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TERM LIMITATIONS AND THE MYTH OF THE CITIZEN-LEGISLATOR

Elizabeth Garrett†

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By the end of the 1994 elections, almost half of the states had amended their constitutions or passed legislation limiting the terms of office of their United States Representatives and Senators.¹ The effort to impose federal term limits appeared to be unstoppable. In May 1995, however, the movement hit a substantial roadblock when the Supreme Court declared federal term limits unconstitutional in *U.S. Term Limits, Inc. v. Thornton*.² Although the Court's opinion in *U.S. Term Limits* did not extinguish all hope for term limits supporters, they must now pursue change through the Article V process by convincing members of Congress to propose a constitutional amendment or by persuading state legislatures to petition for a constitutional convention.³ Such a change in the direction of the term limits

¹ Of the 22 states with federal term limits measures at that time, eight had adopted "pure" term limits of varying lengths. See COLO. CONST. art. XVIII, § 9a; MICH. CONST. art. II, § 10; MO. CONST. art. III, § 45a; Nev. Ballot Question 8, Nov. 8, 1994 (first vote of two required by law to enact the initiative); OHIO CONST. art. V, § 8; OR. CONST. art. II, § 20 (phrased as a ballot access provision in one section); S.D. CONST. art. III, § 32; UTAH CODE ANN. § 20A-10-301 (1995). Fourteen states designed their term limitations as "ballot access" measures, allowing long-term incumbents to run but only as write-in candidates. See ALASKA STAT. § 15.30.180 (Supp. 1995); ARIZ. CONST. art. VII, § 18; ARK. CONST. amend. 73, § 3; CAL. ELEC. CODE § 8700 (West Supp. 1996); FLA. CONST. art. VI, § 4(b)(5)-(6); IDAHO CODE § 34-907 (1995); ME. REV. STAT. ANN. tit. 21A, § 421 (West Supp. 1995); MASS. GEN. LAWS ANN. ch. 53, § 48 (West Supp. 1995); MONT. CONST. art. IV, § 8; N.D. CENT. CODE § 16.1-01-13.1 (Supp. 1993); NEB. CONST. art. XV, § 20; OKLA. CONST. art. II, § 12A; WASH. REV. CODE §§ 29.68.015-016 (Supp. 1996); WYO. STAT. § 22-5-104 (Supp. 1994). Although the provisions in Arkansas, Oklahoma, and Wyoming were phrased as ballot access measures, they would have operated as pure term limitations because they would not have allowed write-in candidates. See ARK. CONST. amend. 73, § 3; OKLA. CONST. Art II, § 12A; WYO. STAT. § 22-5-104 (Supp. 1994). In 1995, New Hampshire passed a ballot access measure. N.H. REV. STAT. ANN. §§ 653:3-4 (1996).

² 115 S. Ct. 1842 (1995). In *U.S. Term Limits*, the Court held that the states could not impose qualifications on federal officeholders in addition to those set forth in the Qualifications Clauses of the United States Constitution. The Court relied, in part, on the rationale used in *Powell v. McCormack*, 395 U.S. 486 (1969). *Powell* denied Congress the ability to impose additional qualifications under Article I, Section 5, which grants each Chamber the power to judge the qualifications of its own members. In the Court's view, the essential holding of *Powell* was that additional qualifications would violate the "fundamental principle of our representative democracy . . . 'that the people should choose whom they please to govern them'." *U.S. Term Limits*, 115 S. Ct. at 1850 (quoting *Powell*, 395 U.S. at 547, quoting Alexander Hamilton in 2 JONATHAN ELLIOT, DEBATES ON THE FEDERAL CONSTITUTION 257 (1836)).

The *U.S. Term Limits* Court also rejected the petitioner's argument that a state-imposed term limitation phrased as a ballot access provision should be treated differently than a "pure" term limitation. The Court broadly held that "a state amendment is unconstitutional when it has the likely effect of handicapping a class of candidates and has the sole purpose of creating additional qualifications indirectly." *Id.* at 1871. For analyses of the opinions in *U.S. Term Limits*, see Charles Fried, *Foreword: Revolutions?*, 109 HARV. L. REV. 13, 14-15 (1995); Kathleen M. Sullivan, *Dueling Sovereignties: U.S. Term Limits, Inc. v. Thornton*, 109 HARV. L. REV. 78 (1995).

³ Initiatives to encourage a vote by the state legislatures on a constitutional convention will appear on the 1996 ballot in as many as fifteen states. *Term Limits Revival*, WALL ST. J., July 22, 1996, at A14; Keith White, *Term Limits Proponents to Push for a Constitutional Convention*, GANNETT NEWS SERVICE, Dec. 10, 1995 (quoting one of the leaders

movement should mark an expansion of the perspective of legal scholars who study term limitations. In anticipation of the Supreme Court's ruling in *U.S. Term Limits*, legal scholarship primarily analyzed and debated the constitutionality of state-imposed term limitations.⁴ Political scientists and economists have developed a rich and sophisticated literature studying the effect of institutional arrangements on the behavior of legislators, but they are still developing an understanding of the changes that would accompany the imposition of term limits.⁵

The claim at the core of the term limits movement remains unresolved in the literature: the assertion that term limits will create a Congress of ordinary citizens—"citizen-legislators"—who will serve only a short time before returning to private life.⁶ Activists argue that

of U.S. Term Limits, a national association of term limits advocates, as saying that the movement will now focus on raising \$1.5 million to call for a constitutional convention by 1998).

⁴ See, e.g., Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341 (1991); Roderick M. Hills, Jr., *A Defense of State Constitutional Limits on Federal Congressional Terms*, 53 U. PITT. L. REV. 97 (1991); Daniel H. Lowenstein, *Are Congressional Term Limits Constitutional?*, 18 HARV. J.L. & PUB. POL'Y 1 (1994); James C. Otteson, *A Constitutional Analysis of Congressional Term Limits: Improving Representative Legislation Under the Constitution*, 41 DEPAUL L. REV. 1 (1991); Stephen J. Safranek, *Term Limitations: Do the Winds of Change Blow Unconstitutional?*, 26 CREIGHTON L. REV. 321 (1993). With two exceptions, see Linda Cohen & Matthew Spitzer, *Term Limits*, 80 GEO. L.J. 477 (1992) and Einer Elhauge, *Are Term Limits Undemocratic?*, U. CHI. L. REV. (forthcoming 1996) (manuscript on file with the *Cornell Law Review*), legal scholarship does not address the institutional consequences of term limits.

⁵ See, e.g., LIMITING LEGISLATIVE TERMS (Gerald Benjamin & Michael J. Malbin eds., 1992) [hereinafter LIMITING LEGISLATIVE TERMS]; Andrew R. Dick & John R. Lott, Jr., *Reconciling Voters' Behavior with Legislative Term Limits*, 50 J. PUB. ECON. 1 (1993); John B. Gilmour & Paul Rothstein, *Term Limitation in a Dynamic Model of Partisan Balance*, 38 AM. J. POL. SCI. 770 (1994); W. Robert Reed & D. Eric Schansberg, *An Analysis of the Impact of Congressional Term Limits*, 32 ECON. INQUIRY 79 (1994) [hereinafter *Impact of Congressional Term Limits*]; W. Robert Reed & D. Eric Schansberg, *The House Under Term Limits: What Would It Look Like?*, 76 SOC. SCI. Q. 699 (1995) [hereinafter *The House*]. The enactment of term limits for state legislators is too recent to allow for substantial empirical work on their effects. See Jay P. Greene, *Term Limits: A Measure of Our Ignorance*, 76 SOC. SCI. Q. 717, 717 (1995) ("To be sure, there is no shortage of hypotheses about what term limits would produce, but we have little evidence with which to test these hypotheses since we have little historical experience with legally imposed term limits."). Few transnational comparative studies exist because only Costa Rica, Mexico, Ecuador, and the Philippines impose term limits on federal legislators. JOHN M. CAREY, TERM LIMITS AND LEGISLATIVE REPRESENTATION 16-18 (1996) (using Costa Rica's experience with legislative term limits to draw some conclusions about the possible effects of such provisions in the U.S.).

⁶ Thomas Mann, who does not support federal term limitations, defines these political amateurs as "selfless citizens who temporarily answer their country's call to legislate in the public interest." *Term Limits for Members of the U.S. Senate and House of Representatives: Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary*, 103rd Cong., 1st & 2d Sess. 16 (1994) [hereinafter *House Hearings on Term Limits*] (testimony of Thomas E. Mann, The Brookings Institution). See also Cleta D. Mitchell, *Term Limits? Yes!*, EXTENSIONS, Spring 1991, at 3 (defining the amateur as "the

Congress will no longer be the domain of professionals whose long careers center on attaining and retaining powerful and prestigious political offices. Regardless of other substantive changes in the legislative process that term limits supporters view as beneficial, all activists seem to believe that empowering the citizen-legislator is prerequisite to improving federal governance.⁷ Relying on insights from economists and political scientists, however, I conclude that the adoption of term limitations will not usher in a new era of Cincinnatus. Instead, a majority of federal legislators will continue to be professionals, both because many people will still find a career in politics attractive, and because the only way officeholders can continue to receive a return on their investments in political capital is to remain employed in politics. Primarily because of the latter phenomenon, many who intended to remain in the political arena only a short time when they entered the legislature will find a longer political career attractive when they face a return to private life.

This conclusion does not mean that other goals of term limits supporters cannot be realized. If term limits significantly affect the nature of a legislator's job by changing the benefits associated with membership in Congress, then politicians—whether amateurs or professionals—may behave differently.⁸ Shortened tenure may fundamentally alter the dynamics of the legislative process so that serving in Congress will no longer allow a politician to satisfy in the way she does now such objectives as wielding power and influence, shaping national policies, and receiving benefits from interest groups. In this Article, I discuss some of the likely changes, including how shorter terms may affect the seniority system, the ability of members to pursue their policy goals successfully, and the relationship between interest groups and federal legislators. I conclude that the hope for a transformation of the status quo, solely because of the implementation of federal term limits, is likely to be dashed.

man from the log cabin, the 'anyone can be president' belief system that is the centerpiece of our democracy").

⁷ See, e.g., GEORGE F. WILL, RESTORATION: CONGRESS, TERM LIMITS, AND THE RECOVERY OF DELIBERATIVE DEMOCRACY 9, 145 (1992); Gorsuch & Guzman, *supra* note 4, at 383; *Forbes*, *Friedman Address Reform-Minded Crowd*, NO UNCERTAIN TERMS, Dec. 1995, at 4 (According to Nobel prize-winning economist Milton Friedman, "[t]he short term limit would attract a different sort of candidate . . . people who would like to spend a few years promoting the public interest, the citizen representative."); Ronald Brownstein, *Converting Congress Back Into a Real Citizen Legislature*, L.A. TIMES, Sept. 12, 1994, at A5. See also *infra* text at notes 17-18.

⁸ Gerald Benjamin & Michael J. Malbin, *Term Limits for Lawmakers: How to Start Thinking About a Proposal in Process*, in LIMITING LEGISLATIVE TERMS, *supra* note 5, at 3 ("Limiting lawmakers' terms of office would affect some of the most basic incentives that shape the way legislatures work in the United States."); WILL, *supra* note 7, at 145 (noting that "term limitation is a simple, spare reform to alter the incentives that are relevant to entry into, and behavior while in, public life").

Institutional structures are not purely exogenous; if politicians wish to continue to receive the benefits that they now enjoy, they can compensate for the imposition of term limits by adopting rules and making other changes that will allow them to do so.

A change as significant as the imposition of federal term limits presents numerous issues and challenges for scholars, which I cannot hope to discuss fully in this Article. For example, the term limits movement presents a case study of our increasing tendency to eschew direct solutions in favor of structural changes designed to result indirectly in desired reforms.⁹ The preference for a procedural solution—term limits—over the direct option of “voting the rascals out” to implement new policies may partially result from a prisoners’ dilemma in which voters find themselves.¹⁰ Voters may prefer a legislature of new politicians, but voters only elect a single representative. Voters also know that they receive a greater share of government benefits if they are represented by a relatively more senior representative. If voters could coordinate their efforts by voting out all incumbents simultaneously so that no constituency were represented by a lawmaker with greater pork-barreling skills, all voters would maximize their utility. Without coordination, however, each individual voter has an incentive to defect and reelect her own representative, hoping that other voters elect newcomers. As a result, the common goal—a legislature without long-term incumbents—is never attained. Term limits may solve the dilemma; the reform forces voters to elect new representatives frequently and denies them the opportunity to follow the otherwise dominant strategy of reelecting long-time incumbents.

In this Article, however, my focus is on the claim that term limits activists identify as the prerequisite to further beneficial changes in

⁹ Other procedural solutions that are currently in vogue include: (1) a constitutional amendment requiring a balanced federal budget and budget process legislation as a means to control federal spending, see DANIEL SHAVIRO, *DO DEFICITS MATTER?* (forthcoming 1997) (manuscript at 390-436, on file with author); (2) regulatory reform proposals that implement processes designed to ensure congressional consideration of property rights issues but do not mandate any particular outcome, see S. 343, 104th Cong., 1st Sess. (1995); Cass R. Sunstein, *Congress, Constitutional Moments, and the Cost-Benefit State*, 48 *STAN. L. REV.* 247, 275-76 (1996); and (3) the recently-enacted Unfunded Mandates Reform Act that relies on a structure similar to the budget process to require that Congress generate information about the expected cost of federal mandates and to ensure congressional deliberation, see Elizabeth Garrett, *Enhancing the Political Safeguards of Federalism?: The Unfunded Mandates Reform Act of 1995*, at 25-27 (Sept. 9, 1996) (unpublished manuscript on file with the *Cornell Law Review*).

¹⁰ For a discussion of the prisoners’ dilemma in the context of term limits, see Dick & Lott, *supra* note 5, at 4, 8-9; Elhauge, *supra* note 4, at 21-24. See also *Putting an End to the Prisoners’ Dilemma of Incumbency*, NO UNCERTAIN TERMS, Jan./Feb. 1996, at 7. See generally DOUGLAS G. BAIRD ET AL., *GAME THEORY AND THE LAW* 33-34 (1994) (describing prisoners’ dilemmas).

Congress: the need to fill Congress with political amateurs. First, I briefly describe the current status of the term limits movement in the wake of *U.S. Term Limits*.¹¹ I then argue that supporters' claim that citizen-legislators would dominate the federal political scene after the ratification of a term limits amendment is overstated. To support this analysis of term limits, I use empirical research on political ambition that has not, in most cases, been applied in this context. Finally, using a dynamic approach, I suggest that institutional changes in Congress will largely negate any effect of term limits on the incentives that influence a professional politician's decision to run for office. The only change for which it will be difficult to compensate entirely is a reduction in legislator effectiveness; I identify some of the possible consequences of such reduced expertise. My conclusions in this final section are speculative because very little empirical and theoretical research has been done on the effects of term limits on political careers and legislator effectiveness.

I

THE DIRECTION OF THE NATIONAL TERM LIMITS MOVEMENT
AFTER THE SUPREME COURT'S DECISION IN
U.S. TERM LIMITS, INC. v. THORNTON

Until recently, term limits supporters directed most of their energy toward imposing term limitations on federal legislators through amendments to state constitutions. This strategic decision was no doubt supported by the sensible belief that federal legislators would be unwilling to enact term limitations which could shorten their own political careers.¹² Although many ambitious state politicians might

¹¹ For the purposes of this article, I assume that a term limits amendment would provide for the following: a twelve-year limit on service in the Senate; a twelve-year limit on service in the House; a candidate's service in one chamber would not count toward the term limitation in the other chamber; and any service in Congress prior to the effective date of the amendment would not be included in the term limits calculation. The amendment supported by a majority of the House of Representatives contained the provisions detailed above. Amend. No. 4 in H.R. REP. NO. 104-82, 104th Cong., 1st Sess., reprinted in CONG. REC. H3959 (daily ed. Mar. 29, 1993). Other proposals, which were defeated, would have limited representatives to six years, Amend. No. 2, *id.* at H3941; allowed states to set limitations of fewer terms in office, Amend. No. 3, *id.* at H3949; or counted the terms of office served before enactment of the constitutional amendment, Amend. No. 1, *id.* at H3928. Although some of the state term limitations proposals limited members of the House to fewer than twelve years, the majority of the state provisions reset the term limits clock and allowed people to run again after a certain "cooling off" period, during which the candidate could not serve in the relevant body. Because of these cooling off periods, most of the state-imposed term limitations, although allowing fewer terms for representatives, were actually more generous than the federal proposal. Rotation would have been even easier in a state that adopted a limitation only on "consecutive" terms in one body.

¹² Incumbent politicians might be hesitant to support term limits language even if it did not apply to them (through a grandfathering provision) because such compromise

have supported federal term limits as a way to hasten their political advancement, the ability to amend most state constitutions through popular vote allowed supporters to bypass any state lawmakers who might have been reluctant in their support because of hopes of long careers at the federal level.

The decision in *U.S. Term Limits* has dramatically changed the tactics of term limits supporters. Their new objective is to convince the states to call for a constitutional convention to propose a federal term limits amendment. The procedural hurdles involved in proposing an amendment, not to mention the additional requirements for ratification, suggest that supporters face a long and arduous road. Their primary hope for success lies in the strength with which the term limits issue resonates with voters. A poll conducted approximately one month after the Court decided *U.S. Term Limits* indicated that voters strongly favor federal term limits. This support is consistent across a variety of demographic groups, including members of both parties, men and women, voters of all ages, and voters in all regions.¹³

If term limits remain a salient issue for voters, federal legislators—notwithstanding their own self-interest—may heed voters' demands for a constitutional amendment. After all, it is an easy issue for voters to understand and remember at the voting booth.¹⁴ As long as

language could be portrayed as staggeringly hypocritical during their next campaigns. The strong opposition to term limits by most Democratic officials and party leaders, who, until 1994, appeared likely to control the House of Representatives for the foreseeable future, provided another incentive for activists to concentrate their energies on the states. See Thomas Galvin, *Term Limits: Big Chunk of 103rd Congress May Have Limited Tenure*, 50 CONG. Q. 3493 (Oct. 31, 1992) (noting opposition of leading Democrats to term limits); see also *Term Limit Divide*, WALL ST. J., Aug. 21, 1995, at A8 (same). In contrast, a federal term limits proposal was a prominent part of the Republican "Contract With America." *Republicans' Initial Promise: 100-Day Debate on 'Contract,'* CONG. Q.: GUIDE TO CURRENT AM. GOV'T, Spring, 1995, at 54. The 1992 Republican platform also contained a term limits plank. CONG. Q. WEEKLY REPORT, Aug. 22, 1992, at 2572.

¹³ Benjamin Sheffner, ROLL CALL, July 27, 1995, at 5 (discussing results of poll by Tarrance Group). See GORDON S. BLACK & BENJAMIN D. BLACK, *THE POLITICS OF AMERICAN DISCONTENT: HOW A NEW PARTY CAN MAKE DEMOCRACY WORK AGAIN* 210-13 (1994) (discussing the support among various demographic groups for state term limits initiatives). Perhaps the most interesting findings of the Tarrance Group poll are the intensity of the support, with forty-two percent calling the issue extremely or very important to their vote, and the significance of the issue for conservative Democrats, who are often identified as key voters in national elections. Sheffner, *supra*, at 5 (citing Tarrance Group poll). Another vital group—the independent voters who support Ross Perot's agenda—consider term limits to be a pivotal issue. Leslie Phillips, *With Powell Out, Perot Could Be Factor*, USA TODAY, Nov. 9, 1995, at 3A (noting that Perot's new Reform Party intends to promote term limits as a central issue).

¹⁴ For a discussion of information costs facing the voter, see ANTHONY DOWNS, *AN ECONOMIC THEORY OF DEMOCRACY* 207-19 (1957); MORRIS P. FIORINA, *RETROSPECTIVE VOTING IN AMERICAN NATIONAL ELECTIONS* 198-200 (1981). Perhaps the relative ease of monitoring explains the surprising amount of congressional support for a constitutional amendment. In March 1995, the amendment received the support of a majority of the House, but it failed because it did not attract the required two-thirds vote. 141 CONG. REC.,

the matter is brought to the floor and a vote is taken, voters can determine whether a member of Congress supported or opposed term limits simply by knowing how she voted. In addition, political opponents have strong incentives to bring this information to voters' attention. Federal term limits will become a particularly prominent issue in states with limits on state officeholders.¹⁵ Challengers who can no longer serve as state legislators or governors will certainly realize that the term limitations issue motivates voters.

II

THE IDEAL OF THE CITIZEN-LEGISLATOR

Term limits activists hope to rid Congress of the professional politician because they believe that such a lawmaker inevitably acts in ways that are contrary to the public interest. They would replace the professionals with amateurs who have little experience in politics but a great deal of experience as ordinary citizens.¹⁶ Much of the term lim-

H3965 (daily ed. Mar. 29, 1995). In April 1996, the Senate narrowly defeated a cloture motion that would have brought the constitutional amendment to a vote; 58 senators voted in favor of cloture. See 142 CONG. REC., S3878 (daily ed. Apr. 23, 1996).

¹⁵ Twenty-three states place term limitations on state legislators. In addition, forty states limit the number of terms that their governors can serve. *The Spread of Term Limits*, DES MOINES REG., May 23, 1995, at 1.

¹⁶ America's belief in the utility and efficacy of rotation in office reflects a political culture long hostile to the concentration of political power, permanence in government, professional politicians, and bureaucratic power. The principle of rotation embraces the proposition that democracy is properly government by amateurs and that the voices of amateurs in the halls of Congress and in many state legislatures throughout the nation are silenced by a chorus of career legislators and other professional politicians.

Mark P. Petracca, *Rotation in Office: The History of an Idea*, in *LIMITING LEGISLATIVE TERMS*, *supra* note 5, at 19, 42. During the Constitutional Convention and the ratification debates, the issue of term limits was referred to as the question of "rotation", i.e., whether public officials should be required to leave government after a number of years and remain in private life for some time before re-entering politics. See *id.* at 30-31; see also VICTOR KAMBER, *GIVING UP ON DEMOCRACY: WHY TERM LIMITS ARE BAD FOR AMERICA* 21 (1995) (stating that the idea of the citizen-legislator is "a fetish" among term limiters). *But see* Elhauge, *supra* note 4 at 51-74, (arguing in favor of term limits for reasons unrelated to the citizen-legislator ideal).

The outcry against political professionalism is of somewhat recent origin. In the early part of the century, the progressive agenda for the reform of Congress included a demand to increase the level of professionalism by encouraging people to view public service as a career. See H. Douglas Price, *Congress and the Evolution of Legislative "Professionalism," in CONGRESS IN CHANGE: EVOLUTION AND REFORM* 2 (Norman J. Ornstein ed., 1975) [hereinafter *CONGRESS IN CHANGE*]; Robert Struble, Jr., *House Turnover and the Principle of Rotation*, 94 *POL. SCI. Q.* 649 (Winter 1979-80). Indeed, beginning in the 1960s, the campaign to increase professionalism in the federal legislature moved to the state level, where it was seen as a crucial step in modernizing and improving state legislatures. See David H. Everson, *The Impact of Term Limitations on the States: Cutting the Underbrush or Chopping Down the Tall Timber?*, in *LIMITING LEGISLATIVE TERMS*, *supra* note 5, at 194-95; see also Gary F. Moncrief et al., *For Whom the Bell Tolls: Term Limits and State Legislatures*, 17 *LEGIS. STUD. Q.* 37 (1992) (finding that term limitations on state legislators will have the greatest impact on "professional" legislatures and virtually no impact in states that still have "amateur" legisla-

its literature reads as a paean to amateurism. The solution to the problem of careerists, activists argue, is to eliminate the incentives that encourage people to make politics their profession and instead to fill Congress with citizen-legislators.¹⁷ Average Americans will leave their jobs in the private sector for a very short period of time, serve their country, and then return to their ordinary lives. Although some particularly outstanding Americans may continue to serve their country in a variety of political jobs after their limited service in Congress, the vision of government by amateurs allows for such a professional, but mobile, politician only in truly extraordinary cases.¹⁸

In addition to the disappearance of professional politicians, supporters believe that a new dominance of amateur legislators would have other institutional effects.¹⁹ Many activists focus on the relationship between term limits and governance structures, but they do not all share the same vision of an ideal democracy. Some argue that involving more Americans in the process of governing would enhance participatory democracy. A citizen-legislature, marked by frequent turnover and filled with amateurs, would be more consistent with the ideal of such a democracy because the privilege of serving in elected office would be more widely dispersed throughout society.²⁰ Others argue that eliminating careerism from politics would bring our de-

tures); Cynthia Opheim, *The Effect of U.S. State Legislative Term Limits Revisited*, 19 LEGIS. STUD. Q. 49 (1994) (same).

¹⁷ See, e.g., WILL, *supra* note 7, at 212; Mark P. Petracca, *The Poison of Professional Politics*, in POLICY ANALYSIS 3 (Cato Institute Series No. 151, 1991); see also Cleta D. Mitchell, *Limiting Congressional Terms: A Return to Fundamental Democracy*, 7 J.L. & POL. 733, 739 (1991) (noting that the objective of term limits advocates is not merely to increase the turnover in Congress, but to replace the "career orientation" of officeholders). A similar fascination with the citizen-legislator led Lamar Alexander, a candidate for the 1996 Republican presidential nomination, to propose a shorter legislative year and a repeal of the ban on outside income so members would spend time in their home states living as ordinary citizens. See Ronald Brownstein, *Converting Congress Back Into a Real Citizen Legislature*, L.A. TIMES, Sept. 12, 1994, at A5 (describing Alexander's proposal and criticisms of it).

¹⁸ Mitchell, *supra* note 17, at 741 (noting that "legislative giants" could continue service in higher office); see also WILL, *supra* note 7, at 84 (noting, apparently without disapproval, that when rotation was the norm, national legislators often returned to state political offices).

