Congress. For example, a lawmaker might sincerely support term limits, but not as much as he or she supports a balanced budget amendment, legislation to lower taxes, campaign finance reform, or a host of other issues. If that lawmaker decides not to seek reelection out of a sincere belief that office rotation is valuable, that lawmaker is forfeiting his or her power to legislate on all other issues. These competing considerations are not entirely addressed by the data presented in this Article.

Still, these limitations do not detract from the strategic model's usefulness. As previously stated, public choice theorists predict legislative outcomes based upon fundamental assumptions made about lawmakers, voters, and how both behave collectively.²⁶⁶ We assume legislators and their constituents are rational, self-interested actors who respond predictably when faced with a set of constraints and choices.²⁶⁷ In short, similarly situated actors will make similar decisions when faced with similar circumstances. While roll-call votes alone are not a perfect measure of member support, they do serve as a powerful measure of how members will behave with regard to a term limits bill when faced with a certain set of circumstances. Part IV takes this analysis further by using the lessons learned from the data presented thus far to predict what might impact the term limits movement led by the Tea Party.

IV. THE TEA PARTY AND TERM LIMITS

There are striking similarities between the term limits movement led by the Republican Revolutionaries of 1994 and the one sparked by the Tea Party Patriots approximately fifteen years later. Both are grassroots campaigns fueled by anti-incumbent, anti-establishment ideals.²⁶⁸ Both stem from the conservative base of the GOP, gaining momentum in the months leading up to the midterm elections. Both have evolved at times when Republicans were the minority party in Congress. And

²⁶⁶ *Supra* notes 130–38 and accompanying text.

²⁶⁷ *Supra* notes 144–63 and accompanying text.

²⁶⁸ For an historical review of the Tea Party movement, see generally Peter Katel, *Tea Party Movement: Will Angry Conservatives Reshape the Republican Party?*, CQ RESEARCHER, Mar. 19, 2010, available at <http://library.cqpress.com/cqresearcher/document.php?id=cqresrre2010031900&type=hitlist&num=5>; Joseph J. Schatz, *Reading the Tea Leaves at the Capitol*, 68 CQ WKLY. 480, 482 (2010); and Dana Milbank, Putting the “Tea” in GOP?, Wash. Post, July 22, 2010, at A02.

both grew out of contempt for a more liberal-sitting president.²⁶⁹ Thus, applying the strategic model developed previously should shed light on how legislators might behave in the 112th Congress with regard to term reform.

A. *The Tea Party Patriots*

The Tea Party movement is named for the 1773 protest against British taxation.²⁷⁰ It is a grass-roots political organization, with more than 1,000 community-based clusters, each touting strong conservative views.²⁷¹ The inaugural Tea Party gathering occurred on Tax Day in 2009 when 1.2 million people gathered at protests around the country, decrying what they believed to be wasteful government spending.²⁷² Protestors voiced their anger over the federal bailouts of banks, financial institutions, and automobile corporations.²⁷³ In the months following Tax Day, Tea Party groups began to formally organize around a national conservative platform.²⁷⁴ Originally, Tea Party activity commenced in states with historically conservative voting blocks,²⁷⁵ but as the movement grew more mainstream, there emerged Tea Party groups in every state of the country.²⁷⁶ The most mainstream of these groups is the Tea Party Patriots.²⁷⁷ With chapters in every state, the Tea Party Patriots' stated mission "is to restore America's founding principles of Fiscal Responsibility, Constitutionally Limited Government and Free Markets."²⁷⁸

The movement took on a dual persona as the 2010 midterm elections approached. While it remained a grass-roots movement organizing voters at the local level, it also developed into an organized national force, providing significant funding to

²⁶⁹ Katel, *supra* note 268, at 243 ("[T]he Tea Party movement is on the cutting edge of a conservative surge that aims to undercut, or even defeat, the Obama administration and what foes call its big-government, socialist agenda.").

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.* at 243–44.

²⁷³ *Id.* at 244.

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 246.

²⁷⁶ *State Directory*, TEA PARTY PATRIOTS, <http://www.teapartypatriots.org/local> (last visited June 1, 2013).

²⁷⁷ Katel, *supra* note 268, at 245.

²⁷⁸ *About Tea Party Patriots*, TEA PARTY PATRIOTS, <https://www.teapartypatriots.org/about/> (last visited June 1, 2013).

conservative congressional candidates.²⁷⁹ Congressional Quarterly journalist Steve Peoples noted that the localized grassroots organizations “opened an enthusiasm gap between parties in virtually every state in the nation, even in places where Democrats hold a widespread registration advantage, such as Pennsylvania and Illinois.”²⁸⁰ At the same time, more centralized national organizations like the Tea Party Patriots “operated much like a political party, funneling financial resources, paid media and get-out-the-vote operations to like-minded candidates The formalized tea party groups had formal spokesmen and media-savvy leaders who ultimately became the faces of an anti-establishment movement.”²⁸¹

