

# It's Time for Term Limits

## Introduction

Congress needs desperate change, and without term limits for members of Congress, the incentives to run for reelection, party politics, fundraising, and self-interest, will continue to foster an abdication of Congress's legislative authority to federal agencies and the executive branch. The following argument will highlight the growing erosion of the checks and balances within the federal government, and show that even when there are attempts to return to constitutional fundamentals, congressional abdication creates an increase in executive orders and excessive judicial entanglement. Thus, the only way to solve the erosion of the separation of powers is to instill term limits on members of Congress.

The following research is a combination of United States Supreme Court (SCOTUS) cases, a current bill in Congress called: H.R. 142: *Regulations from the Executive in Need of Scrutiny Act*, founding documents, journal articles, and other resources highlighting the issues involved in Congress's oversight responsibility. However, as a singular case study, there are limitations to this analysis such as comparisons to other governments around the world, or any robust data driven statistical analysis. Nonetheless, as the American experiment is unique, the argument for term limits is unique to the American political system, and therefore, comparisons and redundant statistical analysis would hinder, not benefit, the readability and argument of this paper.

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### **How Did We Get Here?**

For over 40 years, the holding in *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837 (1984) had created a precedent that a government agency must conform to any clear intent of Congress when interpreting and applying the law, but the courts will defer to ambiguous situations as long as the interpretation of the law is reasonable. This holding is what was known as Chevron deference, and the beginning of Congress's abdication of its legislative authority.

On June 28, 2024, SCOTUS granted certiorari to review: *Relentless v. Department of Commerce*, and *Loper Bright Enterprises v. Raimondo*'s appeal solely on the Chevron issue. Here, the Court held that the Administrative Procedure Act requires that the court "decide legal questions by applying their own judgment" thus "agency interpretations of statutes—like agency interpretations of the Constitution — are not entitled to deference." Thus, the day of deference to federal agencies interpretation of statute, and the writing of regulations from within the agency without Congress's oversight, would appear to be officially over. So, is this really the demise of the federal bureaucracy, and a shift back to constitutional fundamentals?

### **REINS ACT**

For some members of Congress, including Senator Rand Paul and Representative Kat Cammack, it is not only necessary to return to constitutional fundamentals, but that there needs to be a new statute that explicitly defines the oversight role of Congress with the introduction of H.R. 142: *Regulations from the Executive in Need of Scrutiny Act* (REINS Act). The REINS Act establishes a congressional approval process for a major rule that has, or is likely to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices for consumers or industries, or significant effects on competition, employment, or investment.

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But, will the REINS ACT actually return Congress back to its constitutional charge of oversight of federal government agencies, or will this simply be another form of fire alarm policing leaving the federal agencies, and the people interacting with those agencies, without any guidance on interpretation of rules and regulations from those agencies?

This brings up a series of questions that are important to consider in the context of American governance. First, the separation of powers was intended to pit the human desire to consolidate power against the competing interests of equal sources of power, so what happens when Congress abdicates its Article I powers? Second, is it really the size of the bureaucracy and unelected bureaucrats that are the problem? Third, is the abdication of Congressional power due to party polarization and party politics, and if so, what are the repercussions of this? Last, is there anything that can be done to fix this problem?

### **Separation of Powers**

After the dismal performance of the *Articles of Confederation* (Articles) during the American Revolution, the Delegates of the Continental Congress began to argue for ways to start over with a new constitution. These collective arguments are known as the *Federalist Papers*. Authored by James Madison, Federalist 10 and 51 are most quoted when it comes to the separation of powers. In Federalist 10, Madison states that human desires or passions create factions that are:

“...sown in the nature of man; and we see them everywhere brought into different degrees of activity, according to the different circumstances of a civil society....An attachment to different leaders ambitiously contending for preeminence and power; or to persons...whose fortunes have been interesting to human passions, have, in turn, divided

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mankind into parties, inflamed them with mutual animosity, and rendered them much more disposed to vex and oppress each other than to cooperate for their common good.”

This is a foundational argument on the nature of power in human relations. Notably, philosophers: John Locke, Michel Foucault, and political theorist Max Weber would all contend with this same exact problem of human passion and the consolidation of power. Max Weber simplified this argument in his famous quote that “...what ‘politics’ means for us is to strive for a share of power or to influence the distribution of power...” (p.33). Simply, politics is power.

