Department of Justice

STATEMENT

BY

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BEFORE THE

HOUSE COMMITTEE ON THE JUDICIARY

ON

H.J. Res. 807, CONSTITUTIONAL AMENDMENT
TO EXTEND THE TERM OF MEMBERS OF THE
HOUSE OF REPRESENTATIVES

TUESDAY, FEBRUARY 15, 1966

Mr. Chairman and Members of the Committee:

I am pleased to have this opportunity to discuss the proposed Constitutional changes to extend the term of office for Members of the House of Representatives to four years. I strongly favor H.J. Res. 807, the measure embodying President Johnson's recommendations on the subject as set forth in his Special Message to the Congress last month.

Amending the Constitution is a step to be taken only when the need is compelling and when other alternatives are not open. I believe this to be the case for the constitutional provision limiting the term of Members of the House to two years. It is out of keeping with the times and it has impeded the institutional development of the House of Representatives to the detriment not only of the House itself but the country.

I

THE NEED FOR A FOUR YEAR TERM

Criticism of the two-year term for Representatives is not new. In the Constitutional Convention the debate turned on whether to provide a one-year or three-year term.

Madison argued that the longer term was needed "in a government so extensive, for members to form any knowledge of the States to which they did not belong," and that without such knowledge "their trust could not be usefully discharged." Records of the Federal Convention (Farrand Ed.) vol. 1, p. 361.

Madison, predicting that a one-year term would be "almost consumed in preparing for and traveling to and from the seat of national business," (Id. at 214), said that a two-year term was scarcely an improvement since none of the Representatives "who wished to be re-elected would remain at the seat of government." Id. at 361.

Hamilton agreed. It was his view that a three-year term was to be preferred because "Frequency of elections tended to make people listless to them; and to facilitate the success of little cabals. . . ." Id. 362. "This evil," he observed, "was complained of in all the States."

The proponents of the one-year term were influenced by two factors: First, in colonial days, the annual election of the popular assembly had been the only check against the Royal Governors. Second, in 1716 the British Parliament had changed the term of its members from two to seven years in order to defeat the popular will. The two-year term emerged as a compromise.

The two-year term may have been a sensible solution in 1789. The volume of federal legislation in the House was not great, sessions were relatively short, the problems before Congress were not particularly complex, and the costs and other incidents of election campaigns were not such a strain.

Volume

But now the legislative volume facing Members of the House has skyrocketed. In the first Congress 142 bills were introduced, and 108 public laws enacted. In the Eighty-eighth Congress, 15,299 bills were introduced and 666 public laws were enacted.

In addition, each Congressman answers thousands of letters, attends numerous legislative meetings, drafts legislation, writes reports and prepares for debates.

Duration

In recent yearsthe urgency and complexity of current national and international problems has produced much longer sessions of Congress. As the President observed in his recent Message, "Congress adjourned in April of 1904, June of 1906, May of 1908, and June of 1910. But increasing workloads have substantially extended the sessions. Thus it was in August of 1958 that Congress concluded its work, in September of 1960, October of 1962, and again in October of 1964."

In the first five Congresses of this century Members sat for an average of 314 days; the average for each of the last five Congresses was 582 days.

It is increasingly difficult for a Member of the House to consider meaningfully the volume of present-day legislation in Washington and also to devote the necessary time to frequent primary and general compaigns for re-election at home. Either his work or his chances of re-election suffer.

Complexity

The nature of Congressional problems has also undergone a radical change. Representatives today are faced with a whole spectrum of complex and diverse issues flowing from advanced technology, growing population, and international commitments. They range from the problems of crime to the strategy of nuclear defense, from outer space to school construction, from rural highways to urban housing, from civil rights to international health.

This volume, complexity and diversity make it difficult even for a veteran Member to be its master. How much are these difficulties magnified for a freshman Congressman--and each Congress has a substantial complement of new members.

For example, according to Congressional Directories, in the first sessions, there were 83 Freshmen Members in the House in the 89th Congress, 66 in the 88th Congress, 75 in the 87th Congress, and 79 in the 86th Congress.