There are those who questioned whether the Tea Party represented a fringe group of conservatives and would eventually fade from the public limelight.²⁸² Yet, as the movement grew, Republican Party leaders sought to absorb its conservative message and channel its activist force.²⁸³ The leaders of the Tea Party likewise realized that promoting their agenda within the GOP was essential in order to avoid becoming marginalized by America’s two party voting structure.²⁸⁴ This symbiotic relationship between the Republican establishment and the Tea Party has effectively moved the GOP rightward on the ideological spectrum of issues.²⁸⁵

Much like the conservative-driven “Contract with America,” the strength and popularity of the Tea Party helped to shape the outcome of key congressional races. For example, the Tea Party contributed to primary victories for conservative U.S. Senate

²⁷⁹ See Steve Peoples, *For Democrats, A Blue Lining to a Stormy Week*, 68 CQ WKLY. 2570, 2570 (2010).

²⁸⁰ *Id.*

²⁸¹ *Id.*

²⁸² See Katel, *supra* note 268, at 249 (“The surfacing of the tensions among the tea partiers did lend substance to press reports of fringe constituencies attaching themselves to the movement, whose primary concerns publicly center on economic policy.”).

²⁸³ See Bob Benenson, *A Tea Party Lift For the Other Guys?*, 68 CQ WKLY. 2136, 2136 (2010) (“When the tea party movement began blossoming last year . . . the Republican Party’s leaders hoped to harness the activist energy to mainstream conservative candidates with solid prospects for winning 2010 victories that would put the GOP back in charge at the Capitol.”).

²⁸⁴ See Katel, *supra* note 268, at 247.

²⁸⁵ *Id.* (“Tea partiers are also trying to push the national Republican Party to the right, with Tea Party-affiliated candidates this year running in GOP primaries for at least 58 congressional and state offices, including three governorships.”).

candidates Ken Buck of Colorado; Rand Paul of Kentucky; Sharron Angle of Nevada; incumbent Republican Jim DeMint of South Carolina;²⁸⁶ Marco Rubio of Florida, who beat establishment candidate Governor Charlie Crist for the GOP nomination; activist Christine O'Donnell, who beat the GOP-backed favorite Representative Michael N. Castle;²⁸⁷ Joe Miller, who defeated sitting Senator Lisa Murkowski in Alaska's GOP primary;²⁸⁸ and U.S. Senator Scott Brown of the traditionally liberal Massachusetts.²⁸⁹ This political momentum gradually spread from campaign trails to the halls of Congress. For instance, in late July 2010, a collection of conservative Representatives announced the establishment of the Tea Party Caucus, with forty-two House Republican members.²⁹⁰

B. *The Tea Party Push for Term Limits*

On the opposite side of the political aisle, Democrats were hamstrung by the unpopularity of the corporate bailouts and the health care legislation.²⁹¹ The result was a toxic, anti-incumbent political climate.²⁹² In a Gallup Poll asking registered voters if

²⁸⁶ See Peoples, *supra* note 279.

²⁸⁷ See *id.*; Gerald F. Seib, *Republicans' Senate Hopes Ride with the Tea Party*, WALL ST. J. CAPITAL J. BLOG (July 12, 2010), <http://blogs.wsj.com/capitaljournal/2010/07/12/republicans-senate-hopes-ride-with-the-tea-party>.

²⁸⁸ Liz Sidoti, *Is the Republican Party in Line for a Tea Party Takeover?*, PORTLAND PRESS HERALD (Sept. 2, 2010), http://www.pressherald.com/news/nationworld/party-within-a-party-is-the-gop-becoming-tea_2010-09-02.html ("The grass-roots network of fed-up conservative-libertarian voters displayed its power in its biggest triumph of the election year: the toppling of Sen. Lisa Murkowski in Alaska's GOP primary. Political novice Joe Miller is the fifth tea party insurgent to win a GOP Senate nominating contest, an upset that few, if any, saw coming.")

²⁸⁹ See Katel, *supra* note 268, at 243 ("The [Tea Party] movement proved itself a political force to be reckoned with in the special Senate election in January of Republican Scott Brown for the Massachusetts Senate seat held by the late liberal Democratic lion, Edward M. Kennedy.")

²⁹⁰ For a complete list of all members of the Tea Party Caucus, see *The Tea Party's at Their House*, 68 CQ WKLY. 1785, 1785 (2010).

²⁹¹ Katel, *supra* note 268, at 243; Scott Montgomery, *Party Crashers: Primary Season Hints at Anti-Incumbent Mood*, 68 CQ WKLY. 1178, 1178 (2010) ("Heading into the thick of the primary season, the question arises: Is this an anti-Democrat year, as everyone first thought, or is it more broadly an anti-incumbent year that threatens established politicians in both parties?")

