



Written by [Joe Wolverton, II, J.D.](#) on March 1, 2014

Term Limits: a Restraint on Liberty, not on Corruption

Representative Mick Mulvaney (R-S.C.) has proposed [a bill that would limit congressional term limits](#) to 24 years.

Put another way: Representative Mulvaney has proposed a bill prohibiting Americans from voting for the candidate of their choice, placing his own will above that of the people.

“Believe me, 24 years is more than enough time to serve in Washington,” Mulvaney said, as quoted in *The Hill*. “I actually pushed for much shorter terms but compromised at 12-plus-12 in order to gain the support of addition[al] co-sponsors.”

It seems odd that a self-described conservative would adopt such a progressive and paternalistic attitude toward the right of the people to elect their representatives, one of the most fundamental rights in a Republic.

Despite the fact that such a law would deprive Americans of this right held sacrosanct by our Founders, there are many otherwise conservative leaders and organizations joining the “term limits” choir.

For example, many of those collaborating in the effort to call for a second constitutional convention (a “convention of states” in the historically and constitutionally incorrect parlance of the idea’s backers) have included a term limits amendment in the list of corrections they would like to see made to our current Constitution.

Mark Levin, one of the celebrity spokesmen for the Article V movement, has proposed term limits in his list of amendments he insists will “restore liberty.”

The arguments put forward by Levin and others in the Article V camp point to the corruption in Congress and the sale of votes. If that is indeed the problem, would we not be on safer constitutional ground to limit the influence of lobbyists, rather than by disenfranchising millions of Americans?

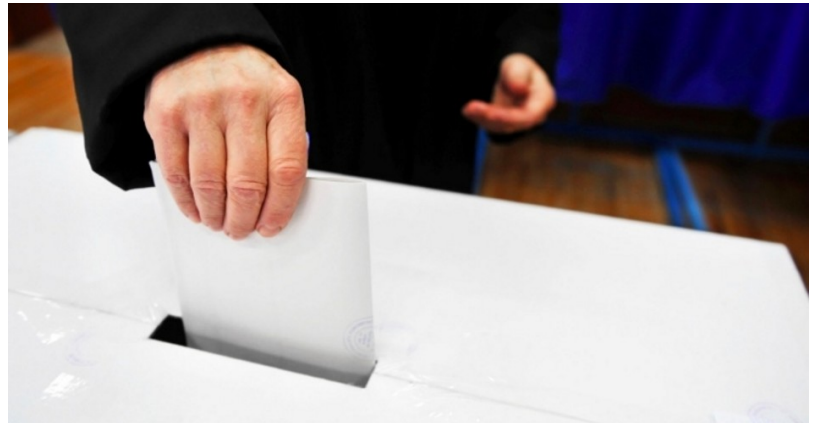
As is the case with so many of the Article V con-con “solutions,” the cure is more dangerous than the disease.

And although Levin claims that the idea of term limits is “consistent with constitutional republicanism,” our Founding Fathers did not agree.

Alexander Hamilton in *Federalist* No. 72 expressed his sense of the question of term limits: “Nothing appears more plausible at first sight, nor more ill-founded upon close inspection.”

During the debates on the subject at the original constitutional convention in Philadelphia in 1787, Connecticut delegate Roger Sherman expressed a similar opinion:

Frequent elections are necessary to preserve the good behavior of rulers. They also tend to give permanency to the Government, by preserving that good behavior, because it ensures their re-





election.

In *Federalist*, No. 53, James Madison wrote:

No man can be a competent legislator who does not add to an upright intention and a sound judgement a certain degree of knowledge of the subjects on which he is to legislate. A part of this knowledge may be acquired by means of information which lie within the compass of men in private as well as public stations. Another part can only be attained, or at least thoroughly attained, by actual experience in the station which requires the use of it.... A few of the members [of Congress], as happens in all such assemblies, will possess superior talents; will, by frequent re-elections, become members of long standing; will be thoroughly masters of the public business, and perhaps not unwilling to avail themselves of those advantages. The greater the proportion of new members and the less the information of the bulk of the members, the more apt will they be to fall into the snares that may be laid for them.

