THE RE-ELECTION OBSSESION

A PROPOSAL TO AMEND
THE CONSTITUTION OF THE UNITED STATES
OF
AMERICA

I am sure the Mass of citizens in these United States mean well, and I firmly believe they will always act well, whenever they can obtain a right understanding of matters ...

President George Washington

by
Ronald K. Olson

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INTRODUCTION

This little book is about our national political and governmental system and how an ever growing RE-ELECTION OBSESSION among incumbent members of Congress has virtually extinguished representative government in America. The subject here is also change, basic change, in our system of electing members to the United States House of Representatives and Senate. In fact, it is a central theme of this work that fundamental change in our tolerant attitude toward the Congress and its systematic subversion of the public trust is the only avenue open to a regeneration of representative government.

Although strong criticism of our political party system is implied throughout, there is no intent to make a partisan statement. Determination to retain power through re-election, and the approbation, through inaction, of the use of power in a way never expressed nor intended in the Constitution does not wear a party label and has no ideological basis or defined philosophical rationale in the context of American politics. In short, this is not a commentary on either of our two major political parties nor the positions they espouse or are generally thought to represent. To the extent the parties have been involved in the steady institutionalization of incumbent-favoring practices, it has been as impersonal agents who have been manipulated and used as a facade to shield, shelter, and lend respectability to the transfer of power from the governed to the governors.

It must also be recognized that what is written here is not and is not intended to be an individually oriented indictment of any of the many excellent men and women who have served and are serving in the Congress. Most of them are well intended; however, as recent history teaches, they are all too often victimized by the infectious mindset that all means to justify and insure re-election are justified. Many succumb to the superficiality that what they are doing and what others have done before them is justified by custom and is defensible under law and morality.

If today's legislators are to be censured, it is for their willing, even eager, subscription to the accumulated ill-uses of the legislative warrant by their predecessors and their adamant disinclination to effect meaningful reforms. Their individual promotion of self-interest under the mantle of collective congressional action has brought disrespect and contempt to public service and government and unforgivably, tainted our love

of self-government. Indeed, the most compelling evidence of the desperate condition of representative government in our Nation today is the fact that so few holders of national office have been openly troubled by the propriety of using the nearly unlimited power and the enormous resources of the Federal government to perpetuate themselves in office.

As for the character of this material, much of what is contained in this tract is general, much is editorial in nature, but it is all offered primarily as an invitation to further research and analysis. Debunking such myths as expertise and experience that undergird the rationale for re-election will require a great deal of effort by many citizens, but the need to make a beginning grows more critical each time the Congress makes a policy decision on economic, social, or defense issues that is in reality substantially controlled, not by the impulse to represent people, but by re-election considerations. Whether or not large numbers of concerned citizens are willing to take up the challenge and reorder the way in which we elect the Congress will tell us much about ourselves and our commitment to the fundamental principles of representative government.

Since the immediately negative reception that will be accorded this tract in the halls of Congress and in Washington, D.C. is predictable, it would seem that this Introduction would be a suitable place to offer some guidelines to the reader on how this material might be approached and some thoughts on how to react to discussions about it.

It is important that you defer judgment on the issues raised here until you have given a fair reading to the arguments by *both* sides. Remember the proposal made here is a far-reaching one and that fundamental change in a longstanding practice is being suggested.

The comments and arguments in this work are not exhaustive. There are a multitude of questions and considerations not treated here that will occur to you as you read. Write them down. Make notes. Underline, in short, get involved.

Do not be diverted from the central issues. The following are illustrative; you may wish to add your own:

> Are members of Congress concerned primarily with representing people or with re-election?

Have the incumbents used the law-making power to their own advantage?

Is it healthy for our governmental system that incumbents spend so much time campaigning for office and so little time actually in Congress?

Do most Congressmen vote for the people or for special interests? Where do most incumbents get their campaign funds?

Is an obsession with re-election at the root of the inability of Congress to deal effectively with difficult problems?