²⁹² See Montgomery, *supra* note 291; see also John McArdle, *Primary Trouble for the Establishment*, 68 CQ WKLY. 1286, 1286 (2010) ("Two Democratic senators [Senators Arlen Specter and Blanche Lincoln]—one ousted after three decades and one hanging on the ropes—last week became the latest victims of this year's anti-incumbent mood, while on the Republican side, a candidate backed by tea party

“most members of Congress’ deserve reelection,” sixty-three percent responded, “No.”²⁹³ This is the highest rate in more than eighteen years.²⁹⁴

The Tea Party claimed to have a way to deal with this perceived need to remove incumbents from office: term limits. U.S. Senator Rand Paul, a leading member of the Tea Party,²⁹⁵ noted, “Over 80% of the public, both Democrats and Republicans, favor term limits. What will it take to force a vote on Congressional Term Limits? . . . What the movement needs is a leader elected to the US Senate. I hope you will help both the Term Limits movement and the country by supporting my campaign for the US Senate.”²⁹⁶ Likewise, self-proclaimed Tea Partier Senator Jim DeMint²⁹⁷ argued, “As long as members have the chance to spend their lives in Washington, their interests will always skew toward spending taxpayer dollars to buy off special interests, covering over corruption in the bureaucracy, fundraising, relationship building among lobbyists, and trading favors for pork—in short, amassing their own power.”²⁹⁸ According to U.S. Term Limits, Inc., a total of fifty-six candidates for Congress took a term limits pledge in 2010.²⁹⁹

While some thought this anti-incumbent movement would not last,³⁰⁰ the campaign culminated with a GOP gain of more than sixty congressional districts.³⁰¹ This exceeded even the fifty-three seat GOP pickup in 1994. Republicans had reclaimed their majority status in the House, which they had lost just four years earlier in 2006.³⁰²

activists [Rand Paul] bucked the party establishment to win the nomination for an open Senate seat.”).

²⁹³ See Jones, *supra* note 260.

²⁹⁴ *Id.*

²⁹⁵ See McArdle, *supra* note 292.

²⁹⁶ *Rand Paul for Term Limits!*, RAND PAUL: U.S. SENATE (Nov. 1, 2009), <http://www.randpaul2010.com/2009/11/rand-paul-for-term-limits>.

²⁹⁷ See Schatz, *supra* note 268, at 485.

²⁹⁸ See S.A. Miller, *DeMint Tries to Ban “Permanent Politicians”*, WASH. TIMES, Nov. 11, 2009, at A8, available at <http://www.washingtontimes.com/news/2009/nov/11/demint-revives-bill-to-ban-permanent-politicians/>.

²⁹⁹ See U.S. TERM LIMITS, INC., *Term Limits Pledge*, TERMLIMITS.ORG, <http://www.termlimits.org/content.asp?pl=112&contentid=112> (last visited Jan. 28, 2012).

³⁰⁰ See Katel, *supra* note 268, at 249.

³⁰¹ See Alan K. Ota, *New Majority, New Challenges*, 68 CQ WKLY. 2528, 2531 (2010).

³⁰² See *id.* at 2528.

The Tea Party has remained a powerhouse within the GOP.³⁰³ Tea Party political clout stems from the movement's popularity among voters.³⁰⁴ A Gallup Poll taken in mid-January of 2011 found that seventy percent of Americans, including eighty-eight percent of Republicans, thought it important that GOP leaders in Congress "take the tea party movement's positions and objectives into account as they address the nation's problems."³⁰⁵ Moreover, by some accounts, the Tea Party Caucus in the House has grown to include at least fifty members.³⁰⁶ In fact, there is some indication that the visceral reaction toward incumbents in 2010 was even greater than in 1994.³⁰⁷ For example, a Pew Research Center poll found the following:

Hostility toward government seems likely to be a significant election issue and an important element in both midterm voting intentions and turnout. While there was widespread distrust of the federal government in the late 1990s, just 37% went so far as to say that the federal government needed "very major reform." Today [2010], that figure stands at 53%; increasing numbers of Republicans, independents and Democrats say that government needs very major reform. Still, far more Republicans (65%) and independents (54%) than Democrats (41%) express this view.³⁰⁸

C. *Predictions for the Future*

As observed in Parts I–III of this Article, viewing the lawmaking process through the lens of public choice theory suggests that dissatisfaction with Congress provides fodder for congressional candidates to endorse mandatory office rotation. This Article proposes that politicians will support term limits when both of two conditions are met: (1) they are members of an ideologically underrepresented political faction and (2) they see a political opportunity to make the most of anti-incumbent opinion

³⁰³ See Sam Goldfarb, *Tea Partiers Build Capitol Credibility*, 69 CQ WKLY. 378 (2011).

³⁰⁴ See *id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ See PEW RESEARCH CTR. FOR THE PEOPLE & THE PRESS, *THE PEOPLE AND THEIR GOVERNMENT: DISTRUST, DISCONTENT, ANGER, AND PARTISAN RANCOR* 9 (2010), available at <http://www.people-press.org/files/legacy-pdf/606.pdf>.

³⁰⁸ *Id.*

by wrapping it into a popular platform among their voters. Using this model allows us to better predict the fate of term limits in the 112th Congress.