¹⁹ Similarly, to the extent that it was not a matter of partisan politics, the adoption of Amendment XXII was motivated by a desire to implement a procedural reform to reduce the power of the executive branch relative to the legislative. Stephen W. Stathis, *The Twenty-Second Amendment: A Practical Remedy or Partisan Maneuver?*, 7 CONST. COMMENTARY 61, 68-72 (1990).

²⁰ WILL, *supra* note 7, at 154, 164; see also Gary W. Copeland, *Legislative Term Limits as Legislative Reform*, Paper delivered at the Annual Meeting of the American Political Science Association (Sept. 1-4, 1994) (manuscript at 27, on file with the *Cornell Law Review*) (increased turnover seen as increasing the openness of the system); Natalie Chambers, *Term Limits Sponsor Sees More Seeking Office*, MISS. PRESS, Oct. 5, 1995, at 1A (quoting a sponsor of the state term limits movement as stating, "I think you're going to see a lot more people running for office and trying to get involved in the process, than you've ever seen before").

mocracy closer to a direct democracy;²¹ still others see term limits as a way to fulfill the Madisonian vision of a representative democracy.²²

On a less fundamental level, activists also hope that term limits will spark certain changes in the legislative process. Interestingly, although some outspoken supporters are also advocates of a smaller federal government,²³ they seldom describe (in term limits literature, at least) the content of the bills that citizen-legislators would pass. Instead, they state in general terms that reducing the "corruption" inherent in the current environment would lead to lawmakers' enacting "better" legislation. Underlining this concern with corruption, the term limits literature also contains arguments in favor of additional congressional reforms to reduce or eliminate pecuniary and other benefits that members receive.²⁴

Perhaps these themes reveal that the dislike of professional politicians can be reduced to the sentiment that political careerists are somehow not like "us"—average citizens. And perhaps, some activists appear to argue, they were never like "us." The desire to enter politics and to submit oneself to the rigors of campaigning and the intense scrutiny of the media is a rather unattractive trait—a trait thankfully not shared by many of "us." Even if one of "us" braves the gauntlet and gets elected, then the life of a politician renders her incapable of identifying with the ordinary person's hopes, dreams, and frustra-

²¹ Many term limits supporters seem to equate the public interest with what a majority of voters want. See, e.g., *House Hearings on Term Limits*, *supra* note 6, at 69 (testimony of Mark P. Petracca); John H. Fund, *Term Limitations: An Idea Whose Time Has Come*, in *LIMITING LEGISLATIVE TERMS*, *supra* note 5, at 225; Mitchell, *supra* note 17, at 736-37.

²² Some advocates favor term limits as a way to insulate elected officials from their constituents so that the officials can deliberate in an effort to make the best decisions in the interests of the country. George Will argues that the framers of our representative democracy structured the federal government "to increase the probability that public sentiments will be leavened by thoughtfulness as they pass along the way to becoming law." WILL, *supra* note 7, at 121 (1992); see also F.A. HAYEK, 3 *LAW, LEGISLATION AND LIBERTY* 113 (1979) (same); THE FEDERALIST No. 71, at 432 (Alexander Hamilton) (Clinton Rossiter ed., 1961) ("The republican principle . . . does not require an unqualified complaisance to every sudden breeze of passion, or to every transient impulse which the people may receive from the arts of men, who flatter their prejudices to betray their interests."); Marci A. Hamilton, *Power, Responsibility, and Republican Democracy*, 93 MICH. L. REV. 1539, 1553-58 (1995) (discussing tension between the original vision of a republican form of government and various proposals to increase elements of direct democracy).

²³ For example, one of the primary supporters is Grover Norquist who, as head of the National Taxpayers Union, argues for tax restructuring, a balanced federal budget, and a vastly reduced federal government. Art Pine, *Vaunted Taxpayer Revolt Only a Skirmish So Far*, WASH. POST, June 3, 1979, at A8; Jeff Shear, *Meet the Antitax Man*, NAT'L J., June 25, 1994, at 1517.

²⁴ See, e.g., *Term Limits Plus: A Broad Agenda for Comprehensive Congressional Reform*, NO UNCERTAIN TERMS, Dec. 1995, at 4 (advocating, in addition to term limits, a Citizen Congress Act to eliminate pensions and cost-of-living adjustments; to dock pay for absences; to require that frequent flyer miles be used only for official trips; and to eliminate special parking at National Airport). For a more detailed discussion of concerns about interest group influence, see *infra* part IV.C.

tions.²⁵ Politicians are routinely given special treatment: they are wooed by special interests; they exempt themselves from legislation that burdens private citizens; and they have a personal stake in expanding the size and scope of government so that they can exercise more power. Term limits are seen as one step in ensuring that politicians are truly average Americans, and they should be enacted with other reforms to make the job of a federal legislator more like any other job.

Whatever the ultimate goals of the leaders of the movement, the resounding theme that unifies them is that professional politicians are the root of most problems pervading the federal government and that the citizen-legislator is the solution. Many average Americans who are sympathetic to this rhetoric are alienated and cynical with an intense, but generalized, distrust of the federal government and those who make a living working in it.²⁶ If, after this sizable group accomplished the difficult task of ratifying a constitutional amendment, the citizen-legislator remained merely a mythic creature, their alienation and their skepticism regarding the legitimacy of the political process would increase. In addition, if term limits caused unanticipated and undesirable effects that were not balanced by positive consequences, the country would face the necessity of enacting another constitutional amendment to repeal them. With these disturbing possibilities in mind, I turn to the question of whether term limits will mark the end of the era of the professional politician.

III

THE PREVALENCE OF PROFESSIONAL POLITICIANS IN CONGRESS AFTER RATIFICATION OF A TERM LIMITS AMENDMENT

The first step is to analyze and resolve term limit activists' central claim—will term limits operate to replace professional politicians, who regard service in elected office as a career, with citizen-legislators, who will spend only a short time in public service? To answer this question, we must identify the different kinds of ambition that motivate people to run for elected office. Political opportunities shape ambitions and, in turn, ambition molds elected office. If the nature and structure of political opportunities change substantially, so may

²⁵ Cf. *United States v. Rostenkowski*, 59 F.3d 1291, 1310 (1995) (observing that an aide who picked up Rep. Rostenkowski's laundry and drove his family around Washington "might, in some circumstances directly—even vitally—aid a Congressman in the performance of his official duties," and therefore the staff member might be performing "official" duties).

²⁶ See Priscilla L. Southwell, "Throwing the Rascals Out" versus "Throwing in the Towel": *Alienation, Support for Term Limits, and Congressional Voting Behavior*, 76 Soc. Sci. Q. 741, 741-42 (1995).

the nature of political ambition. The issue is whether such a change will create a citizen-legislature. The "ambition theory of politics," formulated three decades ago by Joseph A. Schlesinger,²⁷ provides a framework for this analysis.

A. Political Ambition and Political Careers

Three types of ambition have been identified through observations of congressional and other political behavior. Most discussions of political ambition are not attempts to identify the underlying beliefs and objectives that cause a particular behavior. Instead, the ambition theory of politics provides a classification scheme to facilitate the analysis of observable behavior.²⁸ The first kind of ambition is *discrete ambition*. This ambition is contained; a politician who exhibits discrete ambition seeks election to one office for a very limited time and returns to private life rather than pursuing reelection.²⁹ It is the only type of ambition that does not provide the basis for a career in politics, and it is the type that term limit supporters hope will characterize legislators in the future. Examples of politicians who display discrete ambition include a President in his second term of office, or a spouse who is appointed to serve the remainder of her deceased partner's term in Congress.³⁰

The two other kinds of ambition are viewed by advocates of term limits as undesirable.³¹ *Static ambition* is observed when a politician

²⁷ See JOSEPH A. SCHLESINGER, *AMBITION AND POLITICS: POLITICAL CAREERS IN THE UNITED STATES* (1966).

²⁸ *Id.* at 14.

²⁹ *Id.* at 10.

³⁰ A recent example of this phenomenon was the appointment of Jocelyn Birch Burdick to serve the remaining months of North Dakota Senator Quentin Burdick's term, after his death in 1992. Not all members of Congress appointed to finish their deceased spouses' terms demonstrate discrete ambition, however. Hattie Carraway of Arkansas, the first woman to be appointed to complete her husband's term in the Senate, later won the seat in her own right. Perhaps the most famous example of a spouse who first demonstrated static ambition and then progressive ambition was Rep. Margaret Chase Smith, who served in the House for eight years after being appointed to her deceased husband's vacant seat and then for another 24 years in the Senate. See HOPE CHAMBERLAIN, *A MINORITY OF MEMBERS: WOMEN IN THE UNITED STATES CONGRESS* (1973); OFFICE OF THE HISTORIAN, UNITED STATES HOUSE OF REPRESENTATIVES, *WOMEN IN CONGRESS, 1917-1990* (1991). For a discussion of the likelihood that politicians with discrete ambition will develop progressive ambition after a period of congressional service, see *infra* notes 102-04 and accompanying text.

³¹ Unlike term limits advocates, Professor Schlesinger sees static and progressive ambition as potentially beneficial. Schlesinger states:

To slight the role of ambition in politics, then, or to treat it as a human failing to be suppressed, is to miss the central function of ambition in political systems. A political system unable to kindle ambitions for office is as much in danger of breaking down as one unable to restrain ambitions. Representative government, above all, depends on a supply of men so driven; the desire for election and, more important, for reelection becomes

remains in one office for a substantial period of time, running again and again for reelection. This type of ambition is currently the most prevalent in the federal legislature—long-time incumbents remain in one body for decades and accumulate power in a system organized by seniority. The final kind of ambition is *progressive ambition*, which a politician displays when she moves from one office to the next, seeking to serve in increasingly prestigious and powerful positions during a long political career.

These different conceptions of ambition help to contrast professional politicians with amateurs, although defining the boundaries among the three types can be difficult. For example, if statically-ambitious politicians are content to run for reelection only a few times, then they might be sufficiently discretely ambitious to satisfy term limits supporters. But federal legislators are often motivated by ambitions for political careers of lengths that disqualify them as citizen-legislators. The best measure of whether term limits will affect members before they are willing to leave office voluntarily is the mean completed tenure of retired members of Congress and the estimated mean completed tenure of current members of Congress.³² The estimated terms for current members are calculated by using a “continuation rate,” which measures the likelihood that a member will continue in office for an additional term.³³ The mean completed tenure figures indicate that members of Congress serve, on average, more than six terms in the House and two terms in the Senate. If one uses a continuation rate based on data from 1985-1991, the average length of a completed spell in the House is 17.8 years for a new member,³⁴

the electorate's restraint upon its public officials. No more irresponsible government is imaginable than one of high-minded men unconcerned for their political futures.

SCHLESINGER, *supra* note 27, at 2; see also John Ferejohn, *Incumbent Performance and Electoral Control*, 50 PUB. CHOICE 5, 8 (1986) (noting that the natural mechanism to induce politicians to act in the interests of their constituents is the frequency of elections and the lawmakers' desire to remain in office). But see *infra* note 202 (discussing whether threat of defeat is only way to control legislator shirking).

³² The more frequently used mean tenure figure consistently underestimates the number of expected completed terms of lawmakers because it includes members who have not yet completed their legislative service without projecting how long they will remain in Congress. See W. Robert Reed & D. Eric Schansberg, *How Long Do Congressmen Stay in Office?*, 2 ECON. & POL. 173, 173-74 (1990). For a discussion of the advantage of the continuation rate approach over an approach that relies on average tenure, see *id.* at 174, 179-85.

³³ See W. Robert Reed & D. Eric Schansberg, *The Behavior of Congressional Tenure Over Time: 1953-1991*, 73 PUB. CHOICE 183, 185 (1992) (describing the formula used to compute the probability that representative will leave Congress with n terms of completed tenure).

³⁴ Reed & Schansberg, *Impact of Congressional Term Limits*, *supra* note 5, at 82. Using the continuation rate for 1977-1991, which includes data from the entire period following the significant institutional reforms in the House, the mean completed tenure is 13.5 years in the House. *Id.*

and the average length of a completed spell in the Senate is slightly longer.³⁵

Clearly, legislators who currently exhibit static ambition are not exhibiting what term limits supporters would consider discrete ambition; most politicians would find the careers they desired cut short. Had twelve-year term limits been in place at the end of the 102nd Congress, thirty-seven percent of the House and half of the Senate would have been ineligible to seek reelection.³⁶ Members of Congress in high-profile leadership roles will disproportionately feel the effect of term limits. Had term limits been in effect during the 1992 elections, not a single committee chairman in either chamber would have been eligible to run for reelection.³⁷ Over the past ten years, the average tenure for chairmen and ranking members of House committees has been approximately twenty-three years. In the Senate, chairmen and ranking members have an average tenure of nearly twenty years.³⁸ And, if one isolates only the most powerful committees in each body,³⁹ the average tenure increases to over twenty-five years in the House and over twenty-three years in the Senate.

Compared to the separation between discrete and static ambition, the boundary between static and progressive ambition is even more indistinct—possibly non-existent. Both kinds of political careers—long-time service in one body and movement up the political opportunity structure—appear to be motivated by the same kind of ambition, the kind conventionally labelled as progressive. Perhaps we should more accurately consider most politicians as motivated by “careerist ambition” which is manifested through two different types of behavior. If we do not observe progressively-ambitious behavior, then the politician has likely never had a realistic opportunity to move to a more prestigious and powerful political office and has, as a result, contented herself with a career shaped by static ambition. Term limits eliminate the ability of legislators to pursue static ambitions indefinitely, however. If the underlying motivation for careerists is the same (regardless of how it is exhibited), statically-ambitious politicians will

³⁵ Reed & Schansberg, *supra* note 33, at 196 figs. 4 & 5.

³⁶ John R. Hibbing, *Careerism in Congress: For Better or for Worse?*, in CONGRESS RECONSIDERED 68 (Lawrence C. Dodd & Bruce I. Oppenheimer eds., 5th ed. 1993).

³⁷ *Id.*

³⁸ I calculated these figures using data drawn from MICHAEL BARONE & GRANT UJIFSA, *THE ALMANAC OF AMERICAN POLITICS* (1988-1996). Tenure (years in Congress) was computed by subtracting the year of first election from the year of exit (or the current year in the case of those members still in Congress).

³⁹ I considered the most powerful committees in the House to be Appropriations, Armed Services, Budget, Economic and Educational Opportunity, Rules, and Ways and Means. In the Senate, I considered the most powerful committees to be Appropriations, Armed Services, Budget, Education and Labor, and Finance. Again, calculations were derived using data from BARONE & UJIFSA, *supra* note 38.

naturally consider altering their behavior to fit the strategy of progressive ambition, a course that remains open to them under term limits.⁴⁰

Some political scientists have assumed that legislators possess only progressive ambition (with rare instances of discrete ambition).⁴¹ David W. Rohde explained why he thought it fair to assume that all members of the House, regardless of their observed behavior, were progressively ambitious:

[W]e assume that if a member of the House, on his first day of service, were offered a Senate seat or a governorship *without cost or risk*, he would take it. Thus static ambition is not something chosen a priori, but is a behavior pattern manifested by a member because of the risks of the particular opportunity structure he finds himself in, and his unwillingness to bear those risks.⁴²

A recent study by Professors Kiewiet and Zeng supports the assumption of nearly universal progressive ambition. They found that when presented with a realistic opportunity for success in obtaining a higher office, most House incumbents displayed progressive ambition.⁴³ Again, the opportunity structure defined the behavior of House members; it shaped their progressive ambition into static ambition when the former was unlikely to be satisfied.

The dominance of progressive ambition among political careerists explains why long-time incumbents, who are formally classified as statically ambitious, often demonstrate a variation of progressive ambition. Rather than seeking to move to higher office (perhaps because

⁴⁰ See Schlesinger, *supra* note 27, at 49 ("To the extent that political ambitions are generalized, frustration in one direction leads to the transfer of energies to other more accessible outlets."); cf. Gordon S. Black, *A Theory of Political Ambition: Career Choices and the Role of Structural Incentives*, 66 AM. POL. SCI. REV. 144, 158 (1972) ("[T]he structure of a political system acts as a filter that allows some types of individuals to move up through the system, while others are either stopped in their progress or diverted in less risky and costly directions." (emphasis added)); *id.* at 145 (stating that "the office-holder responds primarily to the immediate forces in his political environment rather than to factors that occur in the more distant past" and that politicians "tend to develop ambition slowly as a result of their changing circumstances").

⁴¹ For example, Professor Schlesinger assumes that progressive ambition is the dominant form of ambition motivating politicians. SCHLESINGER, *supra* note 27, at 13.

⁴² David W. Rohde, *Risk-Bearing and Progressive Ambition: The Case of Members of the United States House of Representatives*, 23 AM. J. OF POL. SCI. 1, 3 (1979) (footnote omitted). Professor Rohde noted, however, that a few examples of discrete ambition can be found in the House. *Id.* at 3 n.3; see also Paul R. Abramson et al., *Progressive Ambition Among United States Senators: 1972-1988*, 49 J. OF POL. 3, 5 (1987) (extending Rohde's assumption to the Senate). *But see* Kenneth Prewitt & William Nowlin, *Political Ambitions and the Behavior of Incumbent Politicians*, 22 W. POL. Q. 298, 307 (1969) (finding both static and progressive ambition among city councilmen in the San Francisco Bay area and hypothesizing that, although more federal legislators are progressively ambitious, some are still motivated by static ambition).

⁴³ D. Roderick Kiewiet & Langche Zeng, *An Analysis of Congressional Career Decisions, 1947-1986*, 87 AM. POL. SCI. REV. 928, 933 (1993).

they perceive that the opportunity structure for progression is blocked), these politicians spend a great deal of their time in the House or Senate seeking more powerful roles within the body. Such "intra-institutional ambition"⁴⁴ is encouraged by the organization of Congress, which relies heavily on a seniority system when choosing party leaders and chairmen of committees and subcommittees.⁴⁵ Legislators who currently exceed the twelve-year limitation in either house have typically spent their careers climbing the ladder of leadership positions in the House or Senate, serving on increasingly powerful and prestigious committees, and holding increasingly influential chairmanships or party offices. After the adoption of term limits, it will be natural for them to channel their ambition from position-seeking to office-seeking.

B. Term Limits and the Shape of Political Careers

Given the close relationship among the types of ambition that shape political careers, the question of whether term limits will discourage careerism depends primarily, if not entirely, on how term limits affect progressive ambition. If term limits supporters are correct in their hypothesis that limited terms will keep most people from pursuing a career in politics—thus leaving the door open to political amateurs—then term limits must operate to discourage entry by candidates with progressive ambition. In addition, the adoption of term limits must prevent people who enter politics with discrete ambition from developing progressive ambition. In my view, term limits accomplish neither objective in most cases.

This inquiry is important for two reasons. First, it tests the accuracy of the claim that term limits will bring about a citizen-legislature. Second, it calls into question an assumption made by some who study term limits: that term limits will allow legislators to ignore the interests of their constituents in their final terms in office. For example, Professors Spitzer and Cohen use game theory to predict legislator

⁴⁴ See Rebekah Herrick & Michael K. Moore, *Political Ambition's Effect on Legislative Behavior: Schlesinger's Typology Reconsidered and Revised*, 55 J. OF POL. 765, 765-69 (1993) (studying intra-institutional ambition, that is, position-seeking rather than office-seeking). Herrick and Moore conclude that position-seekers exhibit a different sort of ambition than either office-seekers or politicians who merely seek reelection. *Id.* at 773. A better conclusion, however, may be that position-seeking represents a way for ambitious persons to accommodate their ambition within the current political opportunity structure. Cf. Richard L. Hall & Robert P. van Houweling, *Avarice and Ambition in Congress: Representatives' Decisions to Run or Retire from the U.S. House*, 89 AM. POL. SCI. REV. 121 (1995) (considering the likelihood of satisfying intra-institutional ambition in modeling the decisions of representatives to run for reelection or to retire from the House).

⁴⁵ See *infra* text accompanying notes 111-19. For a further discussion of the seniority system in Congress, see *infra* part IV.A.

behavior after the adoption of term limits.⁴⁶ They assume that term limits impose “a certain end to the political game between the voters and the legislator.”⁴⁷ In contrast, the current system is characterized by probabilistic end periods; that is, no player is sure which term will end the game. Cohen and Spitzer suggest that the existence of probabilistic end periods is one solution to a prisoners’ dilemma that causes legislators to behave contrary to their constituents’ desires and consistent with the agendas of interest groups.⁴⁸ Cohen and Spitzer characterize the relevant prisoners’ dilemma as follows: voters cooperate by reelecting their representatives and defect by not doing so; legislators cooperate by serving constituent interests and defect by serving their self-interest. (Cohen and Spitzer assume the latter diverge.) Unless voters and legislators have some way to cooperate, the possibility of defection is great which means constituent interests will go unserved. As long as legislators face the threat of defeat, they will cooperate, but this mechanism cannot prevent defection in their last term. Thus, if voters know which term will be a legislator’s last, they will not reelect her to her final term. Accordingly, she will defect in her next to last term, voters will anticipate that and defect in this earlier election, and so on, until cooperation unravels completely.⁴⁹ If there are no certain end periods, however, then there is a chance that each period will be the last—and a chance that it will not. If the likelihood that the legislator will continue to serve is high enough, then cooperation may be sustained.⁵⁰

Thus, term limits appear to defeat this solution to the prisoners’ dilemma by enacting certain end periods to legislator terms. But if progressive ambition is the prevalent strategy of politicians constrained by term limits, the political game will still have probabilistic end periods as politicians run for a series of jobs with overlapping constituencies. In other words, term limits cause certain end periods with respect to particular jobs,⁵¹ but not with respect to political careers. This uncertainty is similar to the uncertainty that acts to mitigate the prisoners’ dilemma now, where voters know that a legislator will ultimately come to the end of her service either through death or

⁴⁶ Cohen & Spitzer, *supra* note 4, at 477-79.

⁴⁷ *Id.* at 508.

⁴⁸ *Id.* at 500-06.

⁴⁹ *Id.* at 498-99.

⁵⁰ *Id.* at 504-05. Cooperation may also be encouraged, even when the probability that a particular term will be the last is high, by altering the payoff for cooperation. *Id.* at 500, 505.

⁵¹ Of course, a politician need not remain in one office until the term limit forces her to leave; thus, the certainty of the end period even with respect to the particular job is questionable. See *infra* note 80 and accompanying text (noting the possibility that officeholders will leave early to take advantage of open seats in other parts of the political opportunity structure).

retirement. Legislators will also cooperate because voters are unlikely to elect candidates with a history of defecting in the larger political game.

Thus, determining whether progressive ambition will survive term limits is crucial. At first glance, term limits do not appear to inhibit progressive ambition significantly. A politician can serve in the House for twelve years and then continue her career in the Senate for another twelve years. She can plan to spend some time in the state legislature, the governor's office, or in the executive branch if she hopes for a longer career in public service. This analysis misses the mark, however. The relevant question for a prospective professional candidate is not the length of time that she may possibly serve in political offices; the important question is whether the expected return on a lengthy political career will be sufficient to justify her investment of time, money, and energy.

Term limitations make an uninterrupted political career much more difficult than it is now. Currently, once a candidate is elected to one body of Congress, she can be relatively certain of long tenure because of the great advantages of incumbency in campaigns.⁵² Under term limits, a careerist needs to move up the political opportunity structure to remain in elected office, but the probability of unimpeded upward movement decreases as the number of available positions that are perceived as advancements decline.⁵³ In some

⁵² See JOHN R. HIBBING, CONGRESSIONAL CAREERS: CONTOURS OF LIFE IN THE U.S. HOUSE OF REPRESENTATIVES 43-46 (1991); John R. Alford & David W. Brady, *Personal and Partisan Advantage in U.S. Congressional Elections, 1846-1986*, in CONGRESS RECONSIDERED 153, 156-58, 163-64 (Lawrence C. Dodd & Bruce I. Oppenheimer eds., 4th ed. 1989); Charles S. Bullock, III, *House Careerists: Changing Patterns of Longevity and Attrition*, 66 AM. POL. SCI. REV. 1295, 1295 (1972)

⁵³ Much of Professor Schlesinger's work on political ambition discusses the opportunity structure that shapes ambition. See SCHLESINGER, *supra* note 27, at 11-12, 16-21. Before Schlesinger's study, many perceived the political career structure as hopelessly muddled. See, e.g., HAROLD D. LASSWELL, PSYCHOPATHOLOGY AND POLITICS 303 (1960) ("In American politics the escalator to the top is not a regimented, orderly lift, but a tangle of ladders, ropes, and runways that attract people from other activities at various stages of the process, and lead others to a dead end or a blind drop."). The opportunity structure is logical, however. For example, Schlesinger identified a number of "manifest offices," or offices with numerous obvious conditions which link them together and make movement among them likely. See SCHLESINGER, *supra* note 27, at 90-102. A common path to the Senate begins with a base office in the state legislature and then leads to the U.S. Congress as the penultimate elected office. See *id.* at 92 (creating a frequency tree of prior careers of senators). This opportunity structure is unsurprising because federal and state legislative jobs fit easily into the concept of manifest offices. First, they have obvious functional similarities. *Id.* at 99-100. Second, their constituencies overlap. State legislators have constituencies that are part of House districts, and depending on the size of the state legislatures, the degree of overlap may be substantial. Rohde, *supra* note 42, at 9 ("One thing that will have a substantial impact on voter recognition is the degree of overlap between the constituency a prospective candidate presently represents and the constituency he would like to represent."); D. Eric Schansberg, *Moving Out of the House: An Analysis of Congressional Quits*, 32

states, the pyramid narrows sharply between state legislative positions and U.S. House of Representatives positions. For example, in Wyoming, which applies term limits at the state level, the state house consists of sixty representatives who are limited to no more than six years of service in any twelve-year period, and thirty state senators who are limited to no more than twelve years of service in any twenty-four year period. When progressively-ambitious state legislators consider the federal legislature, they must be painfully aware that Wyoming is represented by only one person in the House and two in the Senate. In most states, the cinch tightens significantly between the House and the Senate. California, which also has term limits at the state level, has eighty seats in the state assembly, forty state senate seats, fifty-two U.S. representatives—but only two U.S. senators. This winnowing effect is particularly pronounced because a race for the Senate is likely to attract not only many federal representatives, but also the governor, other state-wide elected officials, and high-profile mayors from large cities.