As soon as a new Member begins to master the not inconsiderable mechanics of how the House operates, he comes up for re-election. He must disengage himself to wage a new campaign. The cycle is self-generating and almost self-perpetuating. Mr. X who has just been elected is replaced by Mr. Y who has no more experience than his predecessor and yet is faced with precisely the same problems.

Here we can do no better than to recall the words of James Bryce, the perceptive English student of American life. Bryce, speaking in 1893, said that the Congressman's tenure of office was so short that he could "seldom feel safe in the saddle." This was most unfortunate, Bryce thought, since "There are few walks of life in which experience counts for more than it does in parliamentary politics." Bryce, The American Commonwealth, Vol. 1, p. 196.

No one would expect a business to operate in such a systematically uncertain manner. Why should Government? Sound management is hardly assured when our Representatives know in advance that their days may be numbered, that they do not even have two unencumbered years until the next election, but only until the next election campaign begins.

Just as business or any responsible enterprise looks to qualified managers with a long-range, creative outlook, so too should the Government.

Campaign Costs

Another important factor is the expense of election campaigns. Their great and steadily rising costs have priced many worthy candidates out of a political career. The frequency of campaigning severely aggravates the problem.

Asking a man to run every two years may well mean he has to spend more on his campaign than what he receives for serving in Congress. While wide divergences exist in campaign expenditures, they are reported to run as high as $30,000, and in some cases as much as $60,000. Clapp, The Congressman His Work as He Sees it (1963), pp. 333-344.

This is a situation which makes condidacy difficult for men who are highly qualified but who have family responsibilities and limited resources. The choice often is either to forego serving in the House or to become obligated to large financial contributors. Obviously this kind of situation increases the danger of being unduly influenced by special interest groups. The choice is not one the Nation should ask candidates to make.

Other Disadvantages

There are other disadvantages to the two-year term. It deprives new Members of any real opportunity for showing their true caliber as legislators. The personal frustration is accompanied by an inability to stand on a record which makes them worthy of re-election. This is not fair to the Congressman or his constituents. With a four-year term, a House Member has a greater interest and incentive for establishing his own identity separate from the President's, and a better opportunity for doing this.

In short, as the President said in his Special Message, "we have learned that brief and uncertain periods in office contribute -- not to the best interests of democracy -- but to harassed inefficiency and the loss of invaluable experience."

II

Whether the four-year term should coincide with the President's term of office.

However necessary we regard the four-year term to be, the question remains whether it should be concurrent with that of the President's term.

President Eisenhower came to the same conclusion that President Johnson has. "Congressmen ought to be elected for four years," he said, "at the same time with the President." Public Papers of the Presidents, Dwight D. Eisenhower, 1960-61, at p. 151.

The support that can be mustered for this feature of H.J. Res. 807 is persuasive. The Presidential election is the only truly national election, when all the people have the opportunity to install a new Administration. Their choice should include the right to elect as Representatives men who they believe will help the President they have selected.

Those who serve the people in the House should not be chosen, as they are in off years, by a substantially smaller number of voters as compared with the number participating in Presidential elections. The underlying theory of democratic government is to have as broad an electorate as possible.

A four-year term for House Members coinciding with Presidential terms is generally favored by students of government. In 1950 the American Political Science Association said synchronizing the terms of President and Members is as important as lengthening the term of House Members to four years:

> "If the elections for these offices always coincide, recurrent emphasis upon national issues would promote legislative-executive party solidarity." (44 Am. Pol. Sci. Rev. Supplement, at p. 75).

This is also the view of such authorities as Professors Burns, Bailey, Finer, and Koenig. For the convenience of the Committee, representative excerpts from their writings are set forth in the Appendix submitted with this Statement.

All these arguments for a four-year term are, at the same time, compelling arguments against the half-and-half, staggered term proposal, under which half the House would be elected every two years.

The obvious consequence is that half the House always would run with the Presidential candidate and the other half never would--a consequence which would, I believe, dilute the gains to be derived from changing the term to four years in the first place.

A half-and-half system not only would impose a strained and difficult burden on the party in power; it would split the opposition party as well. In both cases, the national interest would suffer, for at least two reasons.