While the second condition—anti-incumbent sentiment—is currently met, the first is not. Recall that prior to the election of a Republican majority in 1994, more voters had identified themselves as conservative than liberal going back as far as 1972. And yet, throughout that entire span of time, the conservative GOP remained an underrepresented minority. The Republicans believed that they had been underrepresented in Congress. Contrast that to the current Republican Party, which, until 2006, controlled a majority of both the House and the Senate. This is not the sort of historical underrepresentation that the GOP experienced from the Great Depression through the 1994 election.

Asking lawmakers to impose term limits on themselves is a tall order. Representative Bob Inglis of South Carolina compared asking Congress to vote for term limits to “asking the chicken to vote for Colonel Sanders.”³⁰⁹ Politician support for term limits requires extraordinary circumstances. The Republican Revolution was an historical anomaly. Not only was public distrust for government at historically high levels, the election of a GOP majority represented a paradigm shift in voting. For only the second time since the Great Depression, Republicans won a majority of the seats in the House. And yet, even under those circumstances, conservatives could not muster up the votes to pass term limits reform. This model therefore predicts that, absent the first condition, term limits stand even less of a chance of becoming public law in the future than they did in 1994.

CONCLUSION

This Article has considered the debate surrounding term limits and has then analyzed lawmaker support for term limits using public choice theory. It has developed a new strategic model to predict when lawmakers will back term limits. The thesis of this Article is that politicians will support congressional term limits when both of two conditions are met: (1) they are members of an ideologically underrepresented political faction

³⁰⁹ Holly Idelson, *Ruling Pressures Congress To Address Term Limits*, 53 CONG. Q. WKLY. REP. 1479, 1479 (1995).

and (2) they see a political opportunity to package anti-incumbent sentiment into a popular platform among voters. This Article does not dispose of the debate on the desirability of term limits as sound public policy. But both the public choice analysis and the empirical data demonstrate that if scholars and voters are to rely on the arguments legislators submit in favor of term limits, their analysis will benefit from applying the strategic model developed in this Article. Any realistic evaluation of term limits thus ought to address the seemingly insincere—yet strategic—positions taken by lawmakers.

APPENDIX A

NATIONAL IDEOLOGICAL SELF-IDENTIFICATION³¹⁰

Year	<i>Percentage who identified as extremely conservative, conservative, or slightly conservative</i>	<i>Percentage who identified as extremely liberal, liberal, or slightly liberal</i>	<i>Percentage Conservative Advantage</i>
1972	26	18	8
1974	26	21	5
1976	25	16	9
1978	27	20	7
1980	28	17	11
1982	27	15	12
1984	29	18	11
1986	30	18	12
1988	32	17	15
1990	26	16	10
1992	31	20	11
1994	36	14	22
1996	33	18	15
1998	30	18	12
2000	30	20	10
2002	35	23	12
2004	31	19	12
2008	32	22	10

³¹⁰ These data were compiled from *The American National Election Study Guide to Public Opinion and Electoral Behavior*, *supra* note 228.

SOUTHERN SELF-IDENTIFICATION³¹¹

YEAR	<i>Percentage who identified as extremely conservative, conservative, or slightly conservative</i>	<i>Percentage who identified as extremely liberal, liberal, or slightly liberal</i>	<i>Percentage Conservative Advantage</i>
1972	27	15	12
1974	25	14	11
1976	26	12	14
1978	28	15	13
1980	28	13	15
1982	27	11	16
1984	27	14	13
1986	26	14	12
1988	28	12	16
1990	22	11	11
1992	28	16	12
1994	33	12	21
1996	31	14	17
1998	30	16	14
2000	31	17	14
2002	37	18	19
2004	33	14	19
2008	38	16	22

³¹¹ See *id.*

APPENDIX B
 OVERALL VOTE PERCENTAGE WITHIN THE SOUTH,
 REPUBLICAN HOUSE AND PRESIDENTIAL CANDIDATES,
 1940 – 1998³¹²

YEAR	<i>Percentage of southerners who voted for a Republican candidate in the House election</i>	<i>Percentage of southerners who voted for a Republican candidate in the presidential election</i>
1940	11.7	21.6
1942	11.6	—
1944	14.6	25.2
1946	18.7	—
1948	15.1	26.5
1950	13.6	—
1952	14.1	48.1
1954	17.7	—
1956	20.7	48.9
1958	17.6	—
1960	22	46
1962	34.5	—
1964	32.8	48.7
1966	33	—
1968	34.8	34.6
1970	30.9	—
1972	37	69.6
1974	34.2	—
1976	35.6	44.7
1978	40.2	—
1980	43	51.4
1982	38.6	—
1984	42.2	62.4
1986	40	—

³¹² These data were compiled from RUSK, *supra* note 60.