If forced to run for higher office, the prospective candidate, weighing the chances of a career in politics, cannot be certain that she will move steadily through a succession of elected offices. This change in her chances for a career in politics is not because term limits decrease the probability of success in, for example, a U.S. Senate race after she has served in the House of Representatives. Indeed, my analysis will suggest that success may be more likely after the adoption of term limits. The problem is that, even if the chances improve, the probability of successfully moving to a higher office will remain lower than the probability in the current system of being reelected indefinitely. Yet, under term limits, the only way to sustain a political career is to hold a series of political jobs.

The preceding analysis is a static one, however. To think of the political opportunity structure as immutable or as comprising only elected offices is a mistake. Term limits will result in various alterations in the available political opportunities that may convince a prospective candidate that a political career remains a viable prospect, notwithstanding the need to move periodically to different positions. As a result, the legislature will continue to be largely professional even with term limits. The shape of the political opportunity structure will

ECON. INQUIRY 445, 453-54 (1994) (finding that representatives from less populous states more often exhibit progressive ambition because of the large overlap of constituencies). Interaction among officeholders in all these jobs is frequent enough to provoke ambition in those holding the less desirable jobs and to allow them to envision themselves in the new role. SCHLESINGER, *supra* note 27, at 100.

change to fit the new realities of a "term-limited world." As politicians' expectations change, so will the opportunity structure.⁵⁴

After the adoption of term limits, a U.S. representative may more frequently consider moving back to a state position, a tendency now negatively referred to as "regressive ambition,"⁵⁵ although notable politicians often returned to state office in earlier eras when states were relatively more powerful.⁵⁶ With term limits, the political opportunity structure may again include state offices at its higher levels. By serving in a state position, a former U.S. representative may increase her chance for success in a future election for the Senate, particularly if the state office encompasses different or larger constituencies or offers an opportunity for greater name recognition. Moreover, the abil-

⁵⁴ See SCHLESINGER, *supra* note 27, at 19 (noting that wars, economic changes, and political changes cause the political opportunity structure to change). Perhaps the opportunity structure will remain the same, although that outcome seems unlikely because the structure is a response to the institutional constraints that shape political life. If the structure does not change to accommodate altered career expectations, people's preferences for risk may become the central factor in their decision to pursue political careers. Several studies on risk preferences and political ambition have been undertaken. See, e.g., Rohde, *supra* note 42; Abramson et al., *supra* note 42; see also Paul Brace, *Progressive Ambition in the House: A Probabilistic Approach*, 46 J. OF POL. 556, 567 (1984) (finding that measurements of risk-bearing tendencies are not sufficiently refined and provide weak results). Unfortunately, although these studies suggest that risk-bearing propensities vary among politicians, see, e.g., Abramson et al., *supra* note 42, at 12, they do not measure their strength or their distribution. Nor do the studies shed any light on whether a politician who must either retire or seek another office because of term limits will exhibit stronger risk-bearing characteristics than a politician who can also choose to satisfy ambition statically.

⁵⁵ Gary W. Copeland, *Term Limitations and Political Careers in Oklahoma: In, Out, Up, or Down*, in LIMITING LEGISLATIVE TERMS, *supra* note 5, at 139, 147. Term limits on state legislators in California have apparently increased the incidence of regressive ambition as some assembly members have sought local offices, such as positions on the boards of supervisors in large counties or on city councils in major cities. See ELIZABETH A. CAPELL, TERM LIMITS AND INTEREST GROUPS: PREDICTIONS FOR CALIFORNIA (Institute of Governmental Studies, University of California at Berkeley Working Paper 94-1, 1994); Mark Gladstone, *Capitol Journal: Legislators Look Homeward for Future in Politics*, L.A. TIMES, Sept. 21, 1992, at A3.

⁵⁶ George Will has noted the decline of regressive ambition in modern politics: During the Jeffersonian era congressmen came and went with what today seems remarkable rapidity. Politicians passed through Congress and then often passed on to, or back to, what we now consider, anachronistically, "lower" offices. "A typical career sequence early in the nineteenth century would be local office, state office, U.S. House, and back to the state House." WILL, *supra* note 7, at 84 (quoting Samuel Kernell, *Toward Understanding 19th Century Congressional Careers: Ambition, Competition, and Rotation*, 21 AM. J. POL. SCI. 669 (1977)). For example, John Quincy Adams served for seventeen years in the House of Representatives after he left the Presidency. LU ANN PALETTA & FRED L. WORTH, ALMANAC OF PRESIDENTIAL FACTS 37 (1988). John Tyler was elected to the Confederate House of Representatives after his service as President of the United States. *Id.* at 52. Several of the early Speakers of the House left the federal legislature to serve in state government: Speaker Varnum (1807-1810) served in the U.S. Senate and then in the Massachusetts State Senate; Speaker Taylor (1820, 1825-1826) served in the New York State Senate after he left the House; and Speaker Jones (1843-1844) was later a representative to the Virginia House of Delegates. Nelson W. Polsby, *The Institutionalization of the U.S. House of Representatives*, 62 AM. POL. SCI. REV. 144, 148, 150 (1968) [hereinafter Polsby, *Institutionalization*].

ity to use a state position either as a springboard or as a place to wait until the chance for advancement improves may make such jobs relatively desirable. Indeed, after the adoption of term limits, the temporary movement to state office should be termed "cyclical" ambition, rather than "regressive" ambition, because the negative connotations will be largely removed.

The political opportunity structure comprises many jobs, not all of them elected. Movement to non-elected political positions is also possible, either as an alternate career path or as a strategic choice to improve a candidate's chances for higher elected office in the future. Such political positions include jobs in the private sector or with political parties.

In addition to changing the pattern of office-holding (or, more expansively, political-job-holding), term limits will also affect many of the critical factors that determine whether a politician is likely to attain the next position along the opportunity structure. If these changes increase the likelihood that a candidate will continue to win as she moves along her career path then she will still be willing to embark on a political career. To understand how term limits affect the factors relevant to the decision to run for office, we need to analyze what considerations a candidate weighs when making her choice.

C. Changes in the Factors Considered by a Prospective Candidate

A person assessing whether she will pursue a career in politics makes her decision strategically,⁵⁷ weighing the risks of running, the benefits of success, and the options after failure. When a candidate decides whether to run for an office, her decisionmaking process can be characterized in the following way:

$$U = P (B_W) + (1 - P) (B_L) - C$$

where:

U is the utility of running for a particular office;

P is the probability of winning the office;

B_W is the benefit of the office that the candidate perceives;

$1 - P$ is the probability of losing the election for the office;

B_L is the perceived benefit of the activity that she expects to engage in if she loses; and

⁵⁷ See GARY C. JACOBSON & SAMUEL KERNELL, *STRATEGY AND CHOICE IN CONGRESSIONAL ELECTIONS* (1981) (formulating a theory of the strategic politician).

C is the cost associated with running, which includes the net cost of the campaign and the value of any currently held political office or other opportunity that she foregoes if she decides to run.⁵⁸

As long as U is greater than zero and the benefits of alternative activities are not greater than U , the prospective candidate will decide to run for office.

If term limits affect the value of the terms of this calculation so that running for another office remains an attractive option after the candidate's term has expired, a careerist should remain in politics. In other words, if the political environment adapts to term limits in ways that compensate for the impossibility of indefinite reelection, the professional politician will remain. I will assume, for the immediate discussion, that the shortened term of office is the only relevant change in the nature of the political office caused by term limits.⁵⁹

Another challenge involved in analyzing the effect of term limits on a politician's career decisions is the presence of feedback effects that make the analysis seem circular: the effect of term limits on the terms in the calculation depends on whether other potential candidates still consider politics an attractive career after their adoption. But we do not know the effect of term limits on careerism until we know how the terms in the calculation will change. For example, both the probability of success and the cost of campaigns—critical factors in determining the value of U —are affected by the number of candidates in any particular race, and the number of candidates depends in large part on the value of U . If an increase in U attracts more candidates, then the net cost of each campaign will rise and the probability of success will decline, causing a reduction in U .⁶⁰ This problem is faced in other contexts by economists and social scientists.⁶¹ The presence of feedback effects means that the magnitude of any change in U may be reduced, but I assume that these secondary effects will not dominate the primary effect. In other words, any reduction in U caused by increased competitiveness will not overwhelm the increase

⁵⁸ This calculus is based on the empirical work in Black, *supra* note 40, at 146 and JACOBSON & KERNELL, *supra* note 57, at 22. See also Timothy Groseclose & Keith Krehbiel, *Golden Parachutes, Rubber Checks, and Strategic Retirements from the 102d House*, 38 AM. J. POL. SCI. 75, 78-79 (1994) (offering a similar model).

⁵⁹ It is likely that term limits will change the nature of the legislative office by altering the benefits that politicians—whether careerist or amateur—can extract from the office. This complex and less frequently studied issue is considered *infra* part IV.

⁶⁰ Perhaps a more accurate depiction of the decisionmaking process is the following:

$$U P(N(U), I) \times B_W + (1 - P(N(U))) \times B_L - C(N(U), I)$$

where the new terms are

N is the number of candidates in a particular election; and

I is the presence of an incumbent in an election.

I am particularly indebted to Dick Craswell for our discussion of this issue.

⁶¹ FRANKLIN FISHER, *ECONOMETRICS: ESSAYS IN THEORY AND APPLICATION* 72-73 (1992).

in the value of U that results in the increased competitiveness. My analysis of the prospective candidate's decision therefore focuses only on the change in her utility, holding constant every other prospective candidate's utility. If, under these conditions, U increases, we would expect more candidates to run for office,⁶² mitigating, but not eliminating, the positive effect on U .

1. *Term Limits' Effect on the Probability of Success in a Campaign for a Particular Office (P)*

The political science literature demonstrates that the most important variable in electoral success is incumbency. Despite the publicized upsets of a few incumbent lawmakers in recent elections, incumbents remain virtually invincible in their bids for reelection.⁶³ Because of this intimidating reality, serious challenges to incumbents are now relatively rare.⁶⁴ Perhaps the primary reason a progressively-ambitious politician avoids challenging an incumbent is the absence of term limits. As long as a politician does not face term limits in her current office, she is apt to be relatively patient because she can re-

⁶² Preliminary studies of state elections after the adoption of term limits suggest that the reform does increase electoral competition. See KAMBER, *supra* note 16, at 35-36 (concluding that term limits at state level increased the number of candidates for elected offices, but decrying this increase in choice as "chaos"); Kermit Daniel & John R. Lott, Jr., *Term Limits and Electoral Competitiveness: California's State Legislative Rules*, 14-15 (Mar. 4, 1996) (unpublished manuscript, on file with the *Cornell Law Review*) (term limits in California increased the number of major party candidates, decreased the margin of victory in elections, and decreased the number of elections with only one candidate); John R. Lott, Jr., *A Simple Explanation for Why Campaign Expenditures are Increasing: The Government is Getting Bigger*, 23 (Nov. 13, 1995) (unpublished manuscript, on file with the *Cornell Law Review*) [hereinafter Lott, *Simple Explanation*]. But see KAMBER, *supra* note 16, at 44 (concluding that term limits in Oklahoma decreased competition but offering no explanation for this outcome).

⁶³ Before the relatively tumultuous elections of 1992 and 1994, incumbent House members enjoyed reelection rates of more than 95%. Robert S. Erikson & Gerald C. Wright, *Voters, Candidates, and Issues in Congressional Elections*, in CONGRESS RECONSIDERED, *supra* note 36, at 91, 99. And, the reelection rate for incumbents in the last two elections has not dipped substantially. The lowest rate of 88% occurred in the Senate in 1992 when 23 of 26 incumbents seeking reelection were returned. The other reelection rates for that year exceeded 90%. Elizabeth Neuffer, *Class of '92 Holds Reformers, Not Radicals*, BOSTON GLOBE, Nov. 17, 1992, at 20; Kevin Bouffard, *Quick Change Expectations Unrealistic*, TAMPA TRIB., Nov. 21, 1994, at H1.

⁶⁴ See Gary C. Jacobson, *The Misallocation of Resources in House Campaigns*, in CONGRESS RECONSIDERED, *supra* note 36, at 115, 127-28 fig. 5-6 (showing that an increasing number of incumbents faced no challenger at all; that a large number of challengers are so poorly funded that the incumbent effectively faced no opposition for reelection; and concluding that 80% of incumbents faced no real challenge in general elections); see also Wayne L. Francis, *House to Senate Career Movement in the U.S. States: The Significance of Selectivity*, 18 LEGIS. STUD. Q. 309, 314 tbl. 1 (1993) (finding that when members of the lower state houses seek to move to the upper body, they run for open seats 78% of the time rather than challenging an incumbent).

main there until the incumbent in the higher office retires.⁶⁵ Term restrictions set a limit on her patience; thus, she is much more likely to consider running against an incumbent.

Although challenges to incumbents in the current system are unlikely to succeed, term limits may change matters. In fact, such a significant institutional change will likely diminish substantially the current invulnerability of incumbents. John R. Lott, Jr., has identified a barrier to entry in the political market—an incumbent politician's "brand name"—that decreases the number of challenges to incumbents and makes successful challenges both unlikely and costly.⁶⁶ An incumbent running for reelection has already made a significant investment in her political brand name. In previous campaigns, she has compiled lists of donors and supporters that she can update and use at a cost vastly lower than the initial cost to produce such resources. She has already spent campaign funds to acquaint the voters with her name and her philosophy of governing. An incumbent has developed a "home style" that engenders warm and positive feelings in potential voters, and she has spent enormous amounts of time performing constituent service like casework or project assistance.⁶⁷ Many congressional institutions are designed to aid incumbents in establishing and reinforcing name recognition among voters relatively cheaply and easily.⁶⁸ This part of a legislator's job can be labeled "advertising."⁶⁹ Incumbent advertising assumes a variety of forms: frequent visits home at taxpayer expense; noncontroversial speeches advocating symbolic responses to problems; and the use of the Senate or House recording studio and franked mail to communicate with constituents.

⁶⁵ Her willingness to wait may also be a function of her preference for risk. For a discussion of the role of risk-taking in the decision-to-run calculus, see *supra* note 54.

⁶⁶ See John R. Lott, Jr., *Brand Names and Barriers to Entry in Political Markets*, 51 PUB. CHOICE 87, 87-88 (1986) [hereinafter Lott, *Brand Names*]; John R. Lott, Jr., *The Effect of Nontransferable Property Rights on the Efficiency of Political Markets*, 32 J. PUB. ECON. 231 (1987) [hereinafter Lott, *Nontransferable Property*]; cf. MORRIS P. FIORINA, CONGRESS: KEYSTONE OF THE WASHINGTON ESTABLISHMENT 101 (2d ed. 1989) (noting that "the strength of challengers is in part determined by the strength of incumbents. An incumbent with a history of comfortable margins, an overflowing war chest, and a reputation for invincibility scares any ambitious prosecutors and state legislators who are natural antagonists."). See also *infra* text accompanying notes 102-04 (discussing these investments as a reason politicians are likely to exhibit progressive ambition once they are in office).

⁶⁷ See RICHARD F. FENNO, JR., HOME STYLE: HOUSE MEMBERS IN THEIR DISTRICTS 101 (1978) (defining constituent service).

⁶⁸ Justice Thomas recognized these advantages in his dissent in *U.S. Term Limits* and argued that term limits would help to level the playing field for challengers. *U.S. Term Limits v. Thornton*, 115 S. Ct. 1842, 1911 (1995) (Thomas, J., dissenting); see also ALAN EHRENHALT, THE UNITED STATES OF AMBITION 230-31 (1991) (describing why Congress is an "incumbent protection society").

⁶⁹ See, e.g., DAVID R. MAYHEW, CONGRESS: THE ELECTORAL CONNECTION 49 (1974) (defining advertising as the effort to "disseminate one's name among constituents in such a fashion as to create a favorable image but in messages having little or no issue content"); see also *infra* notes 156-57 and accompanying text.

A challenger, even a strong one, cannot easily acquire a comparable political brand name. Developing this human capital outside the political arena is difficult.⁷⁰ Moreover, the market for political brand names is imperfect. Unlike a new firm that can purchase a well-known brand name from another firm and immediately benefit from its accumulated goodwill, a new politician cannot purchase a retiring politician's brand name and succeed to her goodwill.⁷¹ An endorsement from a well-respected and popular incumbent is not the same as the incumbent running herself; the new candidate must make further investments to convince voters that she sincerely shares the ideology of her endorser. The endorsement is helpful information to the voters, as is party affiliation, but voters need other credible indications that the signal is accurate and that the affiliation is not merely strategic.⁷²

In addition, a political brand name is a largely nontransferable asset because a challenger cannot literally buy another's brand name without violating bribery or campaign finance laws.⁷³ Moreover, investments in a political brand name are largely unsalvageable. Without an ability to transfer this investment to another, a politician will reasonably decide to continue her career in politics and to continue to receive a return on her investment. As an incumbent remains in office, her investment in brand name increases, which requires larger initial expenditures by challengers to develop comparable reputations. The barriers to entry into the political market become correspondingly more formidable.⁷⁴

By limiting tenure in any one office, term limits may decrease incumbents' ability to invest in office-specific political brand names,

⁷⁰ A political brand name can be produced through activities other than holding political office. For example, General Colin Powell has invested significantly in this asset without holding elected office. Fame is not always a substitute for political renown, however. To the extent that voters engage in sorting, that is, electing persons who share their ideology, general information about the candidate is often unhelpful in evaluating her philosophy of governing. Also, fame is seldom accompanied by the network of political support that is so important in modern politics.

⁷¹ See Lott, *Brand Names*, *supra* note 66, at 87-88 (discussing the difference between brand names of firms and political brand names in terms of their transferability); Lott, *Nontransferable Property*, *supra* note 66, at 232-33 (same).

⁷² The question of political brand names is an example of information costs. Voters desire to elect politicians who share their ideologies so that they are not required to monitor their agents as closely as they might otherwise. Because information about ideology is costly and difficult to verify, those who have established their brand names through prior campaigns and political service are at an advantage relative to newcomers.

⁷³ See Elhauge, *supra* note 4, at 49-50.

⁷⁴ Given that these investments by the incumbent are sunk, he need only cover his marginal cost of creating transfers to remain in office. The challenger, on the other hand, must not only cover his marginal costs but expect a competitive return on his expenditure of campaign funds. If the incumbent has made sufficiently large past investments, it will not pay the challenger to invest the amount required to win.

Lott, *Nontransferable Property*, *supra* note 66, at 240-41.

thereby reducing their current virtual invulnerability.⁷⁵ Of course, even term-limited incumbents will retain some advantages in the development of political brand names because of the resources they have developed in past, albeit fewer, campaigns and through their service in office. A politician with progressive ambition will still have a significant amount of investment sunk in her political reputation and will have developed the valuable campaign infrastructure of volunteers and donor lists. For each new office, however, a candidate will need to make new investments targeted to the new constituency. The need to continue building and refining political brand name may therefore close the resource gap between incumbents and challengers.

The dynamic changes wrought by the adoption of term limits suggest that the incumbency advantage will be further diluted as many races will pit incumbents against one another. Incumbents of term-limited offices who have reached the ends of their terms may choose to challenge an incumbent of a new and desirable office.⁷⁶ If a challenger has been serving in an office that allowed for extensive advertising to the constituents of the new office, the nominal incumbent's comparative advantage may be slim indeed. If a challenger's current constituency overlaps with the incumbent's, the ability to engage in such advertising is enhanced. In her last term, a strategic, progressively-ambitious politician can target her advertising activities toward her new constituency, because her current constituents cannot exert discipline by refusing to reelect her.⁷⁷

⁷⁵ See Daniel & Lott, *supra* note 62, at 13-14 (suggesting that, after term limits, incumbents will become more vulnerable over the long term).

⁷⁶ However, races between incumbents may not increase in frequency if political parties, made stronger by term limits, enforce an orderly process to discourage races between incumbents of the same party. For a discussion of how political parties may control legislators after the adoption of term limits, see *infra* text accompanying notes 213-223.

⁷⁷ Although the emphasis of her advertising may shift, the progressively-ambitious politician should still vote consistently with her past voting record because of her sincere ideological preferences and because severe divergence will tarnish her political brand name in future campaigns. See John R. Lott, Jr. & Stephen G. Bronars, *Time Series Evidence on Shirking in the U.S. House of Representatives*, 76 PUB. CHOICE 125, 128-33 (1993); James vanBeek, *Does the Decision to Retire Increase the Amount of Political Shirking?*, 19 POL. FIN. Q. 444, 447-49 (1991) (finding no "statistically significant change in voting behavior" of those aspiring to higher office). But see Mark A. Zupan, *The Last Period Problem in Politics: Do Congressional Representatives Not Subject to a Reelection Constraint Alter Their Voting Behavior?*, 65 PUB. CHOICE 167, 171 (1990) (finding that aspiring candidates alter their voting behavior to appeal to "a broader and different constituency than the one they contemporaneously represent"); see also CAREY, *supra* note 5, at 171, 175 (suggesting that aspiring representatives with extremist ideologies tend to moderate their positions in their last terms to attract broader constituencies). The former studies may be more persuasive because they utilize more sensitive measures of voting behavior. Compare Lott & Bronars, *supra*, at 128-33 (using five voting indices to measure voting behavior) and vanBeek, *supra*, at 447-49 (four voting indices) with Zupan, *supra*, at 171 (relying on a single voting index—the Americans for Democratic Action index).

Thus, after term limits, prospective candidates will be more willing to embark on serious campaigns against incumbents. At the same time, as incumbents are forced to leave after twelve years, prospective candidates are more likely to find opportunities to run for open seats and thus avoid the more difficult task of challenging an incumbent. Indeed, some commentators believe that politics will begin to resemble a game of musical chairs as prospective candidates postpone running for an office until it becomes open.⁷⁸ Some politicians will not find this "musical chairs" strategy appealing, however, if they lose their current office because of a term limit and find all other desirable positions filled by incumbents. Candidates may not wish to wait for an opening for several reasons. First, an ambitious prospective candidate cannot be certain that her wait for an open seat will last no more than twelve years. After all, incumbents are defeated, and a successful challenge means that the twelve-year clock starts again for the hesitant politician.

In addition, a person interested in a political career can generate a political reputation by running against an incumbent, even without expecting to win in that particular election. This political strategy can be adopted currently by prospective candidates. But now if the challenger miscalculates, her initial challenge may occur well before the incumbent's retirement date, and her investment in political brand name will have depreciated significantly by the time the seat comes open. Term limitations reduce this risk. Thus, challengers are likely to test the political waters in the incumbent's next-to-last term in office.⁷⁹ Such a situation will increase the chance that the incumbent will be defeated in this election, thereby increasing the likelihood that serious challengers will run in the election for the "next-to-the-next-to-last" term to build their brand names, and so on.

The number of open seats will increase as term limits force incumbents out of offices at regular intervals. In addition, in a system where movement among offices is required, an incumbent may leave her current position early if a favorable opportunity to move higher in the structure presents itself, thereby opening the seat before the

⁷⁸ See Hibbing, *supra* note 36, at 69 (noting possibility that term limits will become ceilings on service as well as limitations); Jeffrey J. Mondak, *Elections as Filters: Term Limits and the Composition of the House*, 48 POL. RES. Q. 701, 718 (1995) ("By ensuring that seats become open at fixed intervals, term limits may reduce the incentive for prospective candidates to challenge incumbents . . ."). Professor Brace notes that, although an incumbent senator running for her second term usually faces more challengers than a more senior senator, an incumbent governor seeking her second term is more successful at reducing the threat of a challenge by a member of the House. Brace, *supra* note 54, at 563-64. The willingness of challengers to wait until the governor must leave office because of term limits may explain this difference.

⁷⁹ See Daniel & Lott, *supra* note 62, at 5-6.

twelve years has elapsed.⁸⁰ Thus, compared to the status quo, term limits increase the probability that a prospective candidate can progress higher in the political opportunity structure. Even if such a candidate finds herself with no choice but to challenge an incumbent or to leave politics, the dynamic changes caused by term limits in the nature of incumbency increase the likelihood of a successful challenge.

2. *The Cost of the Decision to Run for a Particular Office (C)*

The cost of running for the federal legislature has two components: one that affects only current officeholders and one that affects all prospective candidates. The first cost is the value of any currently held office that one who aspires to a different office must vacate in order to run.⁸¹ This cost is obviously affected by the imposition of term limits. In many cases, the presence of term limits eliminates the cost; a term-limited politician must leave her office whether or not she plans to run for higher office. In a world without term limits, on the other hand, the opportunity cost to the incumbent of not running for virtually certain reelection can be the most significant factor in a decision not to seek higher office.⁸² Not only does the incumbent know that a bid for higher office will cause her to lose the power and prestige that she wields in her current position, but if the seniority system

⁸⁰ In California, for example, politicians are frequently leaving mid-term to run for other offices or taking non-elected political jobs before state term limits force them out. Between 1992 and 1994, the state held twelve special elections for state assembly seats, at a significant cost to taxpayers. See Peter Schrag, *The Populist Road to Hell: Term Limits in California*, AM. PROSPECT, Winter 1996, at 24-27; see also Kamber, *supra* note 16, at 94-95 (discussing examples of early exits by public officials).

⁸¹ C includes all opportunity costs of the decision to run for a particular office, including opportunities other than running for reelection. However, most opportunities, other than running for reelection, are not entirely lost by the decision to enter the campaign. Although her candidacy may temporarily interrupt her career in the non-political sector, most opportunities typically remain open to the candidate. If she succeeds in her bid for higher office, she can always resign to take advantage of such opportunities if they become sufficiently attractive (for example, if she is offered an appointed political office or an attractive job outside politics, perhaps as a university president). If she is unsuccessful, she can pursue other opportunities because she will need a job. In my equation, $(1-P)(B_L)$ includes the expected value of forced retirement. Thus, the benefits of these opportunities are more appropriately considered as a cost of *winning* the election, not of *entering* it. There are few opportunities available for such a limited time that they can be considered opportunity costs of the decision to run for office. To the extent they exist, term limits will not affect them.