In order to contend with the struggle for power within the emerging American system of government, in Federalist 51 Madison followed John Locke’s reasoning in his *Second Treatise of Government*, Chapter XII §143, that a separation of power must be instilled between the legislative and executive branches of government (p. 75).

The *United States Constitution* (Constitution) was ratified on June 21, 1788, and the official separation of powers into three equal branches of government was introduced in three articles. Article I, Section I, states that “All legislative powers herein granted shall be vested in a Congress of the United States” This is an expansive power, and is intended to keep power closest to the people through their elected representatives. Article II, Section I, states that: “The executive power shall be vested in a President of the United States of America...” This time the focus is on the general will of the people as a collective whole from all of the states. Finally, Article III, Section I, states that: “The judicial power of the United States shall be vested in one Supreme Court...” This is an almost ambiguous power that suggests that the courts may merely be an extension of Congress, due to Congress’s authority to expand the court system and its judges. However, the Court asserted its authority to review congressional legislation in *Marbury v. Madison* 5 U.S. 137 (1803). Thus, the federal government’s institutions compromise of

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specific granted powers by the Constitution and those institutions can only express the powers granted therein.

Of course, things are not this simple. The simple articles stated above do not express the 237 years of legal precedent that has defined the implied powers of these simple articles.

While the co-equal branches of government solidified their roles through checks and balances the federal bureaucracy remained a small spoils system (non-merit based), but this was going to change with the passing of the *Pendelton Act of 1883* that created the Civil Service Commission and the current merit-based system.

### **The American Bureaucracy**

Although the Constitution makes it generally clear of the express powers of the federal government "...it makes virtually no mention of the bureaucracy; its few limited references to departments or officers give virtually no detail apart from the fact that principal officers are to be nominated by the president and confirmed by the Senate" (Lewis, pgs.230-231). Moreover, "[a]part from these few details the Constitution is silent about the design, function, and the administration of the bureaucratic state" (Ibid.). This left the administration of the federal government to be like other bureaucracies around the world by appointments as political favors. Typically, this would mean rewarding family and friends with government appointed jobs. This meant that the American federal bureaucracy was not based on experts in a certain field but was merely a replication of an old aristocratic spoils systems. With the passage of the Pendelton Act, the merit system "...demand[ed] that persons be hired, promoted, and fired only on the basis of merit rather than on other factors such as party membership, gender, or race" (Lewis, p. 236).

However, even with a merit-based bureaucracy the number of civil servants employed by the federal government has varied based on the expectations of the services that the federal

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government has pulled under its umbrella. As would be expected, moments of national crisis increase the number of agencies that are created and employed with merit-based employees, but since the late 1960s the number of federal civil workers has decreased from its peak during both World Wars, and the Korean War, to remain relatively stagnant in comparison to federal spending (See Figure 1, Appendix).

According to John J. Dilulio Jr., federal government spending doubled from 1960-1975, and doubled again between 1975- 2005, expanding the size of the federal government with new agencies such as the Environmental Protection Agency and the Department of Homeland Security, “[and] yet, during the same half-century that federal spending increased fivefold, the number of federal bureaucrats increased hardly at all” (Dillulio, p.14). The implication here is that as the federal government expands, the services and functions it provides are being outsourced to states, non-profits, and for-profit corporations. So, is the dysfunction that many claim is coming from the bureaucracy really due to lazy overworked and underperforming federal bureaucrats, or is something else going on?

Terry M. Moe argues that to answer this question we need to first ask if the federal bureaucracy is intended to be efficient at all? He answers an emphatic no, and argues that the “American Public Bureaucracy is not designed to be effective. The bureaucracy arises out of politics, and its design reflects the interests, strategies, and compromises of those who exercise political power” (Moe, p. 219). Thus, looking for efficiency from the bureaucracy may be a fool’s errand due to the fact that Congress simply does not want the bureaucracy to be efficient. Therefore, it is in the interest of Congress to:

“...write legislation in general terms, put experts on the public payroll, and grant them authority to ‘fill in the details’ and make whatever adjustments are necessary over time.

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This compensates nicely for the group's formidable knowledge problems, allowing it to pursue its own interest without knowing exactly how to implement its policies and without having to grapple with future contingencies" (Moe, p.221).