1988	41.2	58.3
1990	41	—
1992	45.3	42.6
1994	55.1	—
1996	53.4	46.1
1998	53.7	—

APPENDIX C
GALLUP POLL: "DO MOST MEMBERS OF CONGRESS DESERVE
RE-ELECTION? (1992–2010)³¹³

<i>Year</i>	<i>Yes</i>	<i>No</i>
1992	30.25	50.5
1994	41	44.83
1996	48.5	36.5
1998	56.5	28
2000	55	30.5
2002	57	26.5
2004	51	51
2006	39.2	50.6
2008	37	51
2010	30	64

³¹³ These data were compiled from Jones, *supra* note 260.

APPENDIX D³¹⁴THE FIVE REPRESENTATIVES WHO VOTED IN SUPPORT OF H.J.
RES. 73 AND HONORED THEIR TERM LIMITS PLEDGE³¹⁵

Member	Party / State	Senate Service (Years)	House Service (Years)
Rep. Canady	R-FL	--	8
Rep. Chenoweth	R-ID	--	6
Rep. Fowler	R-FL	--	8
Rep. Metcalf	R-WA	--	6
Rep. Miller	R-FL	--	10

³¹⁴ The data in Appendices D, E, and F were compiled by the author using roll call votes in favor of House Joint Resolution 73, OFFICE OF THE CLERK, H.R., FINAL VOTE RESULTS FOR ROLL CALL 277 (1995), *available at* <http://clerk.house.gov/evs/1995/roll277.xml>, and an online database of Congressional biographies, BIOGRAPHICAL DIRECTORY OF U.S. CONG., <http://bioguide.congress.gov/biosearch/biosearch.asp> (last visited June 1, 2013).

³¹⁵ See BIOGRAPHICAL DIRECTORY OF U.S. CONG., *supra* note 314; OFFICE OF THE CLERK, H.R., *supra* note 314; *cf.* Foerstel, *supra* note 262 (discussing the rise of the term limits movement through state ballot initiatives); Lisa Licari, *Promises to Keep in 2002*, 59 CQ WKLY. 161, 161 (2001) (describing other members of Congress who stood by their term limit pledges later in 2002).

APPENDIX E

THE SEVENTY-EIGHT REPRESENTATIVES WHO VOTED IN SUPPORT
OF H.J. RES. 73 AND SERVED NO MORE THAN TWELVE YEARS FOR
REASONS OTHER THAN HONORING A TERM LIMITS PLEDGE

Member	Party & State	Senate Service (Years)	House Service (Years)	Reason for Serving No More Than 12 Years
Rep. Baker	R-CA	--	4	Unsuccessful U.S. House candidate
Rep. Baldacci	D-ME	--	8	Elected Governor of Maine
Rep. Barcia	D-MI	--	10	Elected to state senate
Rep. Barr	R-GA	--	8	Unsuccessful U.S. House candidate
Rep. Barrett	R-NE	--	10	Not a candidate for reelection
Rep. Blute	R-MA	--	4	Unsuccessful U.S. House candidate
Rep. Bono	R-CA	--	4	Died in office
Rep. Brewster	D-OK	--	6	Not a candidate for reelection
Rep. Browder	D-AL	--	8	Unsuccessful U.S. Senate candidate
Rep. Bryant	R-TN	--	8	Unsuccessful U.S. Senate candidate
Rep. Bunn	R-OR	--	2	Unsuccessful U.S. House candidate
Rep. Chrysler	R-MI	--	2	Unsuccessful U.S. House candidate
Rep. Collins	R-GA	--	12	Unsuccessful U.S. Senate candidate
Rep. Cooley	R-OR	--	2	Not a candidate for reelection
Rep. Cremeans	R-OH	--	2	Unsuccessful U.S. House candidate
Rep. Danner	D-MO	--	8	Not a candidate for reelection
Rep. Deutsch	D-FL	--	12	Unsuccessful U.S. Senate candidate
Rep. Dickey	R-AR	--	8	Unsuccessful U.S. House candidate
Rep. Dunn	R-WA	--	12	Not a candidate for reelection
Rep. Ewing	R-IL	--	10	Not a candidate for reelection
Rep. Flanagan	R-IL	--	2	Unsuccessful U.S. House candidate
Rep. Foley	R-FL	--	11	Resigned
Rep. Forbes	R-NY	--	6	Unsuccessful U.S. House candidate
Rep. Fox	R-PA	--	4	Unsuccessful U.S. House candidate