⁸² See JACOBSON & KERNELL, *supra* note 57, at 25. This factor is not determinative, however. For example, Professors Abramson, Aldrich, and Rohde found that some senators were willing to run for the office of president even though they had to give up their seats in the Senate to do so. Abramson et al., *supra* note 42, at 19-20. The cost of waiting for another chance to run for president may have outweighed the importance of reelection status in a year when no incumbent of the same party was running or a divided convention seemed likely. *Id.* at 19.

favors those who display long-term static ambition, she will give up increased power in the future.

Clearly, term limits will profoundly decrease the value of C for a current officeholder who considers running for another office. This change in opportunity costs increases the chance that she will seek higher office. In an analogous context, governors who face restricted terms of office tend to display progressive ambition more often than their counterparts in the House of Representatives.⁸³ Anecdotal evidence from California concerning state legislators facing the bite of term limits suggests that they are more willing to consider bids for federal positions because of the reduced, or nonexistent, cost of giving up their current offices.⁸⁴ Similarly, some research suggests that members of the House who believe that they are vulnerable in a reelection campaign are more willing to seek higher office than incumbents who do not feel threatened.⁸⁵ As a result, it is reasonable to conclude that term limits decrease the cost of this factor in the candidate's decision.

Second, term limits will affect the other major factor in the value of C —the net cost of campaigns. Campaign cost is an important consideration for all candidates, especially those making their initial decision to run for political office. Currently, competitive campaigns, races for open seats, and races in which the incumbent faces a serious challenge are quite expensive.⁸⁶ As the discussion of political brand

⁸³ SCHLESINGER, *supra* note 27, at 18 (noting that governors were candidates "for whom the risks of seeking advancement are either negligible or for whom there are no risks at all").

⁸⁴ A California state senator recently noted: "It would be naive to think that many legislators are not eyeing new congressional seats to be established and perhaps hoping for a restructuring of districts which may well serve their best interests where there is no term limitation." Charles M. Price, *The Guillotine Comes to California: Term-Limit Politics in the Golden State*, in *LIMITING LEGISLATIVE TERMS*, *supra* note 5, at 128.

⁸⁵ Brace, *supra* note 54, at 565. Professor Brace bases his conclusion on evidence that a member of Congress who faces reelection after a harmful redistricting is more likely to run for higher office. *Id.* at 559. An alternate explanation for this finding is that such redistricting occurs after the incumbent indicates to party officials that she plans to run for higher office or that the lawmaker's acquiescence in redistricting is purchased at the price of the party supporting her in the next campaign.

⁸⁶ A serious challenge is one where the incumbent either loses or receives less than 60% of the vote. In 1992, a challenger in a close Senate race spent, on average, \$2,518,456, while the average expenditure for a candidate in a race for an open seat was \$2,827,209. DWIGHT MORRIS & MURIELLE E. GAMACHE, *HANDBOOK OF CAMPAIGN SPENDING: MONEY IN THE 1992 CONGRESSIONAL RACES 7* (1994). In 1994, the average expenditure in an open race was \$2,998,615.80; a challenger in a close race spent \$3,100,201 (if one excludes the atypically expensive Huffington-Feinstein and North-Robb races). See PHILIP D. DUNCAN & CHRISTINE C. LAWRENCE, *POLITICS IN AMERICA 1996: THE 104TH CONGRESS 1508-31* (Cong. Q. Inc. ed., 1995) (providing campaign finance data for House members and their general-election opponents in the 1992 and 1994 elections; providing same data for senators). The House figures are also illuminating. In 1994, an average challenger in a close House race spent \$411,132.54, and a candidate for an open seat spent \$577,107.51. See *id.*

names indicated, however, term limits may reduce the costs of campaigns, especially those against incumbents. If incumbents have smaller investments in their political brand names, serious challengers will not need to spend as much to compete. Preliminary evidence from races in states with term limits indicates that campaign expenditures have declined.⁸⁷ The precise cause of such declines is unclear, but the reduction in the value of political brand names and changes in interest group activity are probably contributing factors. If interest groups, for example, believe that the legislative output they desire is worth less after the adoption of term limits, candidates will find it more difficult to raise money from these groups and will be unable to maintain the high-cost campaigns that we observe now.⁸⁸

The combined effect of eliminating the opportunity costs of a politician's leaving her current position and decreasing net campaign costs means that C is likely to decline. Considering this change together with the increase in the probability of success (P) caused both by the increase in the number of open seats and the weakening of incumbent invulnerability, progressively-ambitious candidates may be convinced that political careers remain possible under term limits. After all, they will have little to lose by running and much to gain. Thus, professional politicians will have incentives to enter and remain in politics.

3. *The Remaining Terms in the Calculation*

The benefit that the aspirant associates with higher office (B_w) is crucial to her decision to seek that office. Perhaps the most significant benefit of the office is the degree to which it allows a politician to achieve her goals and objectives, whatever those might be.⁸⁹ Again, I am assuming that federal elective offices will continue to allow legislators to satisfy the same objectives in the same way that they do now; later, I discuss whether that assumption is valid. Under such an assumption, term limits appear to decrease the benefits of office-holding because politicians retain those benefits for a shorter time. With term limits, a politician will have just twelve years to enjoy the power

(figures calculated from data provided in the book). Races between two incumbents, more frequent after the adoption of term limits, can be staggeringly expensive for all the candidates involved. For example, Senator Alphonse D'Amato spent nearly \$12 million in his 1992 reelection race; his opponent, the state Attorney General, spent \$6.4 million. *Id.* at 127.

⁸⁷ See Daniel & Lott, *supra* note 62, at 10-13 (finding that campaign expenditures in California declined as a result of term limits, and isolating this effect from the effect of changes in state campaign finance laws); Lott, Simple Explanation, *supra* note 62, at 23 (suggesting that campaign expenditures decrease after the adoption of state term limits).

⁸⁸ See *infra* note 200 and accompanying text.

⁸⁹ See *infra* text at note 114 (discussing objectives of legislators).

and influence of her office. Under the current system, it is probable that she will remain in office for much longer.⁹⁰

On the other hand, the reduction of legislative tenures may actually increase the perceived value of an elected office by shortening the time required for a legislator to reach a leadership position. Assuming that the seniority system remains intact after the ratification of a term limits amendment,⁹¹ members of Congress will be eligible to serve in leadership roles or on powerful and prestigious committees in about half the time that it currently takes. Applying their continuation rate methodology to a term-limited House of Representatives, Professors Reed and Schansberg estimate the time it will take members to reach a rank in the 80th percentile, the seniority rank usually required to serve as a chairman or ranking member of a committee, a party leader, or a chairman of a significant subcommittee. In the 102nd Congress, a member reached this seniority ranking after sixteen years of service.⁹² After the adoption of a six-term limit, however, a House member will reach the 80th percentile after only six, and eventually eight, years.⁹³ Thus, although members will wield power for a shorter period of time under term limits, they will assume powerful positions much earlier. This more concentrated value of the office may offset the reduction in value caused by shorter tenure.

Of course, the benefits of a political office are not limited to those the lawmaker enjoys while in office. Many political offices are springboards to other more prestigious political offices, some of which are filled by appointment. Elected office also provides experience that can lead to lucrative private employment. A person contemplating a run for a particular office will consider this "springboard value" which depends on a variety of factors, including the overlap of constituencies and the similarity of job functions.⁹⁴ For example, experience in a state or local deliberative body equips a politician with

⁹⁰ The dynamic changes that are likely to result from an imposition of term limits may well reduce the expected tenure in either the House or the Senate to a level below the upper limit allowed by the constitutional amendment. A shortening of the period during which a prospective candidate expects to reap the benefits of a particular office will reduce its value accordingly.

⁹¹ Of course, it is likely that the seniority system in its current form will not survive the adoption of term limitations. See discussion *infra* part IV.A. If the seniority system is replaced by a system with less certain rules of advancement, legislators will have the opportunity to assume influential posts even earlier in their careers, but retaining power will be more susceptible to political vagaries.

⁹² Reed & Schansberg, *Impact of Congressional Term Limits*, *supra* note 5, at 84. This figure may increase. Using the continuation rate for 1985-1991, by the turn of the century, it will take twenty-two years to reach this rank. *Id.* The sixteen year figure remains virtually unchanged if the 1977-1991 continuation rate is used. *Id.*

⁹³ *Id.*

⁹⁴ See discussion of manifest ties between state and federal legislative offices *supra* note 53.

skills that she will use in the federal legislature; similarly, experience on congressional committees gives the politician substantive expertise to use in a particular private sector job or in an appointed position.

Term limits will cause little change in the suitability of an office for use as a political springboard, except that the other offices may also be subject to term limits and thus offer benefits for less time than they do now. In addition, term limits may reduce the benefits offered by political jobs in the private sector. One effect of term limits is to increase the supply of people looking for such jobs. More people will have held legislative offices, and many of those who are defeated when they seek to move along the political opportunity structure will remain in politics as lobbyists or the like. Studies of the post-congressional careers of members of the House of Representatives indicate that a substantial number of former representatives continue to be involved in politics. A survey of representatives who retired between 1971 and 1992 reveals that twenty-one percent worked as lawyers, lobbyists, or representatives of interest groups; twenty percent left Congress for other government positions; and forty-eight percent worked as volunteers for political causes and candidates.⁹⁵ Former representatives were more likely to decide to remain employed in politics if they had been forced out of elected office,⁹⁶ a situation that will occur with increasing frequency under term limits.

Perhaps the supply of politically-related private sector and appointed jobs will increase and absorb the additional supply of qualified politicians.⁹⁷ But, the greater quantity of jobs reduces their desirability. Scarcity creates part of the mystique and influence that surrounds these jobs—the more former senators traipsing around Capitol Hill and the more appointed political positions created for defeated politicians, the less the prestige and power associated with each one. Certainly, broader dissemination of power may not completely eliminate the desirability of such employment. After all, plenty of people still sought seats in the House after reforms strengthened the committee system in the 1970s and 1980s by decentralizing power and reducing the prestige associated with individual offices and com-

⁹⁵ Rebekah Herrick & David L. Nixon, *Is There Life After Congress?: Patterns and Determinants of Post-Congressional Careers*, J. LEGIS. STUD. (forthcoming) (manuscript at 18 tbl. 2, on file with the *Cornell Law Review*).

⁹⁶ *Id.* at 10-11.

⁹⁷ See Cohen & Spitzer, *supra* note 4, at 514-17 (discussing various ways that the post-legislative career option set may expand to meet increased demand and to allow special interests to continue to exercise control over lawmakers); see also *infra* text accompanying notes 211-12 (discussing the likelihood that such jobs would develop after the imposition of term limits). But see Herrick & Nixon, *supra* note 95, at 12 (providing survey results indicating that the retirement surge of the 1970s increased the supply of former politicians seeking employment in lobbying jobs and finding that the rate of interest group employment was depressed relative to other periods).

mittee positions.⁹⁸ But the greater number of such politically-related jobs will certainly decrease their prestige and the compensation they offer.

Thus, assuming that there are no dynamic changes in the nature of political offices, the effect of term limits on B_w is most likely insubstantial. Certainly, the term of office will be shortened and therefore the holder can enjoy benefits for less time. But term limits will also shorten the wait for a leadership position, perhaps compensating for the downward pressure on the value of B_w . Term limits will not affect the ability to use an office as a springboard, but future options may be somewhat less attractive than similar jobs are now. On the other hand, offices that act as springboards to a variety of jobs or to the most desirable jobs may be more valuable after term limits as politicians are forced to move more frequently among elected and nonelected or public and private political jobs.

Term limits will not change the final factor in the calculation—the benefits of the employment available to the unsuccessful aspirant (B_L). Without term limits, a politician weighing the decision whether to run for reelection or to seek a higher office must consider the options available to her if she chooses to run but loses. She will also consider the benefit of these activities when she decides whether to retire from politics entirely rather than run for any office at all.⁹⁹ The benefit of alternative employment remains the same under term limits. First, if the alternative occupation is more attractive to the politician than running for office, that is, if $U < B_L$, then presumably she will choose not to run. Second, she may believe that running for higher office will provide her contacts and experience that will increase or improve her opportunities outside elected office, regardless of whether or not she wins.

In sum, the effects of term limits on the ambitious politician who is planning a strategy for her career are complex, and perhaps not as significant as one might first presume. In the next section, I broaden the perspective and discuss the ramifications for the overall composition of Congress.

⁹⁸ Lawrence C. Dodd, *Congress and the Quest for Power*, in CONGRESS RECONSIDERED 272 (1st ed. 1977) (noting that the committee system “denies every member the opportunity to control all policy decisions, [but] it ensures that most members . . . can satisfy a portion of their power drive”); ARTHUR MAASS, CONGRESS AND THE COMMON GOOD 58 (1983) (explaining that reforms to strengthen committees were designed to ensure that all individual members, especially junior ones, had some power, but the aggregate effect was to disperse power generally throughout the body).

⁹⁹ See Kiewiet & Zeng, *supra* note 43, at 928 (estimating the effects of relevant variables on the decision whether to retire, run for reelection, or seek higher office). Included in this calculus is the decision to forego greater pension benefits in some cases and a consideration of the pleasures of leisure that can be enjoyed in retirement. See Schansberg, *supra* note 53, at 449.

D. Progressive Ambition as the Dominant, but Not Universal, Characteristic of Politicians After the Adoption of Term Limits

In the end, the fact that term limits eliminate the possibility of remaining in one job indefinitely, coupled with the pyramidal structure of political opportunities, no doubt reduces the probability of a long career in elected office. Nevertheless, even with term limitations, the House and Senate will still consist primarily of the professional politicians so denigrated by activists.¹⁰⁰ First, the previous analysis has undermined supporters' argument that ambitious people will no longer consider a career in politics and will instead pursue other careers. Term limits will increase the probability of winning an elected office, providing many candidates with an incentive to embark on political careers, even though such careers can no longer be sustained by static ambition. Even if a candidate loses, she may not be forced out of politics entirely. For example, in a state without term limits for state officials, a candidate can wait in the state legislature until a run for higher office appears to be a good bet. A politician can spend part of her career in an appointed position or a private-sector political job. In all of these circumstances, an individual pursuing this strategy is most accurately characterized as a career politician—not a citizen-legislator.

Certainly, politicians with discrete ambition may be more numerous after the adoption of term limits. But the number of these legislators will be small compared to the number of professionals, and certainly not significant enough to transform Congress into the domain of ordinary citizens. The number of discretely-ambitious persons will increase primarily because the dynamic changes caused by term limits will make the offices more attractive to them. For example, if the adoption of term limits weakens the seniority system,¹⁰¹ persons who want to serve for a very limited time period can realistically aspire to positions of power and influence during their few years of public service. The rhetoric lauding the "citizen-legislator" may encourage them to believe that their constituents will hold them in high

¹⁰⁰ John M. Carey studied the effect of term limitations on careerism in the Costa Rican Assembly and found that although they eliminated the prospect of careers in the national assembly, they did not operate to eliminate the professional politician from the legislature. Instead, most legislators had served in political posts prior to being elected to the Assembly, and a significant majority served in appointed political jobs after their legislative terms. See CAREY, *supra* note 5, at 71-72, 80-85, 256-57. Whether the Costa Rican experience can be generalized to this country is questionable; the party structure in the two countries is vastly different, as is the relationship between the legislative and executive branches. Nonetheless, the findings suggest that term limitations do not automatically deter professional politicians from seeking office.

¹⁰¹ See *infra* part IV.A.

esteem, allowing them more influence in shaping national priorities. Nonetheless, citizen-legislators will remain a minority in Congress because it is unlikely that amateurs will often succeed in campaigns against professionals whose brand names, though diminished, will still give them an advantage. Moreover, compared to citizen-legislators, careerists have greater incentives to invest in fund-raising, and special interest groups have greater incentives to invest in careerists, because the return on such investments will be greater.

Although they will not predominate after term limits, it is true that more discretely-ambitious politicians will serve in the legislature because more will be attracted to running. But discrete ambition will, in many cases, develop into progressive ambition, and as a result, many amateur politicians will become careerists. For a political novice, the investment required to attain and hold political office will make a political career more enticing when she reaches the point at which she had planned to retire. That is, once a politician has invested in the human capital required to perform political functions, she will find that the benefits of holding similar offices are greater than the benefits of pursuing an unrelated career. Because of the nature of the political market, politicians who have invested in developing political skills and political brand names cannot receive a full return on their investments unless they remain in political office.¹⁰² A politician may enter politics for one set of reasons, but she will decide to remain in politics for entirely different reasons.

Professor Black makes this point in a different way. He notes that "each investment that the individual makes in the political process in his political unit is an investment not only in the office he seeks or holds *but also potentially in the other offices or positions eventually open to the individual.*"¹⁰³ Black sees the ability to transfer political investment from one office to another as one factor that decreases the costs of seeking election, and he notes that the greater the individual's investment, the higher the value she places on political offices to which she may aspire.¹⁰⁴ If political ambition adapts to fit changing expectations, many who begin public service as citizen-legislators will end as careerists. The adoption of term limits will not, therefore, mark the renaissance of the citizen-legislator.

¹⁰² See Lott, *Brand Names*, *supra* note 66, at 87; Lott, *Nontransferable Property*, *supra* note 66, at 231; see also *supra* text accompanying note 66 (discussing political brand names in the context of increased challenges to incumbents).

¹⁰³ Black, *supra* note 40, at 155.

¹⁰⁴ *Id.* at 156. Once a politician begins to make political investments, she is more likely to run for office in the future, even if she entered public life with no intention of seeking higher office. The transferability of her investment in politics increases the return received from a political job, particularly when compared to the expected return from nonpolitical occupations, which remains constant. *Id.* at 158-59.

IV

THE DYNAMIC EFFECTS OF TERM LIMITATIONS ON THE
LEGISLATIVE PROCESS

The crucial question that remains for term limits supporters is whether term limits will work significant changes in the nature of legislative offices themselves. If they will, either the type of person who contemplates a career in politics will be very different or a person will behave differently once in office.¹⁰⁵ Such changes may provide a justification for term limits that does not rest on the conclusion that they produce a citizen-legislature; rather, the argument is that term limits are warranted because they encourage those holding public office to act in ways more consistent with the public's notion of a dedicated public servant.

My assumption in the previous discussion—that the nature of elected office will not fundamentally change after passage of a term limits amendment—is clearly unrealistic. Notwithstanding the crucial role of a dynamic analysis in an accurate assessment of term limitations, few discussions of such complex changes appear in the term limits literature.¹⁰⁶ These changes are important to anticipate for at least two reasons. First, a profound change in the nature of the office will affect the value of the benefits it offers, which is one of the principal terms in the calculation used by prospective candidates in determining whether to run for office and whether politics will be a viable,

¹⁰⁵ I do not address in this article whether changes in the nature of the legislative job will result in a different sort of person pursuing elected office on the federal level, or whether the changes will transform the preferences of those already in politics so that they will be content receiving different benefits from elected office. These effects are not mutually exclusive; both may result from a change in the nature of the legislative office. The analysis in this article is not affected, however, by which one occurs or dominates. In either case, the legislator will behave differently than she does now and thus may begin to pursue public interest, as term limits supporters define it.

¹⁰⁶ Indeed, one limitation in the recent term limits literature is that many studies assume that endogenous characteristics of the political process will survive unchanged. For example, Professors Reed and Schansberg assume that after term limits the seniority system will remain intact and that the continuation rates for members will not change. Reed & Schansberg, *The House*, *supra* note 5, at 735-36 (defending the use of historical continuation rates in their study); *id.* at 702-03, 708 (noting effect on conclusions if leadership positions were filled using criteria other than seniority). However, Reed and Schansberg recognize the problem:

By this assumption [of unchanged continuation rates under term limits] we do not mean to imply that the behavior of politicians and voters will be unaffected by term limits. The problem is, we don't know *how* term limits would affect continuation rates. . . . Given this ambivalence, our assumption that continuation rates will remain the same once term limits become binding may be thought of as representing a *first approximation*.

Id. at 705. Until we have sufficient experience with term limits in state legislatures, empirical studies will continue to rely on measures of congressional behavior that term limitations will undoubtedly affect.

long-term career.¹⁰⁷ But whether term limits will actually bring about such a profound change is unclear. As long as the relevant parties in the legislative process—representatives, senators, and interest groups—wish to preserve the benefits of the status quo, they will adopt rules and reshape political institutions to serve their purposes. As Professor Katz and Sala have found, “Congressional organizations are a matter of choice for incumbent members of Congress; they tend to reflect the forces that drive members’ interests and incentives.”¹⁰⁸ If the political scene can be reconfigured to offset the changes in the nature of legislative office caused by shorter tenure, then the adoption of term limits may have very little effect on Congress.

Second, if term limits do not change the ratio of amateurs to careerists in Congress, then Americans who support the reform are likely to be disappointed unless they are convinced that term limits will alter the way professional politicians act. As I have noted, it is difficult to discern exactly what change in legislative behavior will satisfy the concerns of most term limits activists.¹⁰⁹ Certainly, business as usual is not acceptable. If supporters can be persuaded that, although the elimination of careerists from politics is unlikely, term limits will almost certainly change legislative behavior, they can then determine whether those changes justify embarking on the arduous task of amending the Constitution. Alternatively, supporters can assess whether a system comprised of careerists who have held a variety of political jobs—at different levels of government, in different branches, and in the private sphere—is preferable to one that is dominated by careerists who remain in the legislature for years and even decades. Finally, if future analysis of the effects of term limits suggests that no change in legislative behavior will necessarily result, term limits supporters can work to find and implement other solutions to the problems they perceive in the political process.

In the remainder of this Article, I offer some thoughts about a few of the dynamic changes that will accompany the adoption of term limits, and I assess how those changes may alter the nature of the congressional office. My objective in this article is only to identify the kind of politician one would expect to find in Congress after the ratifi-

¹⁰⁷ See *supra* text accompanying note 58.

¹⁰⁸ Jonathan N. Katz & Brian R. Sala, *Careerism, Committee Assignments, and the Electoral Connection*, 90 AM. POL. SCI. REV. 21, 30 (1996) (studying the committee system following changes in state ballot access laws). On the state level, some observers of term limits in California believe that the influx of freshman has not meaningfully changed legislative behavior. See Elaine Korry, *History of Legislative Reform in California, Part 2* (National Public Radio, Morning Edition, Dec. 8, 1995) (transcript on file with the *Cornell Law Review*) (Interview with Bruce Cain, Institute for Governmental Studies: “[Term limits have] brought in new faces. The problem is that if you had hoped that new faces meant necessarily new practices, then you’re going to be disappointed.”).

¹⁰⁹ See *supra* text accompanying notes 19-24.

cation of a term limits amendment. I do not argue that term limits are or are not justified because of their effects on the quality of deliberation, legislative output, or the political process generally. With a greater understanding of these dynamic changes, however, people may choose to support or oppose term limitations solely because of changes in these areas and no longer engage in the traditional citizen-legislators-versus-professionals debate.

At the outset, we need to identify the benefits currently offered by federal legislative offices; these provide the incentive to seek political office and retain it for decades. Surprisingly, most studies of congressional behavior do not analyze the specific objectives that motivate lawmakers. Instead, much of the literature analyzing congressional behavior assumes that legislators are single-minded pursuers of reelection.¹¹⁰ As long as politicians can be reelected indefinitely, congressional behavior can be adequately explained by the desire to remain in office because a politician must be reelected before she can achieve her other goals, whatever they may be.¹¹¹ As David Mayhew explained, "[T]he electoral goal has an attractive universality to it. It has to be the *proximate* goal of everyone, the goal that must be achieved over and over if other ends are to be entertained."¹¹² Thus, the "preference for reelection" is a useful shorthand term because, in the current political system, no goal can be achieved unless the reelection preference is satisfied.¹¹³

Term limitations significantly diminish the explanatory power of the reelection preference. Term limits eliminate the possibility of an

¹¹⁰ See, e.g., BRUCE CAIN ET AL., *THE PERSONAL VOTE: CONSTITUENCY SERVICE AND ELECTORAL INDEPENDENCE* 77 (1987) (asserting that members hope to profit electorally from their activities); FIORINA, *supra* note 66, at 37 ("I assume that the primary goal of the typical congressman is reelection."); MAYHEW, *supra* note 69, at 13 ("The discussion will come to hinge on the assumption that United States congressmen are interested in getting reelected—indeed, in their role here as abstractions, interested in nothing else."). Other studies include reelection as one of several motivations. See, e.g., RICHARD F. FENNO, JR., *CONGRESSMEN IN COMMITTEES* 1 (1973) (stating that the goals espoused by representatives are "re-election, influence within the House, and good public policy," as well as a career beyond the House and perhaps private gain); DAVID W. ROHDE, *PARTIES AND LEADERS IN THE POSTREFORM HOUSE* 40 (1991) (same); cf. Steven S. Smith & Christopher J. Deering, *Changing Motives for Committee Preferences of New Members of the U.S. House*, 8 *LEGIS. STUD. Q.* 271 (1983) (noting that most legislators have mixed motives).

¹¹¹ See DOWNS, *supra* note 14, at 30.

¹¹² MAYHEW, *supra* note 69, at 16; see also MAASS, *supra* note 98, at 71 ("[Reelection] is a goal to be achieved, or 'satisfied'—a constraint that must be met if the member's career is to continue. Once it is achieved, however, the member can and does pursue other goals.").