This generality allows congressional representatives, and the executive branch, to pick and choose the causes they want to support and have an easy fall-guy in the federal bureaucracy if their pet-projects don't come to resolution efficiently.

### **Congressional Polarization and Executive Overreach**

Federal inefficiency may be due to the lack of congeniality between the political parties. At the peak of the merit-based federal system (during national emergencies) bipartisanship tended to foster efficient governmental outcomes. So, is it simply that representatives just need to merely get along for the common good to solve the efficiency problem? According to Thomass Mann and Norman Ornstein, the answer is a definitive yes; "The single-minded focus on scoring political points over solving problems, escalating over the last several decades, has reached a level of such intensity and bitterness that the government seems incapable of taking and sustaining public decisions responsive to the existential challenges facing the country." (p. 101).

This bitter polarization has led to an increase in omnibus style bills, instead of targeted legislation, which consolidates power within a few party leaders that remain in Congress for decades increasing their influence and personal fortunes. Steven S. Smith's research in *Congress, the Troubled Institution*, has shown that Congress has increasingly passed fewer bills from 1961-2015 and the number of pages in these bills has increased from 200 pages, up to 8,000 pages (See Figure 2, Appendix). Moreover, the number of bills that have been

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circumvented from committees to party leaders that negotiate on their own terms, outside of general voting, has increased at a staggering level (See Figure 3, Appendix).

However, polarization alone is not the root cause of the systemic rot that has destabilized the checks and balances of the American system of government. It is the abdication of Article I powers to the executive branch that has caused the most damage to our system of government. When Congress abdicates its constitutional authority to federal agencies, and the executive branch, it increases executive authority and thus executive orders. Other than actual national emergencies such as war, natural disaster, or economic turmoil, the number of executive orders enacted by presidents in the 20<sup>th</sup> and 21<sup>st</sup> centuries has expanded exponentially under the guise of emergency powers.

According to the American Presidency Project's collected data, George Washington passed a total of 8 executive orders during his total years in office. In contrast, modern presidents, Barack Obama enacted 276 executive orders in his two terms in office, and Donald Trump enacted 220 executive orders in his first term. President Trump has already enacted 111 executive orders as of April 2025 and is well on his way to surpass his first term in office.

In 1976, Congress enacted the National Emergencies Act (NEA) which is intended to restrain the executive from declaring national emergencies and circumventing Congress's legislative authority. The NEA requires the President produce a report on the emergency to Congress within 90 days, and every 90 days thereafter, unless Congress terminates the emergency by concurrent resolution. However, as the data from the American Presidency Project shows, the increase in executive orders has increased devoid of actual national emergencies. Thus, the executive has been legislating by fiat.

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### Term Limits

To directly address the abdication of Congressional authority, and address the moral hazard of representatives only focusing on reelection instead of legislating for the American people, is to impose term limits on Congress. The proposed term limits below are based on presidential terms in office, and are focused on the consistency of a functioning federal government, while addressing the negative outcomes of long-term office holding.

For the House, Representatives will be limited to ten years in office, i.e. five terms. This allows a Representative to be in office for either a two-term presidency, and half of a second presidency, or in office during three single term presidencies. This would deal with the gerrymandering issue because the limited time in office would make it extremely difficult to carve out districts for a changing electoral landscape. For the Senate, Senators will be limited to eighteen years in office, i.e. three terms. This allows the Senator to serve in four presidential terms and overlap into a fifth presidential term. This allows for longer consistency and a general long-term focus. Longer terms are allotted here because senatorial races do not deal with gerrymandering issues like the House.

The proposed term limits offer more time in office than the average number of years that historically a representative has remained in office (See Figure 4, Appendix). However, it will stop legacy politicians from remaining in office for decades, that lead to bills not reaching committee, and these politicians taking advantage of insider information for personal gain. Opponents to this plan will argue that the vote already addresses this issue, that a third party will stop party polarization and increase political choices, or that an expanded voter registration will strengthen the voter base. I will not argue that these proposals are flawed. I will argue that they

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don't specifically address the issues that have been argued thus far, and that only term limits can address the issues of abdication and the long-term political self-interest of members of Congress.