Listen with special care to the responses of your Congressman or Senator if, and when, they are asked to state their position on *there-election Obsession. Do* they address the issues or evade and give non-answers? Remember who they are and what is at stake for them. Ask yourself if their answers are thoughtful and constructive or mere self-serving negativism.

Do not accept the argument that Congressmen are experts. They are not, unless the subject is re-election. This is a substantive rather than a procedural point, but it is critical to the degree that an early warning flag seems justified. Elected representatives are best suited to be policymakers reflecting the general and popular will. As such, theirs is a job which can and should be performed by informed citizens who represent the mass of the people. Elitists, professional politicians, and re-election experts do not, for the most part, fit that job description. Remember, the legislative procedures of Congress can be mastered by any interested citizen and for the difficult questions, Congress has parliamentarians on its payroll. For technical questions on substantive issues, Congressmen have both personal and committee staff.

Share your booklet with others and press them to read it thoughtfully. Then compare reactions and ideas.

Send a copy of the *Re-election Obsession* to your local TV station or newspaper. Ask them to do a story on it and to use it to interview those who are running for Congress. Remind the press that congressional campaigns are perpetual, they are going on now-at taxpayer expense.

Respect honest disagreements. Demand of others, however, that they be informed. Keep in mind that the fundamental purpose

of this tract is to encourage a free and open discussion on a vitally important public policy question.

The material in this booklet has been organized to show at the outset how far the problem of the re-election obsession has progressed. To do that, numbers and statistics are a necessary tool. As lifeless and uninteresting as numbers and tables may be, you are encouraged to take the time to look at them because they give us an understanding and an appreciation of how effectively the re-election obsession operates, in election campaigns.

Following that, the next section is intended to serve as a means of identifying the worst of the usurpations and abuses that successive Congresses have implanted into the system. The key to following the thought in that section is remembering the word "balance." Any practice which may appear to be reasonable or necessary can easily be abused and become oriented toward re-election purposes. In each case it is important to balance what is prudent and necessary against what is excessive and improper.

The remainder of the tract is a presentation of a proposal for reform-an Amendment to the Constitution. The proposed Amendment is discussed in question and answer form with the thought that such a format would be most useful in presenting the essential points in as compact a manner as possible. Some attention is also given to the business of amending the Constitution, how its been done in the past and how it must be done in this case.

Finally, there are appended materials which include a copy of the Constitution, a Resolution which could be presented to various groups, and supporting tables and charts. The Constitution is good reading for any citizen, the Resolution is guaranteed to generate a good discussion in any live group, and the statistical materials are from public documents readily available to any interested person.

SOME FACTS ABOUT INCUMBENCY

That the reader may see and fully appreciate how deeply entrenched is the convention of incumbency, it will be necessary to begin with an accumulation of numbers and data. Viewed as a composite of the end result of the re-election obsession, they evidence the fact that the United States Congress has, over a period of years, institutionalized a system for guaranteeing the re-election of its own members. (The term "Member" throughout this pamphlet will mean *both* members of the House of Representatives and members of the Senate, unless it is otherwise qualified or the context clearly indicates a contrary intent.)

During the past three decades of our history surely, and probably before that, it has become a tradition that an incumbent Member of the House of Representatives is very seldom defeated when he runs for re-election. The same has been true of the Senate although one or two recent elections came close to creating exceptions to that pattern.

Looking first at the House of Representatives and its recent history, we see that re-election has become an established fact for over 90 percent of the Members who seek to succeed themselves in office. In 1956, 41 1 House Members sought re-election. (Remember that there are 435 Members in the House of Representatives and that all of them must stand for re-election every two years.) Of the 411 running in 1956, 389 were successful. That was re- election success at the rate of 94.6 percent! Two years later, in 1958, the percentage only dropped to 89.9 when 356 of the 396 incumbents who ran won re-election.

In all the elections from 1956 through the most recent one in 1982, the lowest percentage of re-election experienced by the House was 86.6. That occurred in 1964 when 344 of 397 incumbents were re-elected. In that election only 45 were defeated in November and 8 were deposed in primaries.