¹¹³ *But cf.* CASS R. SUNSTEIN, *SOCIAL NORMS AND SOCIAL ROLES* (Chicago Law & Economics Working Paper No. 36, 1995) (noting that "for many purposes, the whole idea of 'a preference' is confused and misleading, because it is ambiguous between choices and underlying psychological forces, and because the mental operations that produce choices are a function of a great many factors").

indefinite number of chances for reelection; thus, an analysis of their effects must take account of the variety of motivations that explain the behavior of politicians. Although this list is not exhaustive, I contend that lawmakers are motivated by three main goals: wielding power and exercising influence because of the status associated with being a powerful person; achieving certain policy objectives that the lawmaker values; and enjoying monetary and in-kind benefits offered by special interests.¹¹⁴ These goals are not entirely distinct in all cases. For example, a legislator may value power and influence only as tools to help her implement policy objectives. But she may be powerful and still choose not to institute new policies. Instead, the lawmaker may try to influence the results of decisions within existing policy structures, or she may be relatively indifferent to the content of the enacted policy, caring only that she be portrayed as the force behind the change. Similarly, special interests tend to target lawmakers with substantial power and prestige. However, a lawmaker may seek only narrow influence over one aspect of government policy to attract “rents” from interest groups in that sector¹¹⁵ without seeking influence and national attention more generally. Or a politician may be interested in the

¹¹⁴ Compensation may also be a factor motivating people to consider running for Congress, and its absence from the list does not suggest that changes in congressional pay play no role in the decision. For example, almost one-third of the members who retired from the 102nd Congress did so because 1992 was the last time retiring House members could convert unspent campaign funds to personal use. Groseclose & Krehbiel, *supra* note 58, at 89, 91 tbl. 2 (suggesting that change in real wage is a statistically significant factor in the decision by representatives to retire); JOHN R. HIBBING, CHOOSING TO LEAVE: VOLUNTARY RETIREMENT FROM THE U.S. HOUSE OF REPRESENTATIVES 39-42 (1982) (finding that a salary increase lowers the number of retirements). Some researchers, however, doubt whether one can meaningfully study the effect of pay because of the wide differences in legislators' opportunity costs. See Kiewiet & Zeng, *supra* note 43, at 931. Nevertheless, although congressional pay is certainly a factor in the prospective candidate's decision, term limits will not affect the level of pay; rather, they will only shorten the period during which politicians receive compensation. When out of office, a politician will receive a salary, health insurance, and retirement benefits from private employment, and these may be greater than similar congressional benefits. Many of the perquisites associated with legislative service—access to a health club, subsidized haircuts, and free parking at National Airport—have recently been eliminated or pared back. And one of the frequent targets for criticism during this period of budget cutbacks is the congressional pension system, so this form of compensation may decline whether or not term limits pass. See Richard E. Cohen, *Putting a Lid on Members' Pensions*, NAT'L J., Feb. 10, 1996, at 320; Jeff Shear, *The Other Entitlement*, NAT'L J., Oct. 14, 1995, at 2532; see also Hall & van Houweling, *supra* note 44, at 128-29 (finding that changes in present value of pensions affect members' decisions to stay in office or to retire). The unique aspects of congressional remuneration—benefits from interest groups, free use of a television recording studio to court national fame, and the possibility of lucrative post-term employment in lobbying—are closely tied to the goals of achieving power and prestige and attracting attention from interest groups. A discussion of their relationship to term limits is most relevant in that context. See *infra* part IV. C.

¹¹⁵ “Rent seeking refers to the attempt to obtain economic rents (i.e., payments for the use of an economic asset in excess of market price) through government intervention in the market.” Jonathan R. Macey, *Promoting Public-Regarding Legislation Through Statutory Interpretation: An Interest Group Model*, 86 COLUM. L. REV. 223, 224 n.6 (1986).

status of being a powerful and important person without particularly caring whether she also receives lavish perquisites from lobbyists. In the remainder of this Article, I will explore the ways in which term limits affect the ability of lawmakers to satisfy these objectives.

A. Attaining Power and Influence in a Legislature Without a Strong Seniority System

As Congress became the domain of professional politicians, members attempted to imbue the institution with "structural" certainty as they planned careers in an arena with an inherent element of uncertainty—the threat of defeat. One such structure is the seniority system, which serves as the primary method used to fill congressional positions. Use of the seniority system became common in the House as early as 1910, and it was entrenched by the middle of this century.¹¹⁶ No longer were members at the mercy of congressional leaders for the allocation of positions on prestigious committees or the appointment of party positions; instead, the seniority system regularized advancement in the body, removing most of the leaders' discretion. In addition, seniority allowed party leaders to reduce the possibility of disruptive intraparty conflicts over appointments. Not surprisingly, the seniority system reinforced the tendency toward long-term careers by tying power to tenure.¹¹⁷

Although weakened over the course of the last twenty years, seniority remains the over-riding consideration in the appointment of committees and congressional leaders. Sweeping institutional reforms in the House in the 1970s allowed the Democratic caucus to reject by secret-ballot vote the most senior member of a committee for the position of chairman and provided that the demand of only ten members of the caucus could trigger such a vote.¹¹⁸ Taking advantage of the new rules, the Democratic freshmen in 1974 interviewed likely committee chairmen about their planned legislative agendas and, after a caucus vote, removed three incumbents.¹¹⁹ Although this revolt of the freshmen is significant, it did not mark the death of the senior-

¹¹⁶ See Polsby, *Institutionalization*, *supra* note 56, at 161 fig. 5 (tracing the relative strength of the seniority system over time by measuring deviations from seniority in the appointment of committee chairmen).

¹¹⁷ See Price, *supra* note 16, at 17-20; Polsby, *Institutionalization*, *supra* note 56.

¹¹⁸ ROHDE, *supra* note 110, at 11, 23. Prior to this change, committee chairmen were selected largely on the basis of seniority. Lawrence C. Dodd & Bruce I. Oppenheimer, *The House in Transition*, in CONGRESS RECONSIDERED, *supra* note 98, at 21, 27-28.

¹¹⁹ W.R. Poage of the Agriculture Committee, F. Edward Hebert of the Armed Services Committee, and Wright Patman of the Banking Committee were denied reelection. In addition, Wilbur Mills of the Ways and Means Committee resigned before the caucus could vote to remove him. ROHDE, *supra* note 110, at 22-23; Kenneth A. Shepsle, *The Changing Textbook Congress*, in CAN THE GOVERNMENT GOVERN? 254-55 (John E. Chubb & Paul E. Peterson eds., 1989).

ity system. In the next Congress, the Democrats in the House faithfully followed seniority.¹²⁰ Recent experience in the House demonstrates that seniority remains the norm, although the system shows signs of strain. In 1990, two incumbent chairmen were ousted, but they were replaced by very senior members of the committees.¹²¹ The situation in 1992 was more typical; only Jamie Whitten was removed from his chairmanship and only because of his failing health.¹²² Speaker Gingrich did not follow seniority in three appointments of committee chairmen in 1994, and, in one case, he bypassed four senior members and appointed Robert Livingston to head the Appropriations Committee.¹²³

The Senate follows the seniority norm rigorously, allowing more senior senators to bump incumbent chairmen from their positions when such posts become more attractive because of changes in the legislative agenda or for other reasons.¹²⁴ In 1986, Jesse Helms, who had chaired the Agriculture Committee, decided to serve as the ranking member on the Foreign Relations committee, a post that would otherwise have gone to the former Chairman Richard Lugar.¹²⁵ In the ensuing contest for the position, even moderate and liberal Republicans who preferred Lugar's ideological positions bowed to the seniority principle and supported Senator Helms.¹²⁶ Senate Democrats are slightly more flexible regarding the seniority norm in selecting members for committees; they will consider other criteria such as geography.¹²⁷ Nevertheless, seniority remains the primary factor. In part because of the increasing importance of health care issues, Senator Edward Kennedy stepped down from the chairmanship of the Judiciary Committee and chose to lead the Labor and Human

¹²⁰ HIBBING, *supra* note 114, at tbl. 1-3.

¹²¹ CONG. Q., INC., 1991 CONG. Q. ALMANAC 5 (1991). Glenn Anderson, the chairman of the House Committee on Public Works, was replaced by the next most senior member of the committee, Robert Roe; Frank Annunzio, Chairman of the House Administration Committee, was ousted by Charlie Rose, who ranked third in seniority. More ominously for chairmen, eleven received more than 20 votes opposing their reelection. Two years before, no opposing votes had been cast. *Id.*

¹²² CONG. Q., INC., 1993 CONG. Q. ALMANAC 4 (1993).

¹²³ David L. Haase, *Indiana Clout Up and Out*, INDIANAPOLIS NEWS, Feb. 25, 1995, at E1; Helen Dewar, *Senate GOP Leaders Block Vote on Ousting Chairman Hatfield*, WASH. POST, Mar. 9, 1995, at A7; see also Jackie Koszczuk, *Freshmen: New, Powerful Voice*, 53 CONG. Q. 3251, 3251 (Oct. 28, 1995). Gingrich's other assignments that were inconsistent with seniority were the appointment of Thomas Bliley as chairman of the Commerce Committee and the appointment of Henry Hyde to lead the Judiciary Committee.

¹²⁴ STEVEN S. SMITH & CHRISTOPHER J. DEERING, COMMITTEES IN CONGRESS 71 (2d ed. 1990); CONG. Q., INC., GUIDE TO CONGRESS 461, 469 (4th ed. 1991) [hereinafter GUIDE TO CONGRESS]; Craig D. Margolis, *House Out of Order*, 11 J.L. & POL. 273, 334-35 (1995).

¹²⁵ Norman J. Ornstein et al., *The U.S. Senate in an Era of Change*, in CONGRESS RECONSIDERED, *supra* note 36, at 32.

¹²⁶ *Id.*

¹²⁷ SMITH & DEERING, *supra* note 124 at 71.

Resources Committee, depriving Howard Metzenbaum of the latter role.¹²⁸ The continuing vitality of the seniority system has been recently demonstrated during negotiations between Republican leaders and Democratic legislators who were considering switching parties. One of the most important issues for the wavering Democrats was whether they could maintain their seniority ranking and assume or retain positions on prestigious committees whose membership is usually reserved for more senior members.¹²⁹

In general, the presence of a large group of freshmen legislators tends to loosen the seniority norm because the freshman have sufficient votes in the caucuses to shift power from senior members to themselves. The election of a substantial number of new members was a catalyst for the structural reforms of the 1970s, which were designed to decentralize power and, more specifically, to increase the power of junior representatives.¹³⁰ The recent turnover in Congress, and the resulting entry in 1992 and 1994 of large freshman classes, has challenged the seniority system.¹³¹ Senior members of the Senate Republican caucus narrowly defeated a proposal, offered by a special task force studying rules changes, that would have allowed the major-

¹²⁸ See Ornstein et al., *supra* note 125 at 32.

¹²⁹ See, e.g., Richard E. Cohen, *Payoff for Party Switchers*, NAT'L J., Mar. 23, 1996, at 660 (noting that ex-Democrats have been given prestigious committee assignments by House Republican leadership); *Campbell, Citing BBA Defeat, Switches to Republicans*, CONG. DAILY, Mar. 3, 1995 (reporting that Republicans agreed to preserve Senator Campbell's seniority after his switch to their party); Helen Dewar, *Republicans Prepare for Their Turn on the Hill; Shelby Defects, Boosting GOP's Senate Strength*, WASH. POST, Nov. 10, 1994, at A27 (Sen. Shelby retained his seniority, even though other Republicans were demoted a rank in seniority.). See also Michael deCourcy Hinds, *Senator Who Wouldn't Run Has Won*, N.Y. TIMES, Dec. 6, 1992, at A9 (Sen. Conrad, who did not run for reelection but ran for a seat vacated by Quentin Burdick's death, was allowed to retain his seniority rank.). House members who have switched parties also negotiate to preserve their seniority. See, e.g., Juliana Gruenwald, *Tauzin Makes It Official: He's Now A Republican*, 53 CONG. Q. 2458 (Aug. 12, 1995) (Rep. Tauzin negotiated to retain his seniority rank and his seat on the House Commerce Committee.). Majority Leader Robert Dole relied on the strong seniority norm in ensuring that one of his opponents for the Republican presidential nomination was denied a position on the Finance Committee at the beginning of the 104th Congress. Although Phil Gramm coveted a seat on the powerful Senate committee, Dole was able to persuade other more senior senators to request the open seats. The resignation of Bob Packwood finally allowed Gramm to move to the tax-writing committee because Dole could not find a senator more senior willing to move to the Finance Committee. Jackie Koszczuk & David S. Cloud, *Dole Search Fails: Gramm Going to Finance Panel*, 53 CONG. Q. 2967 (Sept. 30, 1995).

¹³⁰ Dodd & Oppenheimer, *supra* note 118, at 23; MAASS, *supra* note 98, at 56. See also Norman J. Ornstein, *Causes and Consequences of Congressional Change: Subcommittee Reforms in the House of Representatives, 1970-73*, in CONGRESS IN CHANGE, *supra* note 16, at 88, 89 ("Thus structural reform in Congress is generally a product of those who feel shortchanged of power.").

¹³¹ See Koszczuk, *supra* note 123, at 3251 (discussing the influence of the House freshman class on policy); Jason DeParle, *Rant/Listen, Exploit/Learn, Scare/Help, Manipulate/Lead*, N.Y. TIMES MAG., Jan. 28, 1996, at 34 (detailing difficulties Gingrich has had with the large and aggressive freshman class).

ity leader, rather than the members of each committee, to select committee chairmen.¹³² Although the leader's selection of a chairman was to be based largely on seniority, the task force envisioned a leader responsive to other concerns as well.¹³³ The caucus did change the method of selecting chairmen: committee members now vote by secret ballot,¹³⁴ presumably allowing for less politically costly, and therefore more frequent, deviations from the norm of seniority. The House Republicans limited the speaker to four consecutive two-year terms¹³⁵ and committee chairmen to three consecutive two-year terms, ended proxy voting and rolling quorums (practices that increase the power of chairmen to control outcomes in committee), and made several appointments that were inconsistent with seniority.¹³⁶

The ratification of a term limits amendment will place even greater pressure on the seniority system. Term limits necessarily eliminate the possibility of long tenure in one house. It would be astonishing if the seniority system can survive such a change without substantial revision, perhaps so substantial as to destroy its status as a norm. The extent of the turnover that term limitations will cause in the House of Representatives has been estimated by Professors Reed and Schansberg.¹³⁷ They predict that a twelve-year term limit will increase the average turnover rate from seventeen percent to twenty-three percent. This change is not as dramatic as the increase in the turnover rate if representatives were limited to six years (resulting in a thirty-seven percent turnover rate), but it is at the high end of the range for turnover rates since the 1950s. It is also slightly higher than the significant shift in 1994 when twenty-one percent of the House members were freshmen.

More importantly, turnover caused by term limits will be different from even the relatively high turnover of the last few elections. First, turnover under term limits will not be a smooth process; instead, the House will experience periodic spikes in membership turnover as one class of representatives reaches the term limit and leaves office. (Interestingly, had the Court in *U.S. Term Limits* upheld state-imposed term limits, such spikes would have been avoided as the state provisions took effect in different years.) Thus, under a twelve-year term

132 David S. Cloud, *GOP Senators Limit Chairmen to Six Years Heading Panel*, 53 CONG. Q. 2147, 2147 (July 22, 1995).

133 *Id.*

134 *See id.*

135 *Id.*

136 Jackie Koszczuk, *Gingrich Puts More Power Into Speaker's Hands*, 53 CONG. Q. 3049, 3053 (Oct. 7, 1995). Senate Republicans also adopted term limits for chairmen and limited the ability of committee chairmen to chair other committees or subcommittees. Richard E. Cohen, *A Six-Year Rule for Chairmen*, NAT'L J., May 18, 1996, at 1087.

137 Reed & Schansberg, *The House*, *supra* note 5, at 708-11.

limit, forty percent of the House will consist of freshmen at the end of the first twelve years; another, somewhat smaller "superclass" will be elected at the end of the next twelve years; and the spikes will continue to occur every twelve years thereafter, although they will decrease in magnitude.¹³⁸ Second, the members forced to leave office are invariably the most senior. This change is a noteworthy contrast to recent, relatively volatile Houses. For example, in 1992, thirty-nine percent of those who left had served less than twelve years, and in 1994, forty-six percent had served less than six terms.¹³⁹

The certain prospect of large freshmen classes at regular intervals will challenge the seniority system; indeed, supporters of term limits probably intend for provisions to eviscerate the seniority system, or, as they see it, "the mechanism by which entrenched and out-of-touch members perpetuate their power."¹⁴⁰ Pressure on the seniority system will come from two sources. First, the freshmen will likely favor a system that decreases the power of more senior members and allows junior members to exert greater influence. The freshman can meet before the session begins, plan a strategy, and, given their numbers, command enough votes to implement changes in the system.¹⁴¹ Second, even in the absence of a revolt, seniority will no longer be as effective a means of differentiation among members because every member serves for a relatively short time and large entering classes share the same seniority rank. At the least, seniority will have to be

¹³⁸ See *id.* Reed and Schansberg's findings are subject to some criticism. They rely on historical continuation rates, which almost certainly will be affected by term limitations, and they assume that the seniority system will continue unchanged after the ratification of the amendment. See Jay P. Greene, *Term Limits: A Measure of Our Ignorance*, 76 Soc. Sci. Q. 717, 717-18 (1995) (disputing use of historic continuation rates on the ground that term limits will destroy expectations of a long-term political career and attacking assumptions as to the continuation of the seniority system); Everett Upshaw, *An Economist's View of Research on Term Limits*, 76 Soc. Sci. Q. 730, 731-32 (1995) (also discussing the use of historic continuation rates). Others have refined the notion of freshman superclasses, arguing that "to the extent that term limits make incumbents more vulnerable prior to when the term limits become binding, the smaller will be this initial 'superclass' and the faster we will see legislative refinements converging to their long term steady-state." Daniel & Lott, *supra* note 62, at 1. Nevertheless, Reed and Schansberg's conclusions that Congress will include more freshmen legislators and that spikes in turnover will occur, but with decreasing strength, are indisputable. After all, term limitations force turnover of the most senior members of the legislature at regular periods. As other causes of attrition begin to stagger the time at which the period begins to run for each particular office, the spikes will lessen.

¹³⁹ Derived from data from BARONE & UJIFSA, *supra* note 38.

¹⁴⁰ Copeland, *supra* note 20, at 27; see also Paul Jacob, *Whose Government Is It, Anyway?*, NO UNCERTAIN TERMS, Jan./Feb. 1996, at 4 (noting that "[s]trict term limits will end the seniority system"); WILL, *supra* note 7, at 91.

¹⁴¹ See, e.g., *New House Members Arrive on Capitol Hill*, S.F. CHRON., Dec. 2, 1992, at A3 (describing similar seminars held by freshman members of Congress in 1992). But see Elhauge, *supra* note 4, at 27-28 (arguing that junior legislators will not necessarily favor eliminating all seniority advantages because such advantages improve their odds of reelection over challengers with no seniority at all).

supplemented by additional criteria to select among lawmakers who are members of the same entering class.

What system of selecting committee members and party leaders will replace the seniority system? And how will the new system affect the value of a congressional seat? Term limits advocates are convinced that merit will replace longevity.¹⁴² "Merit" is a difficult term to define in any way that receives universal acceptance, however. Does merit mean that the legislator faithfully represents the views of her constituents as they are revealed through focus groups and opinions polls? Or is legislative behavior more meritorious when the lawmaker facilitates the deliberation of major issues in an attempt to shape public opinion or, failing that, votes as she thinks informed constituents would prefer? Is merit tied to support for certain political programs or fidelity to party positions? How can congressional leaders judge the merit of junior members of Congress who may have no prior political experience at the federal, state, or local level? Is the idea of merit so subjective that it can justify decisions made on virtually any basis, thereby eliminating the possibility that political careers will follow consistent patterns? An analysis of congressional practice before the rise of the seniority norm and of non-professional state legislatures may provide some answers.

Before the seniority system emerged in Congress, committee assignments and leadership selections turned on purely political considerations. In the House, the Speaker parceled out chairmanships of prestigious committees to those who had supported his election and brought with them large voting blocs.¹⁴³ The Speaker used his discretion in appointments to ensure passage of his legislative agenda and to shore up his political support.¹⁴⁴ Although in the modern Congress the Speaker and other congressional leaders share the appointment power with their caucuses,¹⁴⁵ after term limits, the strongest coalition can similarly use the malleable standard of "merit" to place supporters in key congressional positions. Prospective party leaders can indicate, during their campaigns for office, whom they prefer as their "Cabinet" of key leaders. Such political processes will be very different from the operation of the seniority system in the 104th Con-

¹⁴² See, e.g., F. Paul Calamita, *Solving the Voters' Dilemma: The Case for Legislative Term-Limitation*, 8 J. OF L. & POL. 559 (1992).

¹⁴³ Polsby, *Institutionalization*, *supra* note 56, at 156. See Price, *supra* note 16, at 15 ("So long as the Speaker made all appointments, both of members and committee chairmen, candidates within the majority party campaigned for the speakership nomination largely in terms of promises to make, or maintain, such appointments.")

¹⁴⁴ Polsby, *Institutionalization*, *supra* note 56, at 157.

¹⁴⁵ See *supra* text at notes 118-20.

gress when moderates assumed chairmanships of key committees even though the Republican leadership's agenda was conservative.¹⁴⁶

The selection processes used in state legislatures with high turnover rates also tend to rely on the discretion of the party leaders and on political coalitions. Peverill Squire has studied state legislatures and divided them into three types: career, springboard, and dead-end.¹⁴⁷ Consistent with the explanation for the growth of the seniority system in the federal legislature, he finds that seniority is prevalent in state legislatures where members perceive service as a career and where there is relatively little turnover.¹⁴⁸ In springboard and dead-end legislatures, the turnover rates are so high that seniority is not a useful norm, and appointments depend on political skill and party support.¹⁴⁹ Anecdotal evidence from the California State Assembly—a springboard legislature before term limits—indicates that term limits have created even more chaos in the selection of legislative leaders, particularly as members nearing the end of their allotted service fight to gain influential posts.¹⁵⁰

If the seniority system in Congress is replaced by a system that rewards political alliances and abilities, it will affect the career strategies of professional politicians. No longer will there be a predictable path to power and influence in the body; holding prestigious positions will depend on political skill and, perhaps, on the whim of the congressional leadership. This alteration in the political landscape may well make the office of representative or senator more valuable for the progressively-ambitious politician who seeks national attention and wants to make a mark early in her career. If a politician is sufficiently skillful, she may assume the helm of a prestigious committee much earlier than she can now. Indeed, in state legislatures that are not organized around strong seniority norms, many junior members serve on powerful and important committees, and, conversely, chairmen and leaders tend not to be the most senior members of the

¹⁴⁶ CONG. Q. INC., 1995 CONG. Q. ALMANAC 17 (1995).

¹⁴⁷ Peverill Squire, *Member Career Opportunities and the Internal Organization of Legislatures*, 50 J. OF POL. 726 (1988). Squire's study predates the term limits movement, so his classification of state legislatures may no longer be accurate.

¹⁴⁸ *Id.* at 732-33.

¹⁴⁹ *Id.* The career legislature that Squire studies most closely is New York's where the dispersion of seniority was similar to the dispersion in the U.S. House of Representatives. *Id.* at 731, 733-34. He also studies the California springboard legislature and the Connecticut dead-end legislature. In both of the latter bodies, seniority was not a significant factor in appointments to prestigious committees and important leadership roles. *Id.* at 734-38. See also Copeland, *supra* note 55, at 152 (noting that appointments in the Oklahoma legislature, classified by Squire as dead-end, are controlled by party leaders and do not rely on seniority).

¹⁵⁰ B. Drummond Ayres, Jr., *Recipe for Legislative Chaos: Term Limits, Party Loyalty and Power*, N.Y. TIMES, Dec. 1, 1995, at A8.

body.¹⁵¹ Skillful politicians will not only achieve influential posts more quickly, they will also use those offices to increase their national stature early in their careers and thereby increase their chances of holding other elected offices in the future.

If members of Congress value certainty more than the possibility of early advancement, however, they can construct institutional structures to bring stability to the process. For example, seniority rankings in the Senate currently give credit for prior service in the House.¹⁵² Under term limits, legislators can adopt a seniority system that considers past political service at all levels of government, thereby regularizing the process and decreasing leaders' discretion. This accommodation will also ensure that congressional leaders are the members who are the most experienced at governing.

Much as the current system encourages statically-ambitious persons, this type of modified seniority system will reward progressively-ambitious legislators and thus will reinforce such behavior in politicians. The specifics of the selected system will significantly influence the shape of the political opportunity structure in the wake of a federal term limits amendment. Interestingly, if this type of compensating strategy is chosen, term limits will not make public service more attractive to discretely-ambitious politicians; just as now, long service in politics will be a prerequisite of obtaining power and influence.

In conclusion, the ratification of a federal term limitations amendment may radically change one of the strongest institutional features of the modern Congress: the seniority system. Seniority may be replaced by merit as the primary criterion for advancement in the legislature, allowing the politically precocious to assume leadership positions early and to retain them with political skill. In this case, the value of holding a political office will increase, particularly for the progressively-ambitious person who desires influence in order to play a high profile role, implement a policy agenda, and increase the chances for future electoral success. Alternatively, politicians may modify the seniority system to both accommodate term limits and facilitate a certain pattern of progressive ambition; just as in the current system, longevity in politics, rather than merit, will determine the locus of political power.

151. Squire, *supra* note 147, at 735. In 1981, the California legislature's majority floor leader had served fewer than two terms, and nine out of twenty-five committee chairs were just beginning their second term. *Id.* In Connecticut's legislature, freshmen were well-represented on those committees that are considered the most influential. *Id.* at 737. "The organization of a body where members have progressive career goals should allow any member to gain important positions quickly. Power should be decentralized so members have the ability to promote their own political fortunes, with junior members being able to influence legislative decisions." *Id.* at 728.

