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Michigan COMMENTARY

Term Limitation: Unravelling the Constitution

by State Representative Maxine Berman

In June 1990 Public Sector Reports issued a Michigan Commentary on political tenure written by Craig Ruff. The Commentary received considerable attention in the media. In the interest of continuing public debate, we are printing Representative Maxine Berman's views on the subject.

Maxine Berman represents the 64th District in the Michigan House of Representatives. Rep. Berman, chair of the Elections Committee in the 85th House session, spends much of her time in the legislature on election law, attempting to streamline election procedures and limit the power of political action committees.

Probably, nothing seems more self-serving than a legislator opposing term limitation, but I am, more importantly, a citizen and constituent of many other elected officials. So were the founders of this country, who rejected term limitation in the same spirit with which they framed our Constitution: a fundamental belief in the wisdom of the people, in their absolute freedom to choose their representatives, and in the requisite responsiveness of their elected officials. Now, as then, term limitation may appear to be just the panacea we're looking for, but in truth it solves no problems and poses significant risks.

The main promoters of term limitation reflect some of its basic arguments. First are all those who feel left out or locked out of the system: Republicans in heavily Democratic legislatures, Democrats in heavily Republican legislatures, and those who see no other way to increase their elected numbers without waiting for *another* century to pass, like women. (The latter are probably correct. But while I share their frustrations, I cannot support ceding my legitimate rights in exchange for a legitimately deserved parity.) Second are people who are frustrated by what they perceive is a dearth of action on their particular issue. They want lower taxes, different taxes, more health care, more guns, less guns, and so forth, and think frequent or wholesale legislative changes would accomplish their goals, failing to realize that people who elected current legislators are likely to vote for the same kind of person again.

Finally, there is a political elite in this country that has the time and resources to chew the philosophical fat while the rest of us spend our days worrying about educating our kids, drugs, the prices at the pump, our relatives in the Persian Gulf, and whether our jobs will be there next year. While they would certainly issue vehement denials, the political elite really believes that most voters are just plain dumb, that reelecting the same person more than three or four times is a sign of stupidity rather than commitment, of apathy rather than attention. As someone who spends considerable time reviewing policy and voting records, who has voted for the same congressman five times, and who knows *exactly* why, I am not about to allow the State of Michigan to take this right away from me. This is the side of term limitation promoters I most resent.

They warn that while the public supposedly sleeps, legislators stay forever and create and maintain every possible roadblock to competition. Nothing could be farther from the truth: The most stunning flaw in their term limitation argument is that longevity is, in fact, the exception rather than the rule in Lansing. Beginning in 1991, only 36 percent of Michigan's House will have served more than eight years, 29 percent more than ten years, 20 percent more than twelve years. More important, legislative turnover from when I first served in 1983 is 40 percent, and 15 House seats have changed hands more than once.

Furthermore, if the 1982 reapportionment is taken into account, the ten-year turnover in the House is 67 percent, in the Senate, 63 percent. Current estimates are that the twelve-year turnover, with two reapportionments intervening, will be at least 80 percent.

Did all of the former members lose? Hardly. Only about a quarter of them did. Most simply chose to leave. Others ran for other offices (some unsuccessfully). Two died. But the turnover raises a significant question: Do those who support term limitation want fresh blood (which they're getting) or do they just want blood? If the legislature experiences this kind of turnover already, and the past decade has not been unique, how will term limitation solve all of the problems attributed to the current open system?

Will, for example, legislative races be more competitive, a goal established by term limitation promoters? Most areas of the state are heavily Republican or Democratic. Incumbents in these seats generally have to be beaten in a primary, and in spite of the unfortunate weakening of both major parties, running a primary against a popular incumbent does not win many points. Furthermore, incumbents simply know more people, are asked to speak more, to meet and greet more, to be quoted more, to introduce bills. Their visibility is a simple reflection of who they are, and those who view this with disdain would probably be the first to criticize legislators who rarely show up anywhere. We have only to look at the narrow "escape" of Newt Gingrich in the 1990 election to understand this. Politicians who fail to keep the home fires burning generally find their careers in ashes.