At the Constitutional Convention of 1787, Gouverneur Morris spoke on the subject, too. Madison records Morris saying:

The ineligibility proposed by the [term limits] clause as it stood tended to destroy the great motive to good behavior, the hope of being rewarded by a re-appointment. It was saying to him, “make hay while the sun shines.”

Last one: John Adams wrote in his “Defense of the Constitutions of the United States of America”:

There is no right clearer, and few of more importance, than that the people should be at liberty to choose the ablest and best men, and that men of the greatest merit should exercise the most important employments; yet, upon the present [term limits] supposition, the people voluntarily resign this right, and shackle their own choice.... They must all return to private life, and be succeeded by another set, who have less wisdom, wealth, virtue, and less of the confidence and affection of the people

There is wisdom in the Founders’ wariness of the concept of limiting corruption by limiting terms of representatives.

When viewed through the Founders’ lens, it becomes clear that an elected representative would likely be less attached to the attitudes of his constituents if he knew that no matter how he performed in Congress, his time among the lobbyists would eventually expire. In that case, a corrupt and designing politician would take maximum advantage of his access to graft in the limited time available to him.

The Founders learned this nuanced lesson during the time they lived under the Articles of Confederation. Article V (coincidentally) of that first constitution mandated term limits for congressmen, mandating, “no person shall be capable of being a delegate for more than three years in any term of six years.”

When they were called to “to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union” (language, curiously, nearly identical to that used by the contemporary con-con crowd, though they deny they are calling for a constitutional convention), the Founders replaced term limits with a plan they believed more consistent with timeless principles of republican government: frequent elections.

Article I of our current Constitution requires representatives to return to the people for their continuing approval: two years for members of the House of Representatives and six years for senators.



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This process not only retained core republican principles in the new constitution, but assured that the people would keep their elected federal officials on a short leash and that those seeking office would know that they would always be accountable to voters within a very short amount of time.

Frequent elections were designed specifically by the Founders to be a powerful and permanent check on the power of the federal government. If we, the people, are dissatisfied with the behavior of those we send to Washington, then we are responsible (a word anathema to the purveyors of the term limits scheme) to find and elect candidates we believe will improve the situation on Capitol Hill.

Admittedly, this is potentially a slow process, one that might take several cycles to produce the desired effects. It is, however, the method preferred by the Founders and believed by them to be the most consistent with republicanism and most likely to “form a more perfect union.”

It’s more than just the political theory of our Founders that augurs against term limits, however. As [Robert Beckett of Ashland University writes](#), quoting Robert Drinan, former congressman and law professor at Georgetown University, term limits are “the wrong cure to the wrong disease.”

While it may be difficult to effect meaningful change with frequent elections, it is almost impossible to do so with term limits. Representatives and senators sitting in office for decades is not the problem. The problem is the surrender by states — forcefully and willingly — of sovereignty to the federal government.

With states becoming reliant on the federal government for over one-third and as much as almost one half of their budgets, it’s easy to see that having power over the federal purse multiplies the relative constitutional power of congressional office. The problem, then, isn’t the length of time in office, but the amount of power associated with those offices.

The solution, then, is restoring power to the states, rather than restricting artificially the right of the people to elect their representatives.

Ironically, the proponents of the Article V constitutional convention claim that the purpose of the meeting is to restore power to the states and to keep the federal government from continuing to “embezzle the legitimate authority of the states, and destroy the liberty of the people.”

Why, then, do these same people want to first, deny states the power to nullify unconstitutional acts of the federal government; and, second, destroy the liberty of the people to elect the candidates of their choice?

Again, turning to the Founders, Samuel Adams summed it up perfectly in 1790:

Much safer is it, and much more does it tend to promote the welfare and happiness of society to fill up the offices of Government after the mode prescribed in the American Constitution, by frequent elections of the people. They may indeed be deceived in their choice; they sometimes are; but the evil is not incurable; the remedy is always near; they will feel their mistakes, and correct them.

Let’s use frequent elections to restrain any legislator who abuses his access to power, not rely on nanny state “term limits” to restrain our liberty. And let us take the shackles off of states and encourage them to exercise their power to refuse to enforce any act of the federal government that exceeds the power given to it in the Constitution.

As of press time, Representative Mulvaney’s resolution has only seven co-sponsors and a similar bill was soundly defeated in the Senate in 2012.



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