152. GUIDE TO CONGRESS, *supra* note 124, at 475.

B. The Effect of Term Limitations on Legislator Effectiveness

Many members of Congress pursue power and influence, not as goals in themselves, but as necessary prerequisites of their primary objective: implementing a particular policy agenda. To the extent that the breakdown in the seniority system allows politicians to assume influential congressional roles sooner, the ability to influence policy—the second benefit offered by elected office—will be enhanced as well. But formal office is not sufficient in most cases to effect policy changes; a legislator must also possess the expertise to develop initiatives and to shepherd them through the legislative process. Because term limitations reduce the time during which legislators can learn the rules, procedures, and norms of the House or the Senate, they will decrease the level of legislator effectiveness and thereby affect legislative output. Although reducing federal legislative activity may be a goal—albeit often unstated—of term limits supporters, such a change will alter the desirability of legislative offices and will ultimately change the type of person attracted to them.

Passing, amending, and opposing legislation are not a lawmaker's only activities; indeed, they may not even be the primary tasks of a modern legislator. Unlike other activities such as constituent service and advertising which should be relatively unaffected by term limits, however, the lawmaking function may be significantly undermined by decreased tenure. Constituent service¹⁵³ tends to be the most time-consuming part of holding congressional office, perhaps because the public's demand for this service is high and members of Congress monopolize its supply. Research by John Hibbing indicates that the level of constituent-service activity is relatively unchanged over a legislator's congressional career, particularly with respect to the more recent classes of representatives.¹⁵⁴ Thus, term limits may not negatively affect the amount of a lawmaker's casework and project assistance.

¹⁵³ Richard Fenno defined "constituent service":

Many activities can be incorporated under the rubric of "district service," or "constituent service," but the core activity is providing help to individuals, groups, and localities in coping with the federal government. Individuals need someone to intercede with the bureaucracies handling their veterans' benefits, social security checks, military status, civil service pension, immigration proceedings, and the like. Private groups and local governments need assistance in pursuing federal funds, for water and sewer projects, highways, dams, buildings, planning, research and development, small business loans, and so forth. Sometimes, service benefiting individuals is known as "casework" and service having a larger number of benefactors is called "project assistance." Sometimes both are lumped together as casework.

FENNO, *supra* note 67, at 101.

¹⁵⁴ Hibbing, *supra* note 36, at 77-78. Hibbing used standardized Z-scores to control for changes in congressional behavior over time and to isolate the changes over a career. See *id.* at 77 (describing methodology of Z-scores as a way to control for period changes and to focus only on life-cycle effects). Junior representatives engage in somewhat greater

The quality of a legislator's constituent service is also relatively unaffected by her tenure in Congress. Effective constituent service techniques are easily taught to new members through seminars, publications, and political party events. During a campaign, politicians learn where to find constituents and how to listen and respond to their problems. Politicians continue to practice and refine this skill after their election. Staff members, rather than the legislator herself, perform most constituent work, and seasoned assistants can quickly establish a routinized process of dealing with correspondence, casework, and project assistance. Although personal contacts between legislators and key executive branch officials were once an integral part of successful constituent service, all agencies and executive departments now have liaisons who ensure that requests from lawmakers are given high priority and that problems are handled smoothly.¹⁵⁵ Because the decline of the seniority system will allow junior members to reach powerful positions earlier in their careers, they will demand and receive greater bureaucratic attention to their casework and project-assistance efforts. Thus, the adoption of term limits may actually increase the effectiveness of junior members in discharging their constituent-service functions.

Similarly, another time-consuming activity—advertising¹⁵⁶—can be accomplished by junior members as effectively as it can by more senior lawmakers. Advertising by a lawmaker occurs when she makes speeches, issues press releases, introduces bills, or engages in floor activity with the purpose of increasing her political brand name, but not necessarily intending to affect substantive policy. The common thread among all these activities is that the legislator is not working toward enacting legislation; instead, she is concentrating on enhancing her visibility and name recognition. Just as with constituent service, a junior legislator appears able to engage in advertising with as

amounts of constituent service than more senior members. Using data measuring the number of trips home and the proportion of congressional staff located in district offices, Hibbing found a slight negative correlation between tenure in office and attention to constituent service. HIBBING, *supra* note 52, at 134-35.

¹⁵⁵ See FIORINA, *supra* note 66, at 63-64.

¹⁵⁶ Although I use the term "advertising" to include all such behavior, Professor Mayhew distinguishes advertising from "credit claiming" and "position taking." MAYHEW, *supra* note 69, at 49-65 (describing advertising, credit claiming, and position taking). Advertising, according to Mayhew, is "any effort to disseminate one's name among constituents in such a fashion as to create a favorable image but in messages having little or no issue content." *Id.* at 49. Credit claiming creates the impression that the lawmaker is directly responsible for some beneficial action taken by the federal government. It is related to casework and project assistance in that not only does the legislator want to meet her constituents' demands that she solve problems, but she also wants to ensure that her success (or, at the least, her energetic efforts) are widely known. *Id.* at 52-61. Finally, position taking is similar to advertising except that, with respect to the former, the lawmaker's public statements contain some information about her stand on issues. *Id.* at 61-65.

much enthusiasm and skill as a more senior lawmaker. The apprenticeship norm that discouraged junior members from speaking in committees, offering amendments, or participating in debate on the floor no longer exerts much influence in either the House or the Senate.¹⁵⁷ New members seek publicity both at home and nationally by introducing bills, making speeches designed to attract media attention, disseminating press releases that describe constituent service, and proposing flashy floor amendments that are unlikely to pass.

Although junior lawmakers have the ability to advertise successfully, it is difficult to discern whether they engage in as much advertising as more senior members because studies measuring this behavior are limited. In his life-cycle research, Professor Hibbing has measured what he terms "legislative activity," that is, the number of bills introduced, amendments offered, and speeches made.¹⁵⁸ He has found that more senior members are more active, but that, over time, the rate of increase in this measure is lower than the rates of increase for other important legislative behavior, such as efficiency and specialization.¹⁵⁹ Hibbing concludes that significant involvement in legislative activity cannot be learned in a workshop but is a matter of experience.¹⁶⁰ With respect to true advertising behavior, this conclusion seems questionable. Advertising behavior that Hibbing does not study, such as making public speeches and preparing press releases, can be learned and practiced effectively early in the legislative career. Indeed, as long as the legislator is concerned only with introducing legislation, and not with whether it passes, she can easily draft bills and floor amendments (with the help of her staff and the professional legislative drafters who work in each house), and the party caucuses will handle the logistics of bill introduction.¹⁶¹ Experience is not a prerequisite of effective advertising.

Some studies indicate that both constituent service and advertising may decrease in a world of term limits because legislators who voluntarily retire significantly reduce both types of behavior at the end of their tenure.¹⁶² One explanation offered for these findings is

¹⁵⁷ See Herbert B. Asher, *The Changing Status of the Freshman Representative*, in CONGRESS IN CHANGE, *supra* note 16, at 216-17 (noting decline of apprenticeship norm in the House); Norman J. Ornstein et al., *The U.S. Senate in an Era of Change*, in CONGRESS RECONSIDERED, *supra* note 36, at 19-20 (noting that the norm no longer operates in the Senate).

¹⁵⁸ Hibbing, *supra* note 36, at 80.

¹⁵⁹ See *id.* at 80-81; HIBBING, *supra* note 52, at 116-19.

¹⁶⁰ Hibbing, *supra* note 36, at 82.

¹⁶¹ Cf. Mark Anderson, *Changes on the Way: Preliminary Effects of Term Limits in Arizona*, TERM LIMITS OUTLOOK SERIES, Nov. 1995 at 14 (describing training program for new members designed by state house leaders after operation of term limits resulted in substantial number of freshmen).

¹⁶² Rebekah Herrick et al., *Unfastening the Electoral Connection: The Behavior of U.S. Representatives When Reelection is No Longer a Factor*, 56 J. OF POL. 214 (1994) (using cross-section

that lawmakers engage in this behavior primarily with an eye to reelection.¹⁶³ In addition, constituent service requires significant office-specific investment which politicians who serve in office for a short time may be unwilling to make even if they have the ability to do so.¹⁶⁴ These conclusions are of limited relevance to our inquiry, however. The question at issue is whether new members of Congress have the *ability* to advertise or to offer constituent services if they perceive benefits, such as the prestige of public recognition and respect. In addition, if progressive ambition becomes the norm after term limits, politicians will continue to be interested in advertising that can enhance their name recognition when they run for future office; they will also perform constituent service that can help them move along the political opportunity structure. These ambitious politicians subject to term limits will not act like voluntary retirees under the current system.¹⁶⁵ That is, term limits will not sufficiently unfasten the electoral connection to reduce appreciably advertising and constituent service. The electoral connection will remain, but with an added link—from the end of service in one job to the campaign for the next political opportunity.

My focus in this section is neither on constituent service nor advertising; instead, I am concerned with a different behavior—legislator effectiveness. A legislator is effective when she moves her bills successfully through Congress and proves that her policy agenda is more than an idea in a press release. The ability to be an effective lawmaker is of paramount importance for those who enter politics with a desire to implement policy. Such people may find politics a less attractive career after the passage of term limits for several reasons. First, because term limits necessarily reduce the time in which a legislator can attempt to influence policy through service in one job, and because the cinch in the political opportunity structure reduces the chances for a long political career, the policy-minded lawmaker may

tional and life-cycle analyses to conclude that voluntary retirees offer less legislation and make fewer speeches at the end of their tenure than other legislators). With respect to constituent service, Herrick's study shows a statistically significant decline in the number of trips home and the number of staffers assigned to the district offices during a member's last term. *Id.* at 221, 224.

¹⁶³ See *id.*

¹⁶⁴ For a discussion of the investment required for constituent service, see CAIN ET AL., *supra* note 110, at 57-76; J. MARK RAMSEYER & FRANCES McCALL ROSENBLUTH, JAPAN'S POLITICAL MARKETPLACE 27-28 (1993) (making a similar point in the context of the Japanese political system).

¹⁶⁵ Indeed, Herrick, Moore, and Hibbing found that politicians who run for higher office are more active than their colleagues. These progressively-ambitious politicians introduce more bills than representatives who are merely seeking reelection. Herrick et al., *supra* note 162, at 224 n.8 (noting limited data set).

worry that she will have insufficient time to accomplish her agenda.¹⁶⁶ However, this concern may be ameliorated if she is confident that a much weaker seniority system will allow her greater influence earlier in her career.

More significantly, experience appears to be the critical factor in developing the skills necessary for legislator effectiveness. Professor Hibbing, in his life-cycle work, measured two relevant behaviors: "legislative specialization" (determined by dividing the total number of bills into the number of those bills that were referred to the most frequently involved committee) and "legislative efficiency" (determined by adding the number of bills passed and the number of bills reported out of committee).¹⁶⁷ The difference between junior and senior members with respect to specialization and efficiency is "notable."¹⁶⁸ And, this difference can be attributed solely to a lawmaker's tenure in office.¹⁶⁹ When Hibbing compared his findings regarding legislative activity (the mere number of bills and amendments introduced) to his findings concerning legislative specialization and efficiency, he found that the latter activities do not reach their means until the sixth or seventh term of House service, while the former—which is at least as closely related to advertising as to legislator effectiveness—reaches its mean by approximately the second term.¹⁷⁰ In other words, even moderately experienced legislators are not yet skilled in the arts of specialization and efficiency.

One could argue that the increase in legislator effectiveness associated with tenure results from something other than a senior member's enhanced skills and knowledge. Perhaps legislator effectiveness correlates with long tenure because incumbents have more seniority and thus fill powerful leadership positions in Congress. With the adoption of term limits, and the decline of the seniority system, junior

¹⁶⁶ See, e.g., Anderson, *supra* note 161, at 7 (Ariz. Rep. Mark Anderson writes, "Term limits forces me to look at my situation very differently than I otherwise might. . . . I have only a short time to succeed, and that forces me to be more aggressive and not wait for my turn to become a major player.").

¹⁶⁷ HIBBING, *supra* note 52, at 112-13.

¹⁶⁸ Hibbing, *supra* note 36, at 80.

¹⁶⁹ HIBBING, *supra* note 52, at 163. Using a mathematical model in which elections are treated as "filters" to select for quality candidates, Jeffrey Mondak concluded that term limits will reduce the effectiveness of the electoral "filter" and that, therefore, elections will screen out fewer low-quality candidates. Mondak, *supra* note 78, at 723-24. Some of Mondak's assumption are questionable, however, including the threshold premise that voters are often offered a meaningful choice between a lower-quality incumbent and a more capable challenger. See *supra* part III.C.1 (discussing absence of serious challenges to incumbents). Mondak acknowledges that his conclusions would be undermined if the presence of term limits attracts higher-quality candidates to run for office. Mondak, *supra* at 718. See also Mark P. Petracca, *A Comment on "Elections as Filters,"* 48 POL. RES. Q. 729 (1995) (disputing Mondak's claims and criticizing his methodology); Jeffrey J. Mondak, *Focusing the Term Limits Debate,* 48 POL. RES. Q. 741 (1995) (responding to Petracca).

¹⁷⁰ HIBBING, *supra* note 52, at 121.

members will hold influential posts and can therefore be more effective. Hibbing's findings, however, do not support this argument; he discovered that the relationship between holding formal positions in the House and legislative involvement, including activity, specialization, and efficiency, is extremely weak when the effect of tenure on both was controlled.¹⁷¹

Second, one might argue that senior members are more efficient because they can spend less time on reelection activities. By extension, term-limited members, freed from concerns about reelection, will focus on enacting law from the start of their careers. The study demonstrating that retirees in their last term focus more on their policy agendas and less on mere position-taking supports this argument.¹⁷² As I have noted above, however, adoption of term limits does not necessarily mean that members will remain in politics for only a short time, so these results may not hold true for term-limited politicians. Progressively-ambitious politicians will continue to spend much time on activities designed to increase their political brand names and to allow them to move to different offices when they reach the limit on their current ones.

Even if term limits reduce the time lawmakers spend on advertising and constituent service, having more time to specialize will not mean much to a legislator who lacks essential lawmaking skills. The close association between substantial expertise and legislator effectiveness is hardly surprising. After all, successfully negotiating the many procedural hurdles of the legislative process requires a sophisticated knowledge of the rules, the dynamics of the institution, the personalities of key members of the House or Senate, and the preferences of other relevant players such as the President.¹⁷³ Shortened tenure is not the only factor at play here; any weakening of seniority may also negatively affect the stability and strength of committees—the entities through which legislator expertise is most often exercised. The seniority system encourages a lawmaker to do low-level committee work to assure further success in future committee leadership roles. The erosion of seniority may mean that a junior legislator will receive a plumb committee assignment, but she may lack the knowledge to use

¹⁷¹ *Id.* at 163. See also Hibbing, *supra* note 36, at 81 (noting that the years of decentralization of power in the House were also the years during which the relationship between tenure and legislator effectiveness grew stronger); Richard L. Hall, *Participation and Purpose in Committee Decision Making*, 81 AM. POL. SCI. REV. 105, 120 (1987) (noting that, controlling for formal position and other factors, junior members had not achieved "participatory equality" in committee activities).

¹⁷² Herrick et al., *supra* note 162, at 219, 221.

¹⁷³ See William N. Eskridge, Jr. & John Ferejohn, *The Article I, Section 7 Game*, 80 GEO. L.J. 523 (1992); see also Schrag, *supra* note 80, at 27 (stating that "no one who has been there four years or less has learned enough about California's complicated system of government").

that position for anything more than advertising purposes. If committee assignments and advancement are contingent on less certain mechanisms than seniority, she will have less incentive to make the time-consuming investment to acquire expertise.¹⁷⁴ A legislator may become an expert in tax matters, for example, only to find that changing political fortunes have resulted in her reassignment to the postal-service committee.

Committees will decline under term limits for another related reason. Other members of Congress defer to committee recommendations in part because committee leaders are repeat players who have specialized knowledge in a particular area. A repeat player in the legislative arena has incentives to deal honestly with her colleagues so that her future credibility is not impaired.¹⁷⁵ She can discipline members who oppose her by denying them provisions that they ask her to include in future bills.¹⁷⁶ Again, increasing uncertainty about institutional advancement will mean that members are less likely to serve as repeat players. Consequently, they will not necessarily have greater expertise; they will have reduced incentives to send only truthful signals to colleagues; and, without the sure ability to shape future legislation, they will likely lack the power to threaten defectors.

If reduced tenure negatively affects the development of the political expertise necessary for legislator effectiveness, and if the workhorses of the legislature—the committees—are weakened, the number of major bills that spark determined opposition may drop considerably, and the overall quality of legislation may decline. Such a change in legislative output does not necessarily mean that repre-

¹⁷⁴ See Shepsle, *supra* note 119, at 250-51; Barry R. Weingast & William J. Marshall, *The Industrial Organization of Congress; or, Why Legislatures, Like Firms, Are Not Organized as Markets*, 96 J. POL. ECON. 132, 143 (1988) (explaining the importance of the seniority system to a stable committee structure). Of course, one would not expect to see the complete disappearance of congressional committees. Given time constraints and the complexity of the modern world, Congress has no choice but to operate in smaller units staffed by specialists. Moreover, the committees will maintain a degree of power because of their members' role in the conference committees that will continue to shape final legislation. See Kenneth A. Shepsle & Barry R. Weingast, *The Institutional Foundations of Committee Power*, 81 AM. POL. SCI. REV. 85 (1987) (discussing the significance of this "ex post veto power"). *But see* Keith Krehbiel, *Why Are Congressional Committees Powerful?*, 81 AM. POL. SCI. REV. 929 (1987) (contesting the Shepsle-Weingast conclusion and noting constraints on the "ex post veto power" of committees); Kenneth A. Shepsle & Barry R. Weingast, *Response to Krehbiel*, 81 AM. POL. SCI. REV. 935 (1987).

¹⁷⁵ McNollgast, *Legislative Intent: The Use of Positive Political Theory in Statutory Interpretation*, 57 LAW & CONTEMP. PROBS. 3, 27 (1994).

¹⁷⁶ See Shepsle & Weingast, *supra* note 174, at 88-89 (describing examples of discipline by committees); Weingast & Marshall, *supra* note 174, at 140-41 (discussing the difficulty of making credible promises or threats when implementation will not occur until subsequent legislation is considered). See generally JOHN W. KINGDON, CONGRESSMEN'S VOTING DECISIONS 110-45 (1989) (discussing the role of committee chairmen and party leaders in influencing the decisions of members of Congress).

sentatives will pass fewer bills. Indeed, the number of bills passed by any Congress is a statistic that imparts relatively little information. For example, the legislature has done much of its recent work through omnibus bills. So, while the total number of pages enacted has increased, the number of bills passed has declined. Additionally, the number of pages is not indicative of the significance of the legislative activity. The number of pages will not drop, for example, if lawmakers spend their time passing advertising legislation, declaring holidays such as "Law Professor Appreciation Day," or establishing hundreds of commemorative coins. What a decline in legislator effectiveness does mean is a decline in the number of contested bills, such as telecommunications overhaul, welfare reform, or employment-discrimination legislation—laws that do not receive overwhelming support.¹⁷⁷

Lack of expertise affects both the ability to pass bills and the ability to block them, but it impairs the former to a much greater degree than the latter.¹⁷⁸ Even relatively inexperienced lawmakers can learn how to block the passage of legislation; they will need to be successful at only one of the many vetogates along the path of enactment.¹⁷⁹ Thus, unless lawmakers make changes to compensate for the effects of term limits, the complicated congressional structure with its many hurdles will create more frustration for people who want to enact, rather than to block, controversial policies.

Policy-minded politicians will try to overcome their reduced legislative ability to be effective by altering one or more of the following institutional features of Congress. First, legislators may reduce the number of vetogates in the system and the complexity surrounding them. Some vetogates are imposed by the Constitution, such as the requirement that both legislative bodies agree, the requirement that revenue bills originate in the House, and the requirement that a two-thirds majority in both houses is necessary to override a presidential veto. A number of legislative hurdles are creatures of statute, however, and can be changed more easily. For example, rules that allow a filibuster to kill a bill in the Senate unless sixty members invoke cloture can be changed if two-thirds of the senators who vote on the mat-

¹⁷⁷ See Schrag, *supra* note 80, at 28 (noting the difficulty after adoption of term limits in "hold[ing] votes together and enact[ing] any major legislation—indeed, do[ing] anything that takes patient compromise and thus requires the luxury of time and a relatively stable group of bargainers").

¹⁷⁸ See JONATHAN RAUCH, *DEMOSCLEROSIS: THE SILENT KILLER OF AMERICAN GOVERNMENT* 124-25 (1994) (discussing asymmetry in legislative process, i.e., ease of blocking legislation relative to passing laws); KAY SCHLOZMAN & JOHN TIERNEY, *ORGANIZED INTERESTS AND AMERICAN DEMOCRACY* 317, 395-96 (1986) (noting that interest groups are more successful at blocking, rather than passing, legislation because "there are so many opportunities for throwing up roadblocks to unwanted action").

¹⁷⁹ See SCHLOZMAN & TIERNEY, *supra* note 178.

ter agree.¹⁸⁰ Moreover, members of the two chambers can harmonize legislative rules so that familiarity with Senate procedures will breed familiarity with House procedures, and vice versa. This effort can include state legislatures as well. The greater the consistency in procedures, the greater the ability to enact bills and—much to the dismay of term limits supporters—the greater the likelihood that progressive ambition will characterize most politicians.¹⁸¹

Second, if the seniority system is replaced by a system where the committee chairs are selected as a kind of “Cabinet” of the Speaker or Majority Leader, all congressional leaders are likely to share a commitment to the same policy agenda. This homogeneity of opinion will reduce friction at many pressure points. An example of this type of coordination was the allegiance of the committee chairs to Speaker Gingrich during the first months of the 104th Congress which allowed him to push through much of the legislation promised in the Contract with America.¹⁸² This solution to the problem of reduced legislator effectiveness will require a great deal of coordination and similarity of policy objectives; one defector can derail a bill, and the minority party may frequently be able to muster the strength to block initiatives (especially in the Senate).

Finally, politicians can attempt to find alternative sources of expertise on which to rely. The professional congressional staff, particularly those who work for committees or other expert entities such as the Congressional Budget Office, are the most obvious replacement for experienced legislators. Currently, staff turnover is much greater than the turnover of members; for House staffers, the turnover is 3.4 times greater than for representatives, and Senate staffers turn over at a rate that is 2.1 times greater than that of senators.¹⁸³ If these rates are indicative of the turnover of knowledgeable staffers after term limits, most aides will have no greater expertise or experience than term-limited members. The aggregate turnover rates for all congressional staff are not the most relevant statistics for this inquiry, however. Unfortunately, they are the only statistics available. More crucial is the

¹⁸⁰ See Senate Rule XXII, para. 2. The rule itself can be changed by a simple majority vote, but ending a filibuster of a rule change requires adoption of a cloture motion by two-thirds of the senators voting.

¹⁸¹ Professor Berkman has found that experience in state legislatures helps U.S. representatives display greater policy and institutional expertise and enables them to advance in leadership roles more quickly than their inexperienced colleagues. Michael B. Berkman, *Former State Legislators in the U.S. House of Representatives: Institutional and Policy Mastery*, 18 LEG. STUD. Q. 77 (1993). Interestingly, the development of such skills is more pronounced in members who have served in professionalized state legislatures, *id.* at 91, 94, so state term limits may affect this trend.

¹⁸² See Koszczuk, *supra* note 136, at 3049.

¹⁸³ Norman Leahy, *Term Limitation and the Re-Ordering of Congressional Culture*, 2 KAN. J. OF LAW & PUB. POL'Y 31, 36 & tbl. 1 (1993).

length of the tenure of the professional committee staff, whose roles tend to be less political and more substantive. One would expect that the turnover for these staff members is less rapid because they must stay longer to develop detailed knowledge in a particular area.¹⁸⁴ Moreover, it seems likely that staff tenure varies among committees;¹⁸⁵ in particular, future studies should focus on staff turnover for committees on which members can serve for only limited terms, such as the House Budget Committees and the Select Committees on Intelligence. Future studies should also measure the effects of the new congressional rule limiting the terms of House committee chairmen to six years. These figures will more closely approximate turnover rates under term limits. Without this more sophisticated analysis, arguments about staff turnover and term limits provide little illumination.

Even if we develop these more refined turnover statistics, they may not accurately portray the length of staff tenure under term limits. Term-limited members of Congress, hoping to compensate for their relative lack of expertise through the use of professional staff, will encourage key aides to stay longer on the Hill. Members can pay their key aides somewhat more generously, but staff compensation cannot be increased substantially over current levels because of budget constraints¹⁸⁶ and because aides cannot receive higher salaries than members.¹⁸⁷ Some staff members will be willing to lengthen

¹⁸⁴ Turnover may be more rapid, however, if the opportunity cost of government service for these professional aides is higher. With some specialized knowledge and legislative expertise, they may be able to command large salaries as lobbyists when they leave the Hill. Such private sector opportunities are greater for those with greater mastery of the process, however, which requires a significant period of governmental service.

¹⁸⁵ Cf. Beth M. Henschen & Edward I. Sidlow, *The Recruitment and Career Patterns of Congressional Committee Staffs: An Exploration*, 39 W. POL. Q. 701, 707 (1986) (studying professional staff and noting that profiles vary between policy/prestige committees and constituent committees).

¹⁸⁶ The Fiscal Year 1996 Appropriations bill for the Legislative Branch reduced overall appropriations for Congress by \$206 million. Jonathan D. Salant, *Legislative Branch Bill Clears, Will Not Go to Clinton Soon*, 53 CONG. Q. 3353 (Nov. 11, 1995) (stating that total congressional appropriations were \$1.63 billion). Such a reduction meant a 12.5% cut in the salaries of congressional support agencies and reductions in the size of personal staffs. By the beginning of the 104th Congress, Senate committee staffs had been reduced by 15%. Eliza Newlin Carney, *Ignoring the Real Problem*, NAT'L J., May 27, 1995, at 1308. The Appropriations Bill for fiscal year 1997 is expected to decrease funding even further. Elizabeth A. Palmer, *House Passes Spending Bill with Little Debate*, 54 CONG. Q. 1948 (July 13, 1996) (cutting spending by \$37.4 million from fiscal year 1996).