The best year for incumbent House Members was 1968. Only 9 Members were defeated in the general election and 4 in the primaries, and 396 of 409 Representatives who ran were re-elected. That was not perfect, but it was re- election success at the percentile level of 96.8! That remarkable record of success for incumbent House Members was consistently maintained in the 13 elections from 1956 through 1980. See Appendix A, Chart 1. [Not reproduced here.]

In the most recent election of 1982 which is not recorded in chart 1, only 29 incumbents were defeated in the general election. Of the 383 general election incumbent candidates, 354 were successful. The 1982 success rate of over 92 percent is therefore dead center on the overall average which, for the period of 1956 through 1982, is also 92 percent.

Senators, during the same 26-year period, have not fared quite as well. Remembering that fewer Senators stand for re-election in each two-year election (approximately 33 as contrasted with 435 House members), it would be expected that a one or two number variation would cause the percentages to fluctuate more than those for the House.

A review of the result for two illustrative years bears out that expectation. In 1966, 28 of 32 incumbents were successful for a percentage of 87.5. Only two years later in 1968, 71.4 percent were successful when 20 of 28 incumbents were able to win re-election.

The overall Senate average, however, is 77.6 percent during the period 1956 through 1978. It is interesting to note that in the three elections, 1976, 1978, and 1980, Senate incumbents did not enjoy re-election success at that level. In 1978, the percentage dropped to 60 and in 1980 it was 55.2. In fact, 1980 was the worst year for incumbent Senators during the 26-year period we have been reviewing. In 1980, 13 Senators lost seats, but of that number 4 were lost in primaries. See Appendix A, Chart 1. [Appendix A is not reproduced here.]

Yet it must be recorded that in the 1982 election only 2 incumbent Senators were defeated of the 30 incumbents running. That is re-electionatbetterthana93 percent level and is second only to 1960 when, of the 29 Senators seeking re- election, only I lost yielding a success rate of 96.6 percent.

While many political analysts, in 1982, concentrated on the margins of party victory or party loss and eagerly tried to find signs of change in the political winds from those margins, they missed an essential point. That omission resulted from the fact that they looked only at political factors, real and imagined, and did not attempt to deal seriously with the incumbency factor.

The consistent and overwhelming domination of congressional elections by incumbents transcends political considerations. Even the thunderous shake of Watergate, that was almost universally thought to have cracked our political foundations, brought only a little dust from the high secure shelf of incumbency. In 1974,

87.7 percent of the House Members seeking re-election were successful when 343 of 391 incumbents held their seats.

Incumbency may be seen as even more of a factor when we look a bit closer at a given election. For example, consider that of the 97th Congress's 435 members, only 81 will be new to the 98th Congress. Of those 81 members not returning, 23 simply retired, 18 were ambitious and ran for other political offices with varying degrees of success, 10 were defeated in the primaries; some of those were victims of redistricting. Thus, of the 383 House Members who sought re-election, 354 were successful. That is success at better than a 90 percent level and consistent with the general trend. Looking yet a bit closer, we note that of the 29 incumbents who lost in 1982, 14 were in the most vulnerable category, i.e., first-termers.

If voter sentiment is related at all to the economy and/or to a perception of the condition of foreign affairs, then the force of incumbency is even greater than anyone has dared to imagine. Re-election is thematic and constant in our national political life. Transient events have been deflected by it; currents of popular will have been diverted by it into a reservoir where the pressures created by congressional inactivity grow ever greater. No matter what happens to the country, the incumbents survive.

While the incumbents have been arranging for and protecting their own re- election, the voters have been steadily losing interest and have been deserting the election system. The trends are alarming and they show a marked decline in the percentage of eligible voters actually voting in both off year and presidential year elections.

From 58.S percent in 1960 and 57.8 percent in 1964 of eligible voters casting votes, a decline occurred until 35.5 percent in 1978 and 47.9 percent in 1980 voted. The difference between the 35 and 47 percent is almost certainly due to the fact that 1980 was a presidential election year. Appendix A, Charts 2 and 3.