Rep. Franks	R-CT	--	6	Unsuccessful U.S. House candidate
Rep. Franks	R-NJ	--	8	Unsuccessful U.S. Senate candidate
Rep. Frisa	R-NY	--	2	Unsuccessful U.S. House candidate
Rep. Funderburk	R-NC	--	2	Unsuccessful U.S. House candidate
Rep. Furse	D-OR	--	6	Not a candidate for reelection
Rep. Ganske	R-IA	--	8	Unsuccessful U.S. Senate candidate
Rep. Greenwood	R-PA	--	12	Not a candidate for reelection
Rep. Gutknecht	R-MN	--	12	Unsuccessful U.S. House candidate
Rep. Hancock	R-MO	--	8	Not a candidate for reelection
Rep. Hayes	D-LA	--	10	Unsuccessful U.S. Senate candidate
Rep. Hayworth	R-AZ	--	12	Unsuccessful U.S. House candidate
Rep. Heineman	R-NC	--	2	Unsuccessful U.S. House candidate
Rep. Hilleary	R-TN	--	8	Unsuccessful gubernatorial candidate
Rep. Hoke	R-OH	--	4	Unsuccessful U.S. House candidate
Rep. Horn	R-CA	--	10	Not a candidate for reelection
Rep. Hutchinson	R-AR	6	4	Unsuccessful U.S. Senate candidate
Rep. Inglis	R-SC	--	12	Unsuccessful U.S. House candidate
Rep. Kelly	R-NY	--	12	Unsuccessful U.S. House candidate
Rep. Kim	R-CA	--	6	Unsuccessful U.S. House candidate
Rep. Klug	R-WI	--	8	Not a candidate for reelection
Rep. Largent	R-OK	--	10	Unsuccessful gubernatorial candidate
Rep. Lazio	R-NY	--	8	Unsuccessful U.S. Senate candidate
Rep. Lightfoot	R-IA	--	12	Unsuccessful U.S. Senate candidate
Rep. Luther	D-MN	--	8	Unsuccessful U.S. House candidate
Rep. Martini	R-NJ	--	2	Unsuccessful U.S. House candidate
Rep. Mascara	D-PA	--	8	Unsuccessful U.S. House candidate
Rep. McCarthy	D-MO	--	10	Not a candidate for reelection
Rep. McInnis	R-CO	--	12	Unsuccessful gubernatorial candidate
Rep. McIntosh	R-IN	--	6	Unsuccessful gubernatorial candidate

Rep. Meyers	R-KS	--	12	Not a candidate for reelection
Rep. Minge	D-MN	--	8	Unsuccessful U.S. House candidate
Rep. Nethercutt	R-WA	--	10	Unsuccessful U.S. Senate candidate
Rep. Neumann	R-WI	--	4	Unsuccessful U.S. Senate candidate
Rep. Ney	R-OH	--	12	Resigned
Rep. Norwood	R-GA	--	12	Died in office
Rep. Orton	D-UT	--	6	Unsuccessful U.S. House candidate
Rep. Paxon	R-NY	--	10	Not a candidate for reelection
Rep. Peterson	D-FL	--	6	Not a candidate for reelection
Rep. Poshard	D-IL	--	10	Unsuccessful gubernatorial candidate
Rep. Quinn	R-NY	--	12	Not a candidate for reelection
Rep. Riggs	R-CA	--	6	Not a candidate for reelection
Rep. Sanford	R-SC	--	6	Elected Governor of South Carolina
Rep. Scarborough	R-FL	--	7	Resigned
Rep. Schiff	R-NM	--	10	Died in office
Rep. Seastrand	R-CA	--	2	Unsuccessful U.S. House candidate
Rep. Smith	R-MI	--	12	Not a candidate for reelection
Rep. Smith	R-WA	--	4	Unsuccessful U.S. Senate candidate
Rep. Tate	R-WA	--	2	Unsuccessful U.S. House candidate
Rep. Thornton	D-AR	--	12	Elected to the state supreme court
Rep. Torkildsen	R-MA	--	4	Unsuccessful U.S. House candidate
Rep. Waldholtz	R-UT	--	2	Not a candidate for reelection
Rep. Watts	R-OK	--	8	Not a candidate for reelection
Rep. White	R-WA	--	4	Unsuccessful U.S. House candidate
Rep. Zeliff	R-NH	--	6	Unsuccessful gubernatorial candidate
Rep. Zimmer	R-NJ	--	6	Unsuccessful U.S. Senate candidate

APPENDIX F

THE 144 REPRESENTATIVES WHO VOTED IN SUPPORT OF H.J. RES. 73 AND SERVED MORE THAN TWELVE YEARS IN CONGRESS, AND THE TOTAL NUMBER OF YEARS THEY SERVED IN EACH CHAMBER

Member	Party / State	Senate Service (Years)	House Service (Years)
Rep. Arney	R-TX	--	18
Rep. Bachus	R-AL	--	20
Rep. Ballenger	R-NC	--	19
Rep. Bartlett	R-MD	--	20
Rep. Bass	R-NH	--	14
Rep. Bereuter	R-NE	--	26
Rep. Bevil	D-AL	--	30
Rep. Bilbray	R-CA	--	13
Rep. Bilirakis	R-FL	--	24
Rep. Boehner	R-OH	--	22
Rep. Bonilla	R-TX	--	14
Rep. Brown	D-OH	6	14
Rep. Brownback	R-KS	15	2
Rep. Bunning	R-KY	12	12
Rep. Burr	R-NC	8	10
Rep. Burton	R-IN	--	30
Rep. Buyer	R-IN	--	18
Rep. Callahan	R-AL	--	20
Rep. Calvert	R-CA	--	20
Rep. Camp	R-MI	--	22
Rep. Castle	R-DE	--	18
Rep. Chabot	R-OH	--	16
Rep. Chambliss	R-GA	10	8
Rep. Clement	D-TN	--	16
Rep. Clinger	R-PA	--	18
Rep. Clyburn	D-SC	--	20
Rep. Coble	R-NC	--	28
Rep. Coburn	R-OK	8	6