¹⁸⁷ A member of Congress earns \$133,600 annually; congressional leaders are paid \$148,400; and the Speaker of the House receives a salary of \$171,500. See 5 U.S.C.A. § 5332 Sched. 6 (WEST. SUPP. 1996). Congressional salaries are indexed for inflation. *Id.* Political realities make salary increases very difficult; the most recent pay hike was a salient and unpopular issue for many voters. See Richard Morin, *Huge Majority in Poll Opposes 50% Raise for Top Officials*, WASH. POST, Jan. 17, 1989, at A1 (80% of respondents opposed pay increase for members of Congress). Only a very few congressional staff members have salaries approaching those of their bosses.

their tenure on the Hill because of their increased responsibility and greater influence over policy outcomes. Others may stay because the opportunity cost of remaining in government service will likely decline. Powerful and well-connected staffers, particularly those who work on committees, have opportunities to work as well-paid lobbyists or in other politically-related private sector jobs. As discussed above,¹⁸⁸ term limits will increase the supply of people who can work for special interest groups, trade associations, or political think tanks. Such an influx of qualified applicants will probably decrease the compensation for these private-sector jobs. Accordingly, the amount of financial sacrifice demanded of congressional aides who forego private-sector opportunities will be reduced, and they will be apt to remain in government service longer.

Other staff members will stay long enough to develop significant expertise because they plan to run for Congress. Indeed, it seems likely that the political opportunity structure will evolve so that people who hope to be elected to the House or Senate will serve apprenticeships as congressional staff members.¹⁸⁹ In this way, they can learn the legislative ropes and then campaign on their greater ability to accomplish policy objectives in the time allowed by term limits. Again, this development will not satisfy those who envision term limits as a way to populate the federal legislature with political amateurs. Staff-members-turned-legislators will be political careerists in many of the same ways that long-time incumbents are now.

Although increased reliance on professional staff is a probable response to term limits, this reliance may not fully compensate for the loss in legislator effectiveness. Perhaps most importantly, staff and legislators are not exchangeable commodities. Staff members can research, draft, and negotiate, but in the end, the passage of controversial legislation depends on the skills of the representatives or senators supporting the proposal.¹⁹⁰ In addition, legislators will be loathe to depend entirely on staff members who are chosen, not necessarily because of their political allegiance, but because of their superior knowledge and expertise. A progressively-ambitious politician will be wary of giving carte blanche to professional staff members who may be pursuing their own policy agendas, agendas that may not correspond to those of the politician or her constituents. A politician will allow her professional staff leeway only to the extent that she can monitor them,

¹⁸⁸ See *supra* text accompanying notes 94-98.

¹⁸⁹ This phenomenon occurs now, but not often. See K.C. Swanson, *Upwardly Mobile ex-Hill Aides*, NAT'L J., Feb. 3, 1996, at 269 (fourteen former aides planned to run for the House in 1996).

¹⁹⁰ See Elhauge, *supra* note 4, at 23 (noting that term limits would reduce not only the amount of pork-barrel legislation, but it might also affect other legislation).

perhaps by filling some staff positions with political aides who possess greater authority but less institutional knowledge.¹⁹¹

Reduced legislative output regarding contested issues and a decline in the overall quality of bills passed will not only affect the value of the office for policy-minded, ambitious politicians; it will also have broad ramifications for judicial officers and concerned constituents. For example, an inability to pass new legislation may freeze current political arrangements and policies because it is too difficult to change them. A new class of lawmakers who had hoped to effect profound changes will be frustrated, and the electorate that expected reform will be disappointed. The difficulty of repealing current institutional relationships does not mean that those structures cannot be altered in other ways. For example, if, after the adoption of term limits, a majority of senators favor a less intrusive federal government, they can ensure that nominees to the federal bench are characterized by a similar ideology. Narrow interpretations of existing laws may indirectly accomplish what cannot be achieved directly through legislative change. Legislators who support such interpretations will be certain to block legislation that seeks to overturn the judicial outcomes. Thus, lawmakers motivated by a desire to influence policy directly will have to be content to play only a supporting policymaking role. Even this limited influence will depend on lawmakers' ability to predict the judicial philosophy of nominees; a comparison of the jurisprudence of Justice Blackmun or of Justice Souter and the expectations of some of their congressional supporters demonstrates that politicians can err in these assessments.

¹⁹¹ See, e.g., SCHLOZMAN & TIERNEY, *supra* note 178, at 309 (noting evidence of "entrepreneurial instincts of congressional staff"). Other sources of expertise, such as professional lobbyists, present even greater agency problems because, in addition to personal preferences, lobbyists may have client interests that do not always correspond to legislator interests. Thus, although legislators may compensate for their own lack of specialized knowledge through an increased use of lobbyists, they will do so only to the extent that they can detect divergence between their interests and those of their agents. See Upshaw, *supra* note 138, at 733 (term limits may make legislators more dependent on interest groups for information). Other commentators have argued that the reduction in congressional effectiveness will increase the relative power of the executive branch. In particular, it will expand the power of federal bureaucrats. See, e.g., Linda L. Fowler, *A Comment on Competition and Careers, in LIMITING LEGISLATIVE TERMS*, *supra* note 5, at 185; Nelson Polsby, *Restoration Comedy*, 102 *YALE L.J.* 1515, 1524-25 (1993) (reviewing GEORGE F. WILL, *RESTORATION: CONGRESS TERM LIMITS, AND THE RECOVERY OF DELIBERATIVE DEMOCRACY* (1992)). If the objectives pursued by members of the executive branch involve passing legislation, certain bureaucrats will become experts in the legislative process and will assist less experienced congressional leaders in successfully negotiating vetogates. See also *infra* text accompanying note 232 (suggesting other implications for executive-branch/legislative-branch relations).

Finally, if judges interpret statutes under the principles of textualism,¹⁹² a reduction in the quality of legislation may result in interpretations of statutory language that were not intended by its drafters. Textualism places great demands on the pellucidity of statutory drafting.¹⁹³ The current legislative process often fails to live up to these standards, and a decline in legislator effectiveness and skill will not improve the situation. In other words, to the extent that textualists hope to "stimulate legislators to perform their functions better, as by drafting statutes more precisely,"¹⁹⁴ term limitations may substantially impair the ability of legislators to rise to such a challenge. Alternatively, a reduction in legislator effectiveness may prompt judges to reject textualism for more purposive approaches in an effort to make sense of lower-quality legislative output.¹⁹⁵ In part, the strategy selected by the judiciary will hinge on the identity of the judges, which in turn will be affected by the preferences of senators involved in the confirmation process.

C. Term Limitations and Interest Groups

Perhaps one of the most hotly contested issues in the term limits debate is whether such provisions will weaken or strengthen the influence of special interest groups over members of Congress.¹⁹⁶ Supporters of term limits point to the fact that most lobbyists oppose the reform as an indication that interest groups prefer the status quo.¹⁹⁷ Opponents counter that inexperienced legislators often turn to lobby-

¹⁹² For discussions of textualism in the Supreme Court and the courts of appeal, see generally William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. REV. 621 (1990); Nicholas S. Zeppos, *Justice Scalia's Textualism: The "New" New Legal Process*, 12 CARDOZO L. REV. 1597 (1991).

¹⁹³ WILLIAM N. ESKRIDGE, JR., DYNAMIC STATUTORY INTERPRETATION 233 (1994).

¹⁹⁴ *Id.*

¹⁹⁵ See, e.g., *Friedrich v. City of Chicago*, 888 F.2d 511, 514 (7th Cir. 1989) (critically evaluating textualism, in part because judges "know that legislatures, including the Congress of the United States, often legislate in haste, without considering fully the potential application of their words to novel settings"); Richard A. Posner, *Legal Formalism, Legal Realism, and the Interpretation of Statutes and the Constitution*, 37 CASE W. RES. L. REV. 179, 189-90 (1986).

¹⁹⁶ Compare MARK PETRACCA, PUBLIC AFFAIRS REPORT 8, TERM LIMITS WILL PUT AN END TO PERMANENT GOVERNMENT BY INCUMBENTS (Nov. 1990) and WILL, *supra* note 7, at 32, with Polsby, *supra* note 191, at 1519, and NELSON POLSBY, PUBLIC AFFAIRS REPORT 9, LIMITING TERMS WON'T CURB SPECIAL INTERESTS, IMPROVE THE LEGISLATURE, OR ENHANCE DEMOCRACY (Nov. 1990).

¹⁹⁷ Lobbyists tend to oppose term limits even though their influence may increase if legislators are relatively less expert. This opposition probably stems from the belief that, although their power as a group will increase, the power that individual lobbyists gain from their close relationships with particular Congress members will decline as current lawmakers are forced to leave office. See WILL, *supra* note 7, at 57 ("As for lobbyists, they are indeed career people. And they are passionate opponents of term limits because they have valuable investments in long-term relationships of mutual aggrandizement with career legislators.").

ists for expertise, and that they lack the ability to think critically about information sent to them by organized interest groups.¹⁹⁸ Legal and economic scholarship has so far provided no clear answer as to which position is correct. Professors Spitzer and Cohen rely on the insights of game theory to conclude that term limitations will result in "legislators spend[ing] less time working for general constituent interests and more time on personal and special interests."¹⁹⁹ Preliminary empirical work suggests, however, that campaign contributions decrease after term limits are imposed on state legislators, indicating that at least one form of special interest benefit to legislators is reduced.²⁰⁰

The effects of term limitations on interest group behavior²⁰¹ are important for a variety of reasons. Americans who favor federal term

¹⁹⁸ See, e.g., Erik H. Corwin, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569 (1991); Polsby, *supra* note 191, at 1524.

¹⁹⁹ Cohen & Spitzer, *supra* note 4, at 508. One problem with Cohen and Spitzer's model is that they use the constituents' ability to deny reelection as the principal control that voters exercise over elected officials. See *id.* at 498-500 (punishment for legislators in the political game is defeat at the polls). The evidence strongly indicates that voters sort candidates and elect those who share their ideology; thus, representatives are unlikely to defect in the political game, even in the last period. See *infra* notes 202-03 and accompanying text. Spitzer and Cohen may be arguing merely that legislators, in the absence of the possibility of reelection, will spend less time legislating. This limited contention appears to have empirical support. See John R. Lott, Jr., *Attendanee Rates, Political Shirking, and the Effect of Post-Elective Office Employment*, ECON. INQUIRY, Jan. 1990, at 133. Their claim is arguably not so narrow, however. See Cohen & Spitzer, *supra* note 4, at 501-04 (describing methods of defection). See also *supra* text accompanying notes 46-51 (discussing Spitzer and Cohen's game theory analysis).

²⁰⁰ Daniel & Lott, *supra* note 62, at 10-11 (discussing findings of a significant decrease in campaign expenditures as a result of term limits in California); Lott, *Simple Explanation*, *supra* note 62, at 23-24. Lott's study included one anomalous finding with respect to campaign contributions and gubernatorial elections. Although he found that term limits do reduce campaign expenditures, sometimes quite dramatically, he also found that increasing the term lengths resulted in a reduction of campaign expenditures. *Id.* at 18 & tbl. 5. Lott is unable to explain this puzzling result, which is inconsistent with the findings of a 1977 study by Crain and Tollison. W. Mark Crain & Robert D. Tollison, *Attenuated Property Rights and the Market for Governors*, 20 J. L. & ECON. 205, 207-08 (1977). But see Lott, *Simple Explanation*, *supra* note 62, at 13-14 (discussing limitations of the Crain-Tollison study). See also Daniel & Lott, *supra* note 62, at 3 (explaining the implication in the Crain-Tollison study that two two-year terms produce greater campaign contributions than one four-year term).

²⁰¹ One of the first definitions of an "interest group" was supplied by James Madison: By a faction [his word for an interest group], I understand a number of citizens, whether amounting to a majority or a minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

THE FEDERALIST No. 10, at 57 (James Madison) (Jacob E. Cooke ed., 1961). Because of collective action problems, the interest groups with the greatest influence on governmental policies tend to be small groups with intense preferences. See generally DANIEL A. FARBER & PHILIP P. FRICKEY, *LAW AND PUBLIC CHOICE: A CRITICAL INTRODUCTION* 17-21 (1991); MANCUR OLSON, JR., *THE LOGIC OF COLLECTIVE ACTION* (1965) (presenting a theory to explain which groups are likely to organize successfully to seek governmental benefits). Madison would not have assigned a pejorative label to a cohesive group seeking outcomes

limitations seem to expect that this reform will weaken the power of special interests and eliminate unseemly close relationships between elected officials and lobbyists. One strand of public dissatisfaction is a feeling that professional politicians work only for private gain or for organized special interests; therefore, they do not act as the ordinary constituent would want. If this displeasure is directed at the legislator's voting record, however, the criticism is not persuasive. A legislator's voting behavior appears to be relatively consistent with her constituents' interests.²⁰² Although interest groups play prominent

consistent with the rights of others or the interests of the community; many modern interest group theorists make the same normative move. See Einer R. Elhauge, *Does Interest Group Theory Justify More Intrusive Judicial Review?*, 101 YALE L.J. 31, 48-59 (1991) (discussing need for normative baselines to understand interest group theory and to evaluate public criticisms of their disproportionate or undesirable influence). For the purposes of this Article, I am using a less normatively charged definition: "[A]ny group that, on the basis of one or more shared attitudes, makes certain claims upon other groups in the society for the establishment, maintenance, or enhancement of forms of behavior that are implied by the shared attitudes." DAVID B. TRUMAN, *THE GOVERNMENTAL PROCESS* 33 (1951); see also RAUCH, *supra* note 178, at 12-13, 44-50 (discussing the exponential growth of interest groups that represent more general interests). Rauch notes that he realized how ubiquitous interest groups had become when he discovered the Washington lobbying office of the Baha'i religion, a faith which teaches that believers should abstain from politics. *Id.* at 38-39.

²⁰² See KINGDON, *supra* note 176, at 30; see also *id.* at 43 (constituency is even more important with respect to salient issues); *id.* at 259 (describing legislative decisionmaking in an environment of conflict and noting that constituents are the first group consulted). Commentators continue to debate how often and when legislators vote inconsistently with their principals' desires. Compare Sam Peltzman, *Constituent Interest and Congressional Voting*, 27 J. L. & ECON. 181 (1984) (analyzing congressional voting patterns using a principal-agent model and concluding that legislators tend to serve their constituents' interests) with Ryan C. Amacher & William J. Boyes, *Cycles in Senatorial Voting Behavior: Implications for the Optimal Frequency of Elections*, 33 PUB. CHOICE 5 (1978) (positing that the longer the electoral period for an elected official, the less likely the official is to vote in accordance with his constituents' interests) and Joseph P. Kalt & Mark A. Zupan, *The Apparent Ideological Behavior of Legislators: Testing for Principal-Agent Slack in Political Institutions*, 33 J. L. ECON. 103, 106 (1990) (testing the hypothesis that "as the slack in the constituent-policymaker bond increases, ideological shirking should increase"). The consensus view is that legislators do not engage in substantial shirking in the salient votes evaluated by various rating organizations like the National Taxpayers Union and the Americans for Democratic Action. This certainly holds true as long as politicians know that voters can remove them from office in the next election, and apparently it still holds true even when the threat of electoral consequences is removed. See Bruce Bender & John R. Lott, Jr., *Legislator Voting and Shirking: A Critical Review of the Literature*, 87 PUB. CHOICE 67 (1996); see also MORRIS P. FIORINA, *REPRESENTATIVES, ROLL CALLS, AND CONSTITUENCIES* (1974) (detailed study of the effect of constituencies on roll-call voting by legislators). Studies finding that legislators tend to share the ideology of their constituents, and therefore to act as faithful agents even without the threat of defeat, have focused on roll call voting. In one case, Professor Lott also studied the frequency of voting, finding that legislators tend to vote less often when they do not plan to run for reelection, although the substance of the votes they do cast does not change in their last term. Lott, *supra* note 199, at 138-39 & tbl. 2. No one studying legislative shirking has focused on other less visible legislative activities, such as interactions with colleagues or regulatory agencies, where there is a risk that legislators may act contrary to the interests of their constituents.

roles in the political process, those that exert the greatest influence on major legislative votes appear to have agendas that reflect the interests of the lawmaker's constituents. Contrary to popular belief, interest group benefits seem not to be the equivalent of payments to "buy votes."²⁰³ Instead, interest group contributions flow to members who share the interest group's ideological perspective and who can therefore be expected to vote consistently with its interests even in the absence of benefits. Thus, the primary purpose of such campaign contributions may be to elect sympathetic members in the first place and then to keep them sympathetic.

Perhaps term limits supporters do not believe that interest group benefits actually change many votes; instead, they may believe that benefits allow such groups greater access to the powerful than the ordinary citizen has, and that such access may influence the legislative agenda in more subtle ways than overt vote buying.²⁰⁴ A member of Congress exercises influence in much broader spheres than the handful of her public votes indicates. She can participate in logrolling to shape particular provisions of a large omnibus budget proposal; she can exert pressure on regulatory outcomes; and she can arrange for interest group representatives to meet with other members of the legislative and executive branch offices. The voters suspect that, at the margin, interest groups influence outcomes (at least with respect to

²⁰³ Stephen G. Bronars and John R. Lott, Jr., recently studied the voting patterns of members of the House of Representatives from 1977 to 1990 to determine whether their voting behavior changed as a result of PAC contributions. Stephen G. Bronars and John R. Lott, Jr., *Do Campaign Donations Alter How A Politician Votes?*, (Aug. 9, 1994) (unpublished manuscript, on file with the *Cornell Law Review*). Their data, compiled from tests of the behavior of retiring members in their final period, compared both to their previous voting behavior and to the behavior of members who did not receive similar PAC contributions, reveal stable patterns of voting and do not support the argument that campaign contributions are used to "buy" members' votes. This study is consistent with others that have found either no influence on voting or ambiguous influences from PAC contributions. See, e.g., Janet M. Grenzke, *Shopping in the Congressional Supermarket: The Currency is Complex*, 33 AM. J. POL. SCI. 1 (1989); John R. Wright, *PACs, Contributions, and Roll Calls: An Organizational Perspective*, 79 AM. POL. SCI. REV. 400 (1985). But see JAMES B. KAU & PAUL H. RUBIN, CONGRESSMEN, CONSTITUENTS, AND CONTRIBUTORS 83-113 (1982). John Kingdon has also found that federal lawmakers are only slightly influenced, if at all, by interest groups that are not connected with the members' constituency in some way. See KINGDON, *supra* note 176, at 146-74. See also SCHLOZMAN & TIERNEY, *supra* note 178 (noting different tactics used by interest groups with respect to legislators who do not share their views).

²⁰⁴ See, e.g., Leahy, *supra* note 183, at 33-34 ("Clout is also a class issue. It implies that someone (a congressman) has the power to deliver favors for those of special need (special interests) at the expense of those who would otherwise benefit (the taxpayers of every state). . . . This favored class of individuals has access that the ordinary constituent can rarely attain."); Ron Nehring, *Congressional Before Crossroads: The Citizen Congress Act Moves Ahead*, NO UNCERTAIN TERMS, Dec. 1995, at 6 (discussing the perquisites showered on members of Congress by interest groups).

the details of legislation),²⁰⁵ and that they command a disproportionate share of the lawmaker's time and attention. Even if sorting by voters results in legislators with ideological preferences similar to those of their constituents, interest groups may be able to shape the congressional agenda to give priority to items that are relatively unimportant to voters. In addition, speeches by legislators at the behest of interest groups may operate to determine what issues voters consider to be salient.

For the purposes of this article, the change in interest group activity is important because it may alter the nature of the legislative office and therefore affect certain professional politicians' decisions to run for Congress. If one of the reasons people currently choose a career in politics is to receive interest group benefits, whether in the form of campaign contributions, in-kind benefits while they hold office,²⁰⁶ or employment when they retire from public life,²⁰⁷ then a reduction in the value of such benefits will reduce the desirability of the office.

To understand the phenomenon of interest group benefits, it is helpful to understand the relationship between groups and politicians. In return for benefits from a group, lawmakers work to pass desired legislation, to block proposals that would impose costs on the group, and to provide interest groups access to officials in the legislative and executive branches. From an interest group's perspective, the value of a deal with legislators depends on the deal's durability, a

²⁰⁵ Schlozman and Tierney argue that interest groups disproportionately influence the details of legislation:

[The ability to influence details] is not in the least a trivial form of influence. On the contrary, one of the axioms of policy analysis is that to know what a piece of legislation actually does, it is important to look beyond its broad purposes to the particulars; it is the details that specify such critical matters as when the measure is to take effect, whom it covers, how much is to be spent, and who has what authority to implement it. How such particulars are defined determines whether a measure will be a mere symbolic gesture or a potentially effective policy.

SCHLOZMAN & TIERNEY, *supra* note 178, at 311.

²⁰⁶ In the 104th Congress, the House and Senate amended their rules to tighten the restrictions on gifts from lobbyists. House members are prohibited from accepting gifts from people other than family and friends. Senators can only accept gifts valued under \$50, and they can receive no more than \$100 worth of gifts from any one source (other than family and friends). These rules may operate to eliminate from the pool of potential candidates those who place a high value on such in-kind benefits from special interests. The restrictions are not airtight, however. Certain exceptions in the new rules will allow legislators to travel extensively and to enjoy special treatment as long as the trips can be tied to their official duties. See Peter H. Stone, *Lobbyists on a Leash?*, NAT'L J., Feb. 3, 1996, at 242 (describing the various loopholes in the lobbying reform rules).

²⁰⁷ Federal regulation of post-tenure employment remains virtually non-existent; the provision currently in force, 18 U.S.C. § 207, is seldom used, and when it is invoked, prosecutors seldom prevail, see, e.g., *United States v. Nofziger*, 878 F.2d 442 (D.C. Cir.), cert. denied, 493 U.S. 1003 (1989).

somewhat uncertain factor given the vagaries of the legislative process.²⁰⁸ In other words, a tax expenditure worth \$1 billion annually to the independent oil and gas industry is more valuable if the politician can promise not only that she will enact such legislation, but also that she will stop any future attempts to repeal or narrow the provision. The industry should be willing to transfer to politicians an amount up to the present value of such a tax benefit, a figure that rises as the durability of the legislative deal increases.²⁰⁹

The nature of the legislative process renders the credibility of any promise of durability problematic, even in the current system. A future Congress, whose members do not share the interest group's agenda, has the power to alter past legislative bargains. The membership of Congress need not change to cause a breach of a legislative deal; the legislator who promises a long-term benefit to one interest group may be persuaded to renege on her deal, perhaps by a higher payment from another group. Term limitations further impair the durability of legislation and, thus, the value of any bargain. The decline of the seniority system, the resulting volatility in committee appointments, and the reduced tenure for pivotal members of Congress mean that an interest group cannot be certain that a sympathetic legislator will be in a position to control an important veto gate or to block attempts to unravel past legislative arrangements. Even if seniority remains a vibrant norm, a twelve-year limit on service means that a member will serve as a committee chairman for no more than four to six years.²¹⁰ No longer will the oil and gas lobby know, for example, that for nearly two decades, a Russell Long at the helm of the Senate Finance Committee can block tax legislation detrimental to their objectives.

One aspect of the change wrought by term limits suggests that durability may not be reduced as much as might be expected. If term limits reduce legislator effectiveness so that lawmakers lack the skill to repeal or modify old bargains, then past legislative deals will remain in place. From the interest group's perspective, however, greater inepti-

²⁰⁸ See Richard L. Doernberg & Fred McChesney, *On the Accelerating Rate and Decreasing Durability of Tax Reform*, 71 MINN. L. REV. 913 (1987); Fred S. McChesney, *Rent Extraction and Rent Creation in the Economic Theory of Regulation*, 16 J. LEGAL STUD. 101 (1987); Weingast & Marshall, *supra* note 174, at 138-39 (discussing ways Congress attempts to assure credibility notwithstanding great difficulties in binding future congresses). For a general description of the interest group theory of politics, see Robert D. Tollison, *Public Choice and Legislation*, in PREDICTING POLITICS: ESSAYS IN EMPIRICAL PUBLIC CHOICE 15 (W. Mark Crain & Robert D. Tollison eds., 1990).

²⁰⁹ See William M. Landes & Richard A. Posner, *The Independent Judiciary in an Interest-Group Perspective*, 18 J. L. & ECON. 875, 877-79 (1975); Jonathan R. Macey, *Promoting Public-Regarding Legislation Through Statutory Interpretation: An Interest Group Model*, 86 COLUM. L. REV. 223, 227-229 (1986).

²¹⁰ See *supra* text accompanying notes 92-93.

tude and confusion caused by more frequent turnover will reduce the predictability of the legislative process. Interest groups will find unpredictable promises much less reliable than the potent guarantee of durability now provided by an entrenched committee system coupled with a strong seniority norm.

By changing the value of the "product" that legislators can offer, the adoption of term limits will reduce the amount of benefits that interest groups are willing to fund.²¹¹ Assuming that interest groups prefer that the legislative product remain unchanged, and that the groups will continue to shower benefits on entities able to guarantee durable deals, the affected parties—legislators and interest groups—will try to develop alternate ways to ensure that deals do not unravel. One entity with both a longer time horizon and an ability to act as a conduit between interest groups and legislators is the political party.²¹² If political parties can bargain with interest groups and reach deals, they will receive the benefits and then parcel them out to legislators. Ambitious people attracted to the bonanza of interest group goodies can continue to pursue that objective, albeit through an intermediary.