Nonetheless, enacting this proposal is not as easy as it may sound. In *U.S. Term Limits, Inc. v. Thornton* (1995) the voters of Arkansas adopted Amendment 73, that made Representatives from Arkansas that had served three or more terms in the House, and two or more terms in the Senate, ineligible for reelection. SCOTUS held that only Congress could amend the U.S. Constitution to impose term limits on itself. This leaves the only option, under Article V of the Constitution, to be a Constitutional Convention to create term limits on Congress if they are unwilling to do it themselves. To do this, 34 states would need to call the convention and 38 states would need to ratify the proposed term limit Amendment (Bomboy, p.1). As no amendment to the Constitution has been adopted this way, some worry that a Constitutional Convention would never work as it may cause a run-away convention that would not simply focus on the term limits issue. I would argue that this was the same argument that was made to keep the Articles in place. The Federalist Papers were essential in framing the argument for a new constitution, and a Constitutional Convention focused on addressing term limits would require the same focused and detailed promotion. Furthermore, a threat of a Constitutional Convention may be just the push that Congress needs to adopt term limits themselves.

### **Conclusion**

Although, a Constitutional Convention may be a long shot, it is not unthinkable. U. S. Term Limits Inc., now Termlimits.com, is still pushing for term limits, and you can sign the petition on their website right now to get involved. If a concerted effort is made to promote term limits on traditional and social media, along with the support of non-profit groups like termlimits.com, politicians, legal scholars, politics departments in American universities, and the

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adoption of the term limit structure outlined above, America may have a shot at returning to constitutional principles. Just as the federalist papers had done in the past, a new plea to the people must be made to foster the change that is so desperately needed to strengthen the rule of law with less ambiguity, and keep our representatives accountable to the people.

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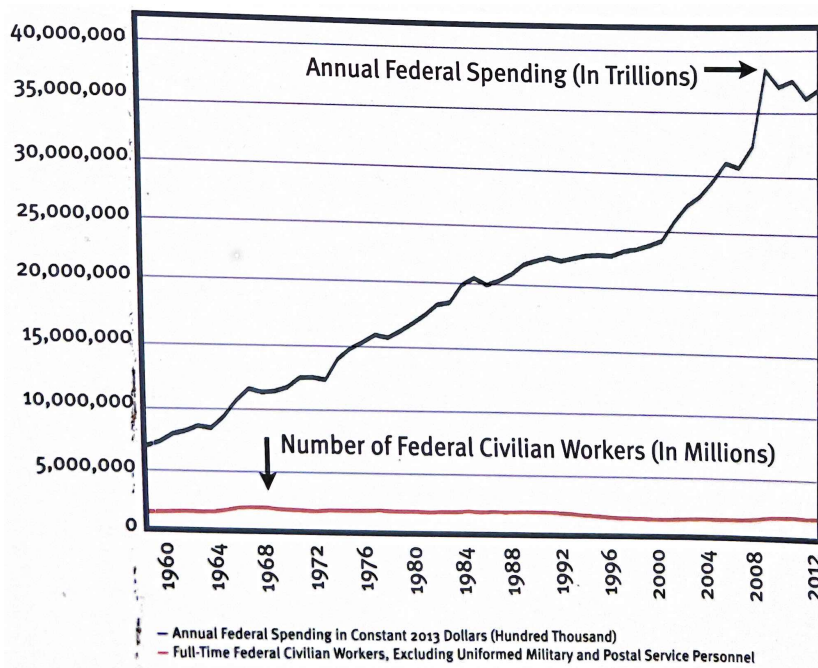
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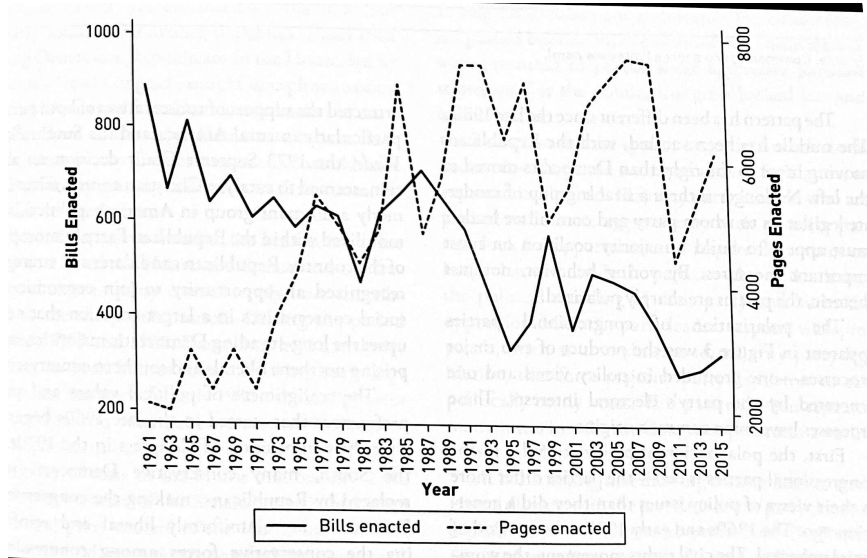
## Appendix