Rep. Combest	R-TX	--	19
Rep. Condit	D-CA	--	14
Rep. Cox	R-CA	--	17
Rep. Cramer	D-AL	--	18
Rep. Crane	R-IL	--	36
Rep. Crapo	R-ID	14	6
Rep. Cubin	R-WY	--	14
Rep. Cunningham	R-CA	--	14
Rep. Davis	R-VA	--	13
Rep. Deal	D-GA	--	18
Rep. Diaz-Balart	R-FL	--	18
Rep. Doolittle	R-CA	--	18
Rep. Dornan	R-CA	--	18
Rep. Doyle	D-PA	--	18
Rep. Duncan	R-TN	--	25
Rep. Ehlert	R-MI	--	18
Rep. Emerson	R-MO	--	17
Rep. English	R-PA	--	14
Rep. Ensign	R-NV	10	4
Rep. Eshoo	D-CA	--	20
Rep. Everett	R-AL	--	16
Rep. Fields	R-TX	--	16
Rep. Frelinghuysen	R-NJ	--	18
Rep. Gallegly	R-CA	--	26
Rep. Gekas	R-PA	--	20
Rep. Gilchrest	R-MD	--	18
Rep. Gillmor	R-OH	--	20
Rep. Gingrich	R-GA	--	20
Rep. Goodlatte	R-VA	--	20
Rep. Goodling	R-PA	--	26
Rep. Gordon	D-TN	--	26
Rep. Goss	R-FL	--	16
Rep. Graham	R-SC	10	8
Rep. Gunderson	R-WI	--	16
Rep. Hall	D-TX	--	32
Rep. Hansen	R-UT	--	22

Rep. Harman	D-CA	--	18
Rep. Hastert	R-IL	--	22
Rep. Hastings	R-WA	--	18
Rep. Herger	R-CA	--	26
Rep. Hobson	R-OH	--	18
Rep. Hoekstra	R-MI	--	18
Rep. Holden	D-PA	--	20
Rep. Houghton	R-NY	--	18
Rep. Istook	R-OK	--	14
Rep. Jacobs	D-IN	--	30
Rep. Johnson	D-SD	16	10
Rep. Johnson	R-TX	--	22
Rep. Jones	R-NC	--	18
Rep. Kasich	R-OH	--	18
Rep. Kingston	R-GA	--	20
Rep. Knollenberg	R-MI	--	16
Rep. Kolbe	R-AZ	--	22
Rep. LaHood	R-IL	--	14
Rep. Latham	R-IA	--	18
Rep. LaTourette	R-OH	--	18
Rep. Leach	R-IA	--	30
Rep. Lewis	R-KY	--	16
Rep. Linder	R-GA	--	18
Rep. LoBiondo	R-NJ	--	18
Rep. Lucas	R-OK	--	17
Rep. Manzullo	R-IL	--	20
Rep. McCollum	R-FL	--	20
Rep. McCrery	R-LA	--	22
Rep. McKeon	R-CA	--	20
Rep. McNulty	D-NY	--	20
Rep. Meehan	D-MA	--	15
Rep. Mica	R-FL	--	20
Rep. Moorhead	R-CA	--	24
Rep. Myrick	R-NC	--	18
Rep. Nussle	R-IA	--	16
Rep. Packard	R-CA	--	18

Rep. Peterson	D-MN	--	22
Rep. Pombo	R-CA	--	14
Rep. Portman	R-OH	2	13
Rep. Pryce	R-OH	--	16
Rep. Radanovich	R-CA	--	16
Rep. Ramstad	R-MN	--	18
Rep. Regula	R-OH	--	36
Rep. Rohrabacher	R-CA	--	24
Rep. Rose	D-NC	--	24
Rep. Ros-Lehtinen	R-FL	--	24
Rep. Roth	R-WI	--	18
Rep. Royce	R-CA	--	20
Rep. Saxton	R-NJ	--	26
Rep. Schaefer	R-CO	--	16
Rep. Shadegg	R-AZ	--	16
Rep. Shaw	R-FL	--	26
Rep. Shuster	R-PA	--	28
Rep. Smith	R-TX	--	26
Rep. Solomon	R-NY	--	20
Rep. Souder	R-IN	--	16
Rep. Spence	R-SC	--	31
Rep. Stearns	R-FL	--	24
Rep. Stump	R-AZ	--	26
Rep. Talent	R-MO	6	8
Rep. Tauzin	D-LA	--	26
Rep. Taylor	R-NC	--	16
Rep. Thomas	R-CA	--	28
Rep. Thornberry	R-TX	--	18
Rep. Tiahrt	R-KS	--	16
Rep. Traficant	D-OH	--	18
Rep. Upton	R-MI	--	26
Rep. Vucanovich	R-NV	--	14
Rep. Walker	R-PA	--	20
Rep. Walsh	R-NY	--	20
Rep. Wamp	R-TN	--	16
Rep. Weldon	R-FL	--	14