A political party can assume this role only if it is able to control legislative outcomes to the extent necessary to make credible promises concerning congressional action. Parties do not currently exercise such control over their members. Rather than sorting candidates by ideology or attempting to dictate voting behavior, party organizations

²¹¹ If the legislative "product" becomes cheaper, it will also become more affordable to interest groups. In this case, term limits may actually increase the level of interest group activity as more organizations can enter the market. This outcome is quite likely if significant numbers of new legislators are interested in making deals to respond to the desires of their constituents—many of whom participate in interest groups. Although less effective legislators may find passing legislation more difficult, *see supra* part IV.B., some interest group legislation will pass because it faces little opposition or is part of the logrolling necessary to enact other bills. Thus, legislative output may increase, but not with respect to the controversial matters I identified as the potential casualties of term limits. *See supra* text accompanying notes 165-81. *But see* Elhauge, *supra* note 4, at 29 (arguing that reduction in expertise would reduce certain interest group legislation (pork-barrel bills), but not considering the effect of reduced durability or decreased cost of the legislative product). As I discuss, however, legislators and interest groups that want the value of the legislative "product" to remain unchanged can rely on entities with longer time horizons for durable promises. *See infra* text accompanying notes 212-20.

²¹² *See* Weingast & Marshall, *supra* note 174, at 158-59 (noting that "strong parties and strong committees, as institutional underpinnings of legislative exchange, are substitutes"). Parties also serve a coordinating function in the legislature by "providing a forum where legislators can arrange [vote] trades," i.e., facilitate logrolling. J. MARK RAMSEYER, PUBLIC CHOICE (University of Chicago Law & Economics Working Paper No. 34, 2d Series 1995). A political party currently has a longer time horizon than an individual candidate because the party remains a player on the political scene much longer than does any individual politician. A political party may thus have an incentive to influence legislator behavior; to the extent that parties are currently rather unsuccessful at this task, we might wonder whether they could increase their influence in response to term limits.

use their resources primarily to elect a large number of party members.²¹³ Majority-party status is crucial in a variety of ways; for example, the leaders of the majority party largely control the legislative agenda. Certainly, party leaders also work to influence members' votes, but renegade members often avoid harsh punishment because leaders are more concerned with maintaining a large caucus than they are with winning a vote on any particular issue. If rogue members support the party on certain key procedural votes, such as voting for the "rule" in the House or voting for cloture in the Senate, they can safely diverge from the party line on other votes that are more salient for their constituents. Similarly, lawmakers currently have no real incentive to strengthen political parties and reduce their own independence because the power of incumbency allows them to make legislative deals that are durable enough without an additional party guarantee. Given the discount rate applied to any deal, a legislator's promise of twenty to thirty years protection is worth as much as a promise of indefinite duration made by a political party.

Under term limits, however, political parties need not remain paper tigers (or, more accurately, a paper donkey and elephant). First, parties can sort potential candidates, as voters do now, supporting only those who share their ideology.²¹⁴ Potential candidates can benefit from party support in several ways. Party affiliation is an important signal to voters during campaigns; even with the rise of incumbency as a voting cue, the most significant factor affecting a voter's decision may be her partisan identification.²¹⁵ As term limits reduce a candi-

²¹³ See Kevin M. Leyden & Stephen A. Borelli, *Party Contributions and Party Unity: Can Loyalty be Bought?*, 43 W. POL. Q. 343, 345 (1990) (noting that "[p]arty committee staffers repeatedly state that their mission is to help congressional candidates win elections, not to influence policy or policymakers"). Leyden and Borelli's study suggests that certain kinds of campaign spending by parties can increase party unity among winning candidates and thus can be used by parties to influence legislative outcomes. *Id.* at 358. See also Steven G. Calabresi, *Political Parties as Mediating Institutions*, 61 U. CHI. L. REV. 1479, 1527 n.155 (1994) (noting that while parties attempt to send out signals concerning ideology, they also need to assemble majorities).

²¹⁴ See John R. Lott, Jr. & Michael L. Davis, *A Critical Review and an Extension of the Political Shirking Literature*, 74 PUB. CHOICE 461, 478 (1992) (noting that evidence suggests that sorting by voters is efficient and occurs quickly).

²¹⁵ See, e.g., CAIN ET AL., *supra* note 110, at 9 (noting continuing importance of partisan affiliation even with the rise of the "personal vote," or support for a candidate based on her personal qualities); cf. FENNO, *supra* note 67, at 241 (acknowledging importance of party identification, but also noting increase in importance of home style and other "candidate-centered" qualities); see also FLORINA, *supra* note 66, at 24-26 (discussing growing importance of incumbency cue in relation to party affiliation). But see PAUL S. HERRNSON, CONGRESSIONAL ELECTIONS: CAMPAIGNING AT HOME AND IN WASHINGTON 205-06 (1995) (concluding that incumbency is the "most important determinant of congressional election outcomes"); John A. Ferejohn, *On the Decline of Competition in Congressional Elections*, 71 AM. POL. SCI. REV. 166 (1977) (studying increasing importance of incumbency relative to candidate's party affiliation, even for voters who identify themselves as either Democrats or Republicans).

date's ability to develop a distinct brand name, and as they diminish the relevance of incumbency, a candidate may increasingly depend on her party affiliation to win elections. Moreover, campaign contributions to candidates by political parties can be significant because the "soft money" loophole in the campaign finance laws allows parties to circumvent contribution limitations.²¹⁶ Also a party contribution spurs interest groups to direct their money toward those candidates;²¹⁷ thus, a party's contribution can influence a campaign to an even greater extent than its monetary value suggests.

Other tools are also available to control a legislator's behavior once in Congress. A party can begin to manipulate these tools if interest groups will otherwise reduce their payments because of concern that the party's sorting of candidates is not foolproof. Mechanisms for disciplining a sitting member of Congress do exist even though they are not now used to encourage particular voting behavior. For example, party leaders can use committee assignments to reward and punish members for their voting behavior.²¹⁸ It will become easier, and

²¹⁶ The term "soft money" refers to contributions by parties at the state level ostensibly for "get-out-the-vote" campaigns and other party-building activities. Anne H. Bedlington, *Loopholes and Abuses, in MONEY, ELECTIONS, AND DEMOCRACY: REFORMING CONGRESSIONAL CAMPAIGN FINANCE* (Margaret L. Nugent & John R. Johannes eds., 1990) [hereinafter MONEY, ELECTIONS, AND DEMOCRACY]. Soft money expenditures are not limited by the federal campaign finance laws, and such expenditures by parties have been publicly disclosed only since 1991. Peter H. Stone, *Soft Money—Lots of It Is Still Secret*, NAT'L J., Nov. 25, 1995, at 2913; Peter H. Stone, *Labyrinth of Loopholes*, NAT'L J., Nov. 25, 1995, at 2912. Some soft money still escapes disclosure. Most notable are expenditures by the so-called "leadership PACs" which are controlled by congressional leaders who often contribute soft money to the campaigns of members of Congress who have supported them and who face difficult elections. Federal Elections Comm'n v. GOPAC, 917 F. Supp. 851 (D. D.C. 1996); see also Eliza Newlin Carney, *Backdoor PACs*, NAT'L J., Mar. 2, 1996, at 468 (noting increasing importance of state-based PACs, which are not regulated by federal law and which are used by many federal candidates). In fact, soft money is often coordinated with candidates' campaigns, even those for federal office, and allows candidates to use their limited campaign funds elsewhere. See James A. Barnes, *Diary's Gramm Entry a Dud?*, NAT'L J., Sept. 23, 1995, at 2365 (discussing common occurrence of coordination between particular candidates and parties and party committees spending soft money). Soft money can add up to tremendous sums; in 1995, the Republican and Democratic Party Committees collected more than \$64 million in soft money. Peter H. Stone, *Some Hard Facts About Soft Money*, NAT'L J., Mar. 23, 1996, at 672; see also Colorado Republican Campaign Committee v. Federal Election Commission, 116 S. Ct. 2309 (1996) (allowing political parties to make unlimited independent expenditures during campaigns).

²¹⁷ GARY JACOBSON, *MONEY IN CONGRESSIONAL ELECTIONS* 96 (1980). Political parties can also provide candidates with a great deal of technical support. See generally PAUL S. HERRNSON, *PARTY CAMPAIGNING IN THE 1980s* (1988) (discussing the increasing importance of political parties in congressional campaigns and detailing the technical and non-monetary support they offer).

²¹⁸ In recent Congresses, the party caucuses have tried to accommodate members' requests for committee assignments and have not used their power of assignment to enforce party discipline. See KENNETH A. SHEPBLE, *THE GIANT JIGSAW PUZZLE: DEMOCRATIC COMMITTEE ASSIGNMENTS IN THE MODERN HOUSE* 236-38 (1978) (noting that statistical evidence tends to support accommodation theory of committee assignments); SMITH & DEERING,

more appropriate, to use measures of party support to choose congressional leaders if the seniority norm is replaced by an ambiguous merit standard. Given the relatively frequent turnover of party leaders, the duty of monitoring members may fall to staff in either the congressional party structures or the national party organizations. Voting and other important indications of party loyalty, such as activities in committee, will be sufficiently public that knowledgeable observers can compile the relevant information and make it available to party leaders when they organize each new Congress.

Finally, an institutional arrangement that allows political parties to serve as intermediaries between interest groups and members can be structured so that compliant party members still receive a significant amount of interest group benefits. If the new arrangements eliminate the erosion of legislative durability, interest groups will be willing to send political parties the same amount of benefits as they now send to individual legislators—in whatever form would be most helpful to lawmakers.²¹⁹ For example, a party can reward its faithful with campaign help or with employment in an enlarged party organization. Interest groups themselves can hire sympathetic lawmakers who have been forced out of public life by term limits but wish to continue their political involvement.²²⁰

That benefits will often take the form of post-tenure employment may mean that, under term limits, many of the current legislator objectives identified previously can still be achieved by politicians. Term limits will decrease a politician's ability to plan on a long-term career in elected office, but, if she can be relatively certain of employment in a job that allows her to use legislative skills and that offers her benefits similar to those available to members of Congress, she can face the increased uncertainty of the electoral process with greater

supra note 124, at 68-69 ("Although there are opportunities to do so, current party leaders do not attempt to exercise special influence on the vast majority of assignment decisions."). *But see* RICHARD F. FENNO, JR., *CONGRESSMEN IN COMMITTEES* 25-26 (1973) (finding that with regard to the important assignments to the Ways and Means Committee, party leaders did impose a test of party orthodoxy); Jackie Koszczuk, *GOP Faces Campaign Year Adrift in Roiled Waters*, 54 CONG. Q. 139, 141 (Jan. 20, 1996) (reporting that Gingrich applied discipline to freshmen who refused to vote with him to reopen the federal government).

²¹⁹ Cohen & Spitzer, *supra* note 4, at 515-17.

²²⁰ Professor Lott has found that politicians who leave public life for jobs with constituency groups or political parties do not behave differently in their last period than do other politicians, indicating that the promise of future employment does not affect voting patterns. John R. Lott, Jr., *Political Cheating*, 52 PUB. CHOICE 169, 176-179 (1987). This result is consistent with his findings that voters ensure legislator fidelity through sorting, rather than through the threat of denying reelection. However, his finding does not indicate that, in a world with term limits, politicians who seek interest group rewards will not re-engage institutional structures so that they can continue to enjoy the same amount of benefits; for example, they can receive pecuniary benefit through salaries in post-tenure jobs rather than through campaign contributions.

equanimity. If she is entering politics to shape policies, she can continue to pursue that goal as a party official brokering legislative deals and sorting candidates according to their ideologies. Indeed, with the decline of legislative effectiveness, inexperienced lawmakers may rely heavily on the "old hands" in the party. A candidate who primarily desires prestige from public service, however, may be less pleased with the effect of term limits on institutional arrangements. An increased supply of people seeking lobbying jobs and party positions will decrease the prestige associated with these positions, as well as the pecuniary compensation they offer.

Thus, after term limits, political parties will have the capacity to take advantage of politicians' reduced ability to extract payments from interest groups in return for promises of long-term legislative deals. The primary problem for the two parties as they attempt to fill this new role will be that they do not have clearly defined ideological platforms on which interest groups can rely. In their quest to gain the support of a majority of voters in all parts of the country, parties avoid firm allegiances to any ideology and attempt to represent all things to all groups.²²¹ For example, the independent oil and gas lobby can currently ascertain which candidates are likely to be sympathetic to its perspective by looking at the region they represent, their past experience, and their particular statements on the economy and the industry. The Republican and Democratic parties, however, do not send out very clear signals about their positions on issues relevant to the lobby. For example, the Democratic party has included strong supporters of special legislation favoring the oil and gas industry, such as Lloyd Bentsen and Bill Archer, as well as some of its most vocal opponents, such as Bill Bradley and Howard Metzenbaum. When the industry wants to negotiate with the Democratic party for a durable tax expenditure, how can it know that the party will support candidates similar to the first group of lawmakers, rather than the second? Unless the parties place greater importance on clear and binding policy platforms, interest groups may be uncomfortable relying on them to sort candidates.

But modern political parties are shaped by the institutional framework in which they exist. In the absence of term limits, the most

²²¹ Professor Rossiter once observed that our parties stand for "flag, home, mother, virtue, liberty, and progress—in a word, for victory." CLINTON ROSSITER, *PARTIES AND POLITICS IN AMERICA* 175 (1960). See also Calabresi, *supra* note 213, at 1521 (detailing reasons for reduced influence of political parties in modern Congress); Jonathan R. Macey, *Packaged Preferences and the Institutional Transformation of Interests*, 61 U. CHI. L. REV. 1443, 1463 (1994) (stating that party affiliation provides little information about the positions of particular politicians on issues); Jonathan R. Macey, *The Role of Democratic and Republican Parties as Organizers of Shadow Interest Groups*, 89 MICH. L. REV. 1, 21-22 (1990) (stating that the ideological signal sent by party affiliation is quite weak).

important objective for a party is to dominate the legislative and executive branches. Sending unambiguous signals concerning policy objectives is less important. However, if a political party wants to assume a new role under term limits, it can do so. For example, parties can use geography and constituent interests as reliable proxies for ideology. In the example above, oil and gas industry lobbyists may be content if they know that Democrats from oil-producing states will fill key spots on the energy and tax-writing committees and that the parties will keep committee jurisdictions relatively unchanged from year to year. Interest groups can therefore rely, not only on the promises of the party, but also on the natural allegiance of members who are likely to hold sympathetic views.

If the existing parties cannot change sufficiently enough to broker durable deals, other entities will develop to fill such a role. Perhaps new political parties will form around defined platforms that signal interest groups searching for a guarantor of durable political deals, or perhaps parties will develop geographical units in the various regions of the country. The history of political parties in this country, however, is mainly one of a very few parties, so other devices for meaningful signaling may be required. The role of intermediary may be assumed not by political parties, but by well-established advocacy groups such as the National Taxpayers Union, the Sierra Club, and the Concord Coalition.²²² Their endorsement of candidates can signal ideological preferences to interested parties, particularly to their members who are likely both to vote and to contribute time and money to sympathetic candidates. Such groups can act as conduits of benefits to legislators, in part through the use of independent expenditures, a virtually unlimited source of campaign funds.²²³ Moreover, such organizations can offer post-tenure employment to

²²² Interest groups are already beginning to play this role. See Thomas B. Edsall, *It Doesn't Always Take a Party*, WASH. POST, National Weekly Edition, Aug. 26 - Sept. 1, 1996, at 11 (discussing increasing political influence of outside groups such as the Sierra Club, NARAL and the Chamber of Commerce since the 1980s); Michael Weisskopf, *For the NITB, Organizing Makes It So*, *id.* at 12 (detailing activity of National Federation of Independent Business in recent elections and importance of their endorsement in campaigns).

²²³ Independent expenditures are not limited by the federal campaign finance laws. *Buckley v. Valeo*, 424 U.S. 1, 54-59 (1976) (per curiam); see also Candice J. Nelson, *Loose Cannons: Independent Expenditures*, in MONEY, ELECTIONS, AND DEMOCRACY, *supra* note 216 (discussing increasing importance of independent expenditures because they, unlike campaign contributions, are unlimited). Independent expenditures have played substantial roles in recent congressional elections. In 1992, independent expenditures were greater than \$10 million, with the National Rifle Association alone spending over \$3 million. MORRIS & GAMACHE, *supra* note 86, at 79. In the 1994 elections, the various advocacy groups forming term limits used such expenditures to affect election outcomes. See DAN BALZ & RONALD BROWNSTEIN, *STORMING THE GATES: PROTEST POLITICS AND THE REPUBLICAN REVIVAL* 23 (1996) (noting crucial role played by U.S. Term Limits organization in Oklahoma congressional election); *Look for Independent and Negative Ads in 1996* (National Public Radio Morning Edition, Nov. 11, 1995) (Transcript No. 1475-2, on file with author) (noting

legislators; if the groups become more important players on the political scene, these jobs may become very attractive to professional politicians with compatible ideologies.

Prospective candidates who are motivated by a desire for interest group benefits may thus be able to pursue that objective after the adoption of federal term limits. Legislators will have an incentive to use existing entities with longer time horizons—most obviously political parties—to bargain with interest groups pursuing legislative deals. In turn, these entities can serve as conduits of benefits to politicians, encouraging persons with the proper ideological preferences to enter political life. Again, the effect of term limits on the nature of the legislative office may be negligible.

CONCLUSION

The primary claim of term limits activists, that adoption of an amendment limiting the service of federal legislators will transform Congress into a body of amateur, rather than professional, politicians, is overstated. Not only will people still consider politics a promising career option, but many who entered with discrete ambition will find the temptation to remain in politics overwhelming. Perhaps persons with sincere and settled discrete ambition will be found more frequently in the federal legislature than now, but my analysis indicates that they will be relatively rare creatures.

Although Congress will still be dominated by professional politicians, the patterns of their careers may be different. Politicians may exhibit cyclical ambition more frequently, working in state positions or in politically-related private employment before reentering the federal government. Further analysis of the differences between careerists who serve for years in one office and careerists who hold a variety of jobs at different levels of government would be useful. For example, will a varied political experience change the relationship between the federal government and the states, perhaps leading to increased cooperation and coordination?

Future analyses of the effects of term limits ought not to focus on the citizen-versus-professional debate,²²⁴ but rather on whether the nature of the legislative office will be so profoundly changed by term limits that even professional politicians will act differently. Given the

that Americans for Limited Terms spent \$300,000 for issue ads that affected the congressional race in which Speaker Foley was defeated).

²²⁴ If term limits activists remain committed to the notion of a citizen-legislature, then they should consider alternative formulations of a term limitations amendment; for example, implementing a lifetime cap on the number of years one person could serve in Congress or in any elected office at the state or federal level. Such a restriction, however, will exacerbate any decline in legislator effectiveness that results from the form of term limits I study here.

players' control over the rules of the game, however, term limits may not result in the sort of sweeping structural changes envisioned by its supporters. Many features of Congress and of the political arena are endogenous; thus, self-interested legislators can alter these structures to enable them to continue to meet many of their objectives.

Although federal legislators can compensate for many of the institutional effects wrought by term limits, it seems likely that term limits will decrease lawmakers' ability to enact controversial legislation. A less effective Congress will change the nature of what it means to be a representative or a senator not only for those seeking to implement new policies. In addition, less prestige will be associated with an office that affects fewer Americans, disappointing those who seek power for its own sake, and fewer interest group benefits will flow to politicians who lack the skills to deliver suitable legislation.

My conclusion that legislative output, at least with regard to contested issues, will decline suggests other directions for future studies of term limits. For example, if term limits reduce the economic and social influence of the federal government, perhaps politicians whose ideologies are more compatible with the new federal role will find political careers particularly attractive. A discussion of possible change in the ideological profile of Congress should focus not only on whether Republicans will benefit more than Democrats,²²⁵ but also on whether persons favoring smaller government will be more prevalent and more powerful. One hypothesis is that these "libertarians" do not stay in Congress for long, often leaving in disgust or frustration. The decline in the seniority system combined with shorter terms may increase their willingness to serve. At the least, these conditions may increase the influence of those libertarians who are elected.²²⁶ Such a change in the dominant ideology of Congress would have far-reaching

²²⁵ Cf. John B. Gilmour & Paul Rothstein, *Early Republican Retirement: A Cause of Democratic Dominance in the House of Representatives*, 18 LEG. STUD. Q. 345 (1993) (noting that Republicans voluntarily leave office at a higher rate than Democrats); Reed & Schansberg, *The House*, *supra* note 5, at 712-13 (concluding that term limits would benefit Republicans more than Democrats). But see Gary C. Jacobson, *The House Under Term Limits: A Comment*, 76 SOC. SCI. Q. 720 (1995) (questioning earlier findings because term limits alter career incentives so fundamentally). Some supporters of term limits are quick to disclaim any intention to favor one party over the other. See, e.g., Mitchell, *supra* note 17, at 740.

²²⁶ Weakening the seniority system may have other effects on the demographics of Congress. For example, perhaps one reason large numbers of women are not found in the Congress is that their family responsibilities lead them to careers which allow them blocks of time away from work. If the seniority system is weakened, such prospective candidates who want the option of rotating between public and private life will find legislative office more attractive. A system that encourages candidates for Speaker or Majority Leader to identify a "Cabinet" of committee leaders could increase the representation of women and minorities in leadership positions. It is unimaginable, for example, that a President of either party would appoint a Cabinet consisting only of white males.

effects,²²⁷ including a substantial influence on the ideology of federal judges whose views of constitutional issues and statutory interpretation in turn affect the substance of federal law.

Alternatively, some supporters equate careerism with unacceptable fiscal policies and hail term limits as the cure. "The unhealthy tendency that today requires constitutional correction is the distortion of government and the demotion of Congress in the regime. That distortion and that demotion have been produced by legislative careerism predicated on constant abuse of the power of the purse."²²⁸ If activists are arguing that long-time politicians are more likely to become part of a "culture of spending" the longer they remain in office, empirical data seem to undermine that claim.²²⁹ It is unclear, however, whether the current system encourages those who favor large wealth transfers through federal spending to seek a career in Congress in the first place, or whether members who favor high spending levels remain in Congress for a longer period. In other words, perhaps the "culture of spending" is a manifestation not of a moral hazard problem but of a selection bias.²³⁰ If the structure of the federal government changed so that less wealth can be transferred by Congress, those attracted to the federal legislature may be very different sorts of people, even if they tend to remain in politics for the entirety of their careers.

Perhaps term limits activists, many of whom are generally hostile to the federal government, favor the amendment because it may reduce the ability of members of Congress to interfere in their lives. But reduced legislator effectiveness may result in no reduction in the size of the federal government, at least not in gigantic entitlement programs or in the benefits currently transferred through the tax code, because these programs are on "automatic pilot." Unlike programs

²²⁷ See, e.g., Kenneth B. Noble, *A Swerve to the Right in California*, N.Y. TIMES, Feb. 2, 1996, at A6 (stating that term limits are partly responsible for a strong Republican presence in state legislatures and thus can generate significant policy change).

²²⁸ WILL, *supra* note 7, at 182; see also Stevens Backs Billion Dollar "Pork Boat" and Gingrich Pulls Down Big Money for District, NO UNCERTAIN TERMS, Jan./Feb. 1996, at 6 (attacking pork barrel politics and blaming unnecessary spending on lack of term limits); *Putting an End to the Prisoners' Dilemma of Incumbency*, *id.* at 7 (same).

²²⁹ Arsene Aka et al., *Is There a "Culture of Spending" in Congress?* (August 1995) (unpublished manuscript, on file with the *Cornell Law Review*). Cf. CAREY, *supra* note 5, at 104-05 (finding that particularism, or pork barrel politics, thrives in the term-limited legislature of Costa Rica). But see JAMES PAYNE, *THE CULTURE OF SPENDING* 175-81 (1991) (arguing on the basis of cross-sectional data that increasing tenure correlates with increasing willingness to support large spending programs); Robert A. Lawson & Russell S. Sobel, *Will Term Limits Limit Government Spending?*, (1996) (unpublished manuscript, on file with the *Cornell Law Review*) (using cross-sectional data from 103d Congress and finding that term limits might reduce government spending but that the effect would be small).

²³⁰ See W. Robert Reed et al., *The Relationship Between Congressional Spending and Tenure with an Application to Term Limits* 15 (September 1995) (unpublished manuscript, on file with the *Cornell Law Review*).

funded through the annual appropriations process, legislative change is required to pare back entitlement programs, which constitute nearly half of the federal budget²³¹ and, along with tax provisions, are the most visible ways in which ordinary citizens are affected by the federal legislature. If proponents of the "era of small government" do not dismantle these programs before legislator effectiveness is impaired, program supporters can block reform legislation at any one of the vetogates that survive after the adoption of term limits.²³²

Finally, reduced legislator effectiveness may further empower the President and the executive branch relative to Congress. Most obviously, long-time federal bureaucrats represent a source of expertise that can compensate for reduced legislator effectiveness. Because executive officers will presumably offer their skills and institutional knowledge only with respect to legislation they support, the executive branch will significantly influence the congressional agenda. Indeed, after term limits, the modern phenomenon of an "outsider" President being out-manuevered by the old hands on the Hill may become a historical footnote. More interestingly, legislators may compensate for the reduced ability to pass controversial bills by drafting more general provisions that can garner widespread support and can allow lawmakers to avoid taking firm positions on contested issues. Such general language will delegate more policymaking to administrative agencies and federal bureaucrats, again increasing their relative power.

Put more simply, when we move away from arguments about the citizen-legislator and toward analyses of the dynamic interactions between term limits and institutional arrangements, we move into fascinating territory full of challenging questions. The answers will illuminate not only the effects of term limits; they may also improve our understanding of current legislature behavior.

²³¹ BIPARTISAN COMMISSION ON ENTITLEMENT AND TAX REFORM, INTERIM REPORT TO THE PRESIDENT 10-11 (1994).

²³² Cf. RAUCH, *supra* note 178, at 125 (discussing the difficulties of dismantling subsidy programs in an interest group democracy). The difficulties that the Republicans in the 104th Congress have faced in enacting a budget reconciliation bill to restrain the growth of certain entitlement programs should provide sobering evidence to fans of small government; it is much easier to oppose change than to enact it.