

# Term Limits: Voters Aren't Schizophrenic

By EINER ELHAUGE

The House is bogged down over term limits. A major reason is that the conventional rationale for term limits—that citizen legislators are preferable to career politicians—has proved vulnerable to a telling critique. Why do the same voters who vote for term limits generally vote for their career politicians?

Even in the political earthquake of 1994, more than 90% of incumbents running won re-election. (The high turnover resulted mostly from retirements.) Yet term limits were popular nationwide. Pundits have had a field day insinuating that these voters are either schizophrenic or uninformed. Worse, term limits are dubbed antidemocratic because they prevent voters from retaining experienced incumbents if the majority wishes.

It's a telling argument. Yet perhaps what it tells us is not that voters are irrational or antidemocratic, but that the conventional rationale for term limits is wrong. Term limits are not, and have never been, about voters ousting their own senior representatives. They are about ousting the senior representatives of other districts. Ousting one's own senior representative is simply the price one must pay to achieve this result.

Why subscribe to a system that ousts all senior representatives? Because otherwise pork barrel politics creates perverse incentives for each district to vote for senior incumbents.

The problem is that each district enjoys the benefits from its pork but spreads the costs over all the districts. Of course, because each district does the same thing, the result is to impoverish the nation. But here lies the collective action dilemma: If perchance my district ousted our pork-providing representative, that would not

mean other districts would oust theirs. It would simply mean that none of the pork would likely come to my district.

Thus, as an individual voter, it is perfectly rational to oppose pork barrel politics but to vote for the representative who engages in it best. This also explains why polls show citizens generally like their incumbent but hate Congress.

The incentive to vote for a pork-providing representative becomes greater the

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more seniority, and thus clout, that representative has. Thus we see the Boston Chamber of Commerce endorsing Ted Kennedy, hardly a favorite of business groups nationwide, on the candid grounds that "with 32 years of seniority and experience, he's in a better position than ever to deliver for us." And for every conservative or moderate voting for Ted Kennedy despite his views, a liberal or moderate may be voting for Jesse Helms despite his.

Of course, voters can forgo the porcine benefits of seniority when the ideological strain becomes too great. Witness the remarkable ousting of House Speaker Tom Foley. However, it is not irrational for voters to want to rid themselves of a systemic pressure to vote for senior incumbents whether they like them or not.

This explains why voters pass term limits for state legislatures. However, why do they vote to limit the terms of their state's

representatives to Congress? If my state enacts federal term limits and other states do not, then my state forgoes its share of federal pork without ending it. The explanation is that term limits involve only a commitment for the future. They can be understood as an offer by each state to rid itself of senior incumbents if other states will do the same. Thus it is not surprising that term limits are invariably prospective. Nor is it surprising that their passage has occurred against the backdrop of term limit movements in every state.

What if other states do not fulfill their side of the national bargain by passing either their own term limits or a constitutional amendment that imposes term limits nationwide? Wouldn't those other states then just take advantage of their greater seniority to get a greater share of pork? They might try. But the states that enacted term limits would have remedies. They might rescind their term limits. Or—if enough states enacted term limits to form a national majority—their congressional representatives would likely abolish a seniority system that disfavored them.

Opponents thus err when they conclude that term limits are antidemocratic. Term limits are rather a logical corrective to a seniority system that itself has no basis in democratic theory. And Republicans err if they assume that ending Democratic control over Congress will have satisfied the appetite of voters for federal term limits. Voters know how to throw Democrats—and Republicans—out of power. What they want is to end a system that creates pressure on everyone to retain incumbents no matter what their political stripe.

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