Term limitation supporters also criticize legislators for doing too much constituent work. While many constituents who have been helped by my office and those of my colleagues would hardly consider this a fault, there may be legitimate concern about the increased role of constituent work and the staff to do it, but that increase has been much less a factor of attempting to solidify incumbency than a simple increase in population served. Those who long for the "good old days" of representation choose to ignore the fact that each House member now represents 64,000 more people than in 1890, 14,000 more than in 1960. Each Senate member represents 210,000 more people than in 1890, 45,000 more than in 1960. Each member of Congress represents 330,000 more than in 1890, 86,000 more than in 1960.

And as Michigan's population has grown in size, along with the size and complexity of our problems, citizens have found it increasingly difficult even to contact the appropriate state department, much less communicate with it. It is no wonder that they turn to their elected representatives.

The growth of constituent work probably contributed to the increase in the lobbying corps and their right hand, PACs, the real culprit to many who trumpet term limitation. PACs, they reason, create an unlevel playing field in campaigns and influence voting decisions. Since they can think of no way to get rid of PACs, they decide to get rid of legislators instead, though incumbents, because of their visibility and political acuity, can raise far more money than most challengers even without PACs. Furthermore, if few legislators currently serve beyond eight years and PACs are still a problem, why would limiting terms help? Surely PACs would begin seeking candidates in the districts of those serving mandatory last terms, simply beginning the cycle again. And although last-term incumbents might or might not be less influenced by PACs, they would certainly be less influenced by their constituents. Every legislative district would have a two- and four-year lame duck serving approximately once a decade. That is a frightening prospect. "The most to be expected . . . in such a situation, is the negative merit of not doing harm, instead of the positive merit of doing good," warned Alexander Hamilton in *The Federalist Papers*.

In fact, the big winners in legislative term limitation unquestionably will be those who owe nothing to the public: the massive, faceless, unelected bureaucracies of every government, who would, lacking sophisticated legislative oversight, call the policy shots while inexperienced legislators simply try to find their way through the process. And though PAC money might not go to unelected bureaucrats, no one should presume that lobbyist favors cannot. The public has a right to know that there is someone they can hold accountable.

The public has a right to know that there are senior legislators with a wealth of knowledge and experience that benefit everyone in the state, no matter where they live. Indeed, the only *certain* effect of term limitation would be to deprive us of many of our best legislators when we really need them. Would America feel *more* comfortable about the Persian Gulf crisis if senators like Robert Dole or Sam Nunn

had been forced to leave office this year? Would Michigan's potential budget problems be easier to solve if people like Representative Dominic Jacobetti and Senator Harry Gast were not there to lend their experienced, steady hands? It is, all in all, a strange kind of political system which assumes that inexperience is not only more beneficial but ought to be enshrined in our Constitution.

It is impossible to understand how the public benefits at all when it loses its voting rights, when its choices are limited. America's founders were extremely careful to create very few eligibility requirements for office. Term limitation flies in the face of that. Not only would term limitation deny quality people a right to run for office, it also would strip millions of others of their right to vote, including people who want to keep their incumbents and those who currently may be ineligible to vote and find that others have restricted their choices before they're even allowed into the polls. Future voters will have absolutely no say.

That, of course, still leaves many good reasons to be frustrated with government, and there is plenty of blame to go around. Is public apathy a result of diminishing identity with government, plain indifference, or an inability to get quality news coverage? Have weakened party structures allowed legislators to be more or less responsive to the people they serve? Is the plodding nature of decision making a flaw or an accurate reflection of public ambivalence about many issues? Has the influence of television commercials in campaigns been a result of candidates and their advisors or public preference? Are PACs the root of all evil—or not?

Each of these is a question that should be studied separately but has no direct relationship to term limitation. The greatest country in the world long ago figured out how to limit legislators' terms: by giving people the right to participate in open and free elections. That is still the best way to respond to problems in the system. Michigan House members, for example, face the very real threat of term limitation every two years. And every two years, a public with far more acuity than it is given credit for abruptly limits a number of legislators' terms.

There are few doctors I know who would suggest mitigating the effects of one disease by exposing the patient to a much more deadly one. That, in essence, would be the result of the term limitation "cure." No problem in a democracy, however, can be cured by limiting the democracy, and no right can be enhanced by limiting access to it.

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