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House Democrats Want to Limit Supreme Court Terms — Through Legislation

There seems to be no end to disrespect for the clear wording of the Constitution among far too many members of the modern Democratic Party. Now, despite the U.S. Constitution providing for a life term for members of the federal judiciary, some Democrats in the U.S. House of Representatives are calling for limiting the tenure of Supreme Court justices to 18 years, with a bill announced this week.

Article III of the Constitution states, "The judges, both of the supreme and inferior courts, shall hold their office during good behavior."

The "Supreme Court Term Limits and Regular Appointments Act," sponsored by Representatives Ro Khanna of California, Joe Kennedy of Massachusetts, and Don Beyer of Virginia, would allow the president to nominate two justices to the Supreme Court during each four-year term and would limit the tenure of a justice to 18 years. The three House members have "Freedom Index" scores of 24 percent, 22 percent, and 15 percent, respectively. The Freedom Index rates members of Congress on how their votes demonstrate fidelity to the U.S. Constitution.

This proposed law is a reflection of those low scores. Regardless of the merits of the proposal, it is *not* what the Constitution provides. And because of that, simple legislation such as this proposal by these three House Democrats cannot change the Constitution. Particularly egregious is the idea that every president will be allowed to nominate two justices to the Supreme Court during each four-year term. While one may argue that this would be a good policy (or not), such a proposal would require an amendment to the Constitution.

Representative Khanna said that his proposal "would save the country a lot of agony and help lower the temperature over fights for the court that go to the fault lines of cultural issues and is one of the primary things tearing at our social fabric." Perhaps so, but again, this cannot be accomplished by mere legislation — it requires a constitutional amendment.

Many would argue that limiting the president to two terms in office is good, considering the potential concentration of power in that office. A good example would be the growth of presidential power under Franklin Roosevelt, who was elected four times. Before FDR, two terms for presidents was a tradition, established by Thomas Jefferson, who explicitly followed the example set by the first president, George Washington, who retired to his Mount Vernon home in 1797, following two terms in office.

When Republicans gained control of both houses of Congress following the 1946 elections, they proposed an amendment to the Constitution to limit the president to two terms in office. They did not simply argue that they could do it through legislation, like these Democrats are saying they can do so with Supreme Court tenure.

Then there is the example of Congress. Interestingly, the Democrats are not proposing term limits on Congress, just the Supreme Court. In 1995, the Supreme Court ruled 5-4 in *U.S. Term Limits, Inc. v. Thornton*, that states could not impose term limits on their own U.S. representatives and senators. Their reasoning was that the Constitution did not provide for congressional term limits, and the only way to add qualifications for election to the House or the Senate would be through a constitutional amendment. States had no constitutional authority to add qualifications beyond what are found in the Constitution. Term limits for members of Congress were discussed at the constitutional convention, and explicitly rejected. Delegate Rufus King said that a person who has "proved himself to be most fit for an

office, ought not to be excluded by the Constitution from holding it."

Circumventing the wording of the Constitution is not uncommon, as can be seen with the National Popular Vote (NPV) proposal, popular with Democrats, which would essentially make the Electoral College irrelevant. As it stands now, presidential candidates receive electoral votes by carrying a state's popular vote. NPV would change that through a compact of states to determine a state's electoral votes by who carried the *national* popular vote. The reason for this proposal is clear. Enemies of the Electoral College have concluded that they are not able to abolish it through an amendment to the Constitution, so they are just going to make an end-run around it.

The same thinking is at play with this proposal to limit the terms of members of the Supreme Court. A constitutional amendment requires two-thirds vote of each house of Congress, followed by ratification from three-fourths of the states, and there is little likelihood of that happening with this proposal.

The Founders intentionally made changes in the Constitution — the fundamental and supreme law — difficult, but not impossible. After all, it can be done, if there is enough support for such an amendment, as evidenced by the fact that the Constitution has been amended 27 times.

But this effort by these three very liberal House Democrats does provide us with another lesson, which is the dangers posed by another constitutional convention. The Constitution provides for the possibility of amendments by such a convention, if asked for by two-thirds of the states. Some conservatives have been duped into supporting what is sometimes called a "convention of states." Leftists who hate our present Constitution are no doubt salivating at the thought of being able to change it at a national convention. After all, we could anticipate liberals like these three House members being present at such a convention, proposing all sorts of left-wing ideas, like repealing the Electoral College, the Second Amendment, and the like. They might even propose scuttling our present Constitution in favor of one more to leftist liking.

As was said earlier, regardless of the merits of their proposal to limit terms of office of Supreme Court members, such proposals require amending the Constitution. Changing our political structure through legislation is not what the Founders intended. George Washington made this very point, when he said, "If in the opinion of the People, the distribution or modification of the Constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the Constitution designates. But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed."

I think Washington had more wisdom than these three members of the House of Representatives.

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