Rep. Weldon	R-PA	--	20
Rep. Weller	R-IL	--	14
Rep. Whitfield	R-KY	--	18
Rep. Wilson	R-TX	--	24
Rep. Wolf	R-VA	--	32
Rep. Young	R-AK	--	40
Rep. Young	R-FL	--	42

APPENDIX G³¹⁶THE NINE SENATORS WHO VOTED IN SUPPORT OF S.J. RES. 21 AND SERVED NO MORE THAN TWELVE YEARS³¹⁷

Member	Party & State	Senate Service (Years)	House Service (Years)	Reason for Serving No More Than 12 Years
Sen. Abraham	R-MI	6	--	Unsuccessful candidate for reelection
Sen. Ashcroft	R-MO	6	--	Unsuccessful candidate for reelection
Sen. Coverdell	R-GA	8	--	Died in office
Sen. Faircloth	R-NC	6	--	Unsuccessful candidate for reelection
Sen. Frist	R-TN	12	--	Honored pledge to serve only two terms
Sen. Grams	R-MN	6	2	Unsuccessful candidate for reelection
Sen. Kempthorne	R-ID	6	--	Elected Governor of Idaho
Sen. Thompson	R-TN	8	--	Not a candidate for reelection
Sen. Wellstone	D-MN	11	--	Died in office

³¹⁶ The data in Appendices G, H, and I were compiled by the Author using roll call votes in favor of Senate Joint Resolution 21, U.S. SEN., LEGIS. & RECORDS: ROLL CALL VOTE, ON THE CLOTURE MOTION (CLOTURE MOTION ON THE COMMITTEE SUBSTITUTE S.J. RES. 21) (1996), available at http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=104&session=2&vote=00079#position, and an online database of Congressional biographies, THE BIOGRAPHICAL DIRECTORY OF U.S. CONG., *supra* note 314.

³¹⁷ Senator Bill Frist of Tennessee was the only Senator who voted in support of S.J. Res. 21 and then honored a prior term limits pledge. See U.S. SEN., *supra* note 316; BIOGRAPHICAL DIRECTORY OF U.S. CONG., *supra* note 314; see also Alan K. Ota, *Frist, Feeling Post-Election Blues, Abandons 2008 White House Bid*, 64 CQ WKLY. 3237, 3237 (2006).

APPENDIX H
 THE FORTY-EIGHT SENATORS WHO VOTED IN SUPPORT OF S.J.
 RES. 21 AND SERVED MORE THAN TWELVE YEARS IN CONGRESS,
 AND THEIR TOTAL NUMBER OF YEARS OF SERVICE IN EACH
 CHAMBER

Member	Party-State	Senate Service (Years)	House Service (Years)
Sen. Bennett	R-UT	18	--
Sen. Bond	R-MO	24	--
Sen. Burns	R-MT	18	--
Sen. Campbell	R-CO	12	6
Sen. Chafee	R-RI	23	--
Sen. Coats	R-IN	8	12
Sen. Cochran	R-MS	34	5
Sen. Cohen	R-ME	18	6
Sen. Craig	R-ID	18	10
Sen. D'Amato	R-NY	18	--
Sen. DeWine	R-OH	14	8
Sen. Dole	R-KS	28	8
Sen. Domenici	R-NM	36	--
Sen. Exon	D-NE	18	--
Sen. Feinstein	D-CA	21	--
Sen. Gorton	R-WA	18	--
Sen. Graham	D-FL	18	--
Sen. Gramm	R-TX	18	6
Sen. Grassley	R-IA	32	6
Sen. Gregg	R-NH	18	8
Sen. Hatch	R-UT	36	--
Sen. Hatfield	R-OR	30	--
Sen. Helms	R-NC	30	--
Sen. Hutchison	R-TX	20	--
Sen. Inhofe	R-OK	18	8
Sen. Jeffords	R-VT	18	14
Sen. Kassebaum	R-KS	20	--
Sen. Kohl	D-WI	24	--

Sen. Kyl	R-AZ	18	8
Sen. Lott	R-MS	24	16
Sen. Lugar	R-IN	36	--
Sen. Mack	R-FL	12	6
Sen. McCain	R-AZ	30	--
Sen. McConnell	R-KY	28	--
Sen. Murkowski	R-AK	22	--
Sen. Nickles	R-OK	24	--
Sen. Pressler	R-SD	18	4
Sen. Roth	R-DE	33	3
Sen. Santorum	R-PA	12	4
Sen. Shelby	R-AL	25*	8
Sen. Simpson	R-WY	18	--
Sen. Smith	R-NH	13	6
Sen. Snowe	R-ME	17*	16
Sen. Specter	R-PA	30	--
Sen. Stevens	R-AK	40	--
Sen. Thomas	R-WY	12	6
Sen. Thurmond	R-SC	48	--
Sen. Warner	R-VA	30	--