It is not difficult, assuming such a system, to conceive of the entrenchment of two subparties in each major party. The national interest which every Member seeks to serve while he is serving his district would suffer. The Member running in off-years, free to ignore the Presidential banner and platform of his party, might well campaign solely on narrow local issues and thus abstain from positions on national issues.

A further argument against this half-and-half approach is a very practical one relating to the decennial reapportionment. What would happen, for example, if a state's representation were reduced? How would such a reduction be put into effect?

In short, it seems clear to me that the problems created by staggered four-year terms are staggering. They would create new difficulties worse than those we seek to correct. A cure, to be a cure, cannot be worse than the malady and I urge you to reject this alternate proposal.

We would, concededly, pay a certain price even by establishing concurrent four-year terms. Plainly, no four-year term system, regardless of how it is timed, provides as frequent opportunity for the expression of public attitudes as a two-year term system.

But I believe the advantages of a concurrent four-year term system outweigh decisively this advantage of the two-year system. And I believe that even the original advantage of the two-year term -- public expression -- has lost its importance.

In the post-revolutionary era, there were no national communications, there were no polls, and even mail took weeks or months to be delivered. But today, national issues are discussed daily in newspapers, television and radio. Those who read, watch, and listen obtain an informed understanding of the nation's concerns. They make their views quickly known to their Representatives by millions of letters, telegrams, personal visits -- and by abundant opinion polls.

There is another effective barometer of public opinion. You will recall that one-third of the Senate is elected in off-years in two-thirds of the States. Therefore, even if there is no voting for House Members in the off-years, two-thirds of the national electorate would still be going to the polls in each off-year to elect one-third of the Senate.

History shows that over the years when there has been a swing from one party to the other in the House, it has been accompanied generally by a corresponding shift in the Senate. Accordingly, if there is substantial dissatisfaction with the administration in power, it will be reflected in the vote for Members of the Senate.

A further argument advanced against the four-year term is that it would increase the likelihood that Members, riding the President's coattails, would become Presidential "rubber stamps."

I believe this argument is unsuccessful for several reasons. First, all Members of the House must run with the President under the present system. A change to a four-year term would not enlarge that circumstance.

Second, in Presidential years the public in general elects a Congress that is running on the platform of the President. This does not mean that these Members of Congress are therefore rubber stamps. It means that those elected candidates on the same political complexion as the President are basically in sympathy with the views of their party.

In this climate, the President and the Congress are more likely to be able to carry out a program without unreasonable deadlocks.

Off-year elections, on the other hand, too often involve local issues and personalities; national issues are often subordinate. Since there are frequently no substantial competing alternatives offered nationally in off-year elections, candidates are much less likely to take positions for or against their party's program.

I find it hard to see, therefore, how elimination of off-year elections can deprive Members of Congress of a base for positions more independent of the President when alternative national positions are not by and large even presented.

I am inclined to feel, moreover, that the "coattail" argument is exaggerated. For example, even such a popular President as Dwight D. Eisenhower was elected in 1952 without carrying in great congressional majorities for his party. And when he won an even greater victory in 1956, his party lost both the Senate and the House.

III

Resignation from office in one House to run for vacancy in the other House.

Let me comment briefly on section 2 of H.J. Res. 807. That section would provide that no Member of a House of Congress shall be eligible for election as a Member of the other House until his term has expired unless at least 30 days prior to that election, he submits his resignation from the office he holds.

The aim of the amendment is to make the House a better instrumentality of government. But this objective would be threatened if House Members, having been freed from the need to campaign in off-years, were free also to campaign for the Senate in those years without resigning their seats in the House.

While that prospect may be unlikely, it is only fair that the conditions for running for office in another House should apply alike both to Members of the House and Senate.

Conclusion

I am convinced that an extension of the term of Members of the House to four years would make considerably more effective the House's ability to discharge the Nation's affairs. It is a needed step towards better government, viable government and responsible government.

In my opinion, H.J. Res. 807 merits prompt adoption by the Congress, and therefore I earnestly urge this Committee to give it its early approval.