**Figure 1**



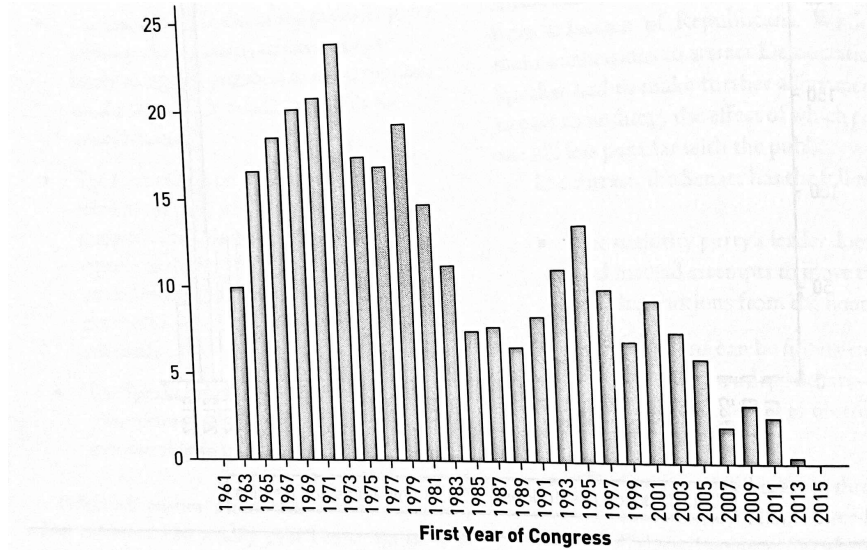
**Figure 2**

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Source: Data from Brookings Institute, Vital Statistics on Congress, <https://www.brookings.edu/multi-chapter-report/vital-statistics-on-congress/>.

**Figure 3**

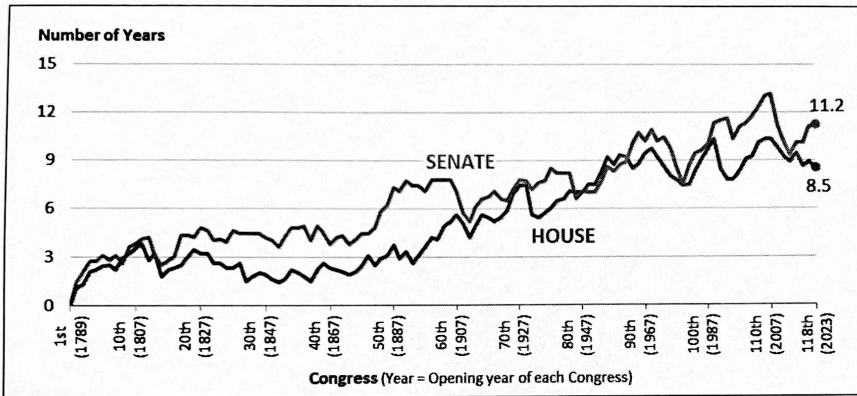


Source: Park, Smith, and Vander Wielen (2018).

**Figure 4**

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1<sup>st</sup> through 118<sup>th</sup> Congresses



**Sources:** CRS analysis of *Biographical Directory of the United States Congress*, ICPSR, and proprietary data. Inter-university Consortium for Political and Social Research, and Carroll McKibbin, *Roster of United States Congressional Officeholders and Biographical Characteristics of Members of the United States Congress, 1789-1996: Merged Data* [computer file] 10<sup>th</sup> ICPSR ed. (Ann Arbor, MI: Inter-university Consortium for Political and Social Research [producer and distributor], 1997).