Even more arresting, however, is the fact that in 1980, a presidential election year, less than half of the eligible voters in this country voted for Members of the House of Representatives. More specifically, we note that in gross numbers, 162,76 1,000 Americans could have voted for House Members in 1980, but only 77,995,000 did so. Proceeding from that and applying a 51 percent-to-win factor, 39,777,450 voters out of the 162,761,000 who were eligible decided the composition of the House. Therefore, approximately 24 percent of the Nation's voters

selected the House of Representatives for 100 percent of the people,

These numbers tell an alarming tale of eroding voter interest and participation, but they do not by themselves give any reasons for the torpor which has been enveloping the American body politic. The argument could be made that it is the fact of incumbency which is in large measure responsible for the erosion of voter interest. Detailed statistical evidence would be required to conclusively support the contention, but we can, in general, note the steady decline of voter participation during a period of high incumbency success. The reader can look for himself at specific election contests in his own state and perhaps determine whether the proposition has substance. Appendix A, Chart 4.

Although it is not directly related to the active application of re-election devices, it is interesting to note one significant effect of perpetual office holding in the Congress. The average tenure of the chairmen of the standing committees of the House of Representatives is over 22 years. The average tenure of chairmen in the Senate is nearly two terms, or over 11 years.

Even with the larger than average turnover in the Senate in the 1978 and 1980 elections, the 97th Congress had 13 Senators with over 20 years of continuous service. In the House some 50 Members have 10 or more consecutive terms (20 years). In both the House and Senate these long tenured Members typically are the chairmen and ranking minority Members of all the standing committees and of the subcommittees. The significance of this is that positioned thus, a few long-term Members totally control the flow of legislation through Congress. They exert commanding influence over what bills are selected for consideration, when hearings will be held, and who will testify for and against the bills. For identification of the longest tenured Members see Appendix A, Charts 5 and 6.

What we have described is, of course, the seniority system which has been the target of much criticism for many years and has been the subject of repeated attempts at reform. Proposed reforms have met with only moderate success and today it is still fair to say that it is the underlying force which controls the events in Congress. The disproportionate power of the "seniors" is due almost entirely to the seniority system which is, of course, able to exist only as the misbegotten child of incumbency.

From the examples and statistical evidence set out above, one is led to conclude that either the American people love their Congressmen and Senators and approve of their legislative behavior or that there are other less obvious reasons why we

repeatedly suffer the phenomena of in incumbency success each and every two years. Since it is a premise of this tract that there are indeed other and more plausible explanations for the invincibility of incumbents, we should now turn from the alarming statistics of re-election and consider the various instruments and methodologies which are at the root of habitual re-election and which successive Congresses have carefully and quietly woven into the fabric of our election processes.

HOW THEY WIN, AGAIN AND AGAIN AND ...

Incumbents win because they work at it and because they have the tools necessary for the task. They work at re-election incessantly, continuously, and at the expense of the taxpayers they were elected to represent. The habit, quickly learned upon first being elected to Congress, is to tend and nurture the system they find in place upon their arrival.

In this section we shall look at some of the methods and instruments of re-election. As we do so, the reader should remember that the names of things vary, that practices vary from one office to another, and, tragically, that much of what is done has become accepted as the norm. It should also be kept in mind that the difficulty of our task is compounded by the fact that much of the malpractice is concealed behind a facade of "constituent service." To the extent that a Member is able to conduct and manage the business of his office under the guise of a necessity imposed by citizen interest, then we, the people who make unreason- able demands incidentally or in the aggregate, must share the blame for the abuses which result.

In trying to balance the necessary and legitimate against the excess and the corrupt, one useful touchstone would be to consider in each instance whether the practice is, in the context of an election, fair to the challenger or whether it gives the incumbent an advantage. We should recognize that some advantage is inevitable, but not all advantage is necessary.

First, it might be instructive to introduce a congressional staff. This staff exists in one form or another and to a greater or lesser extent in nearly every office on Capital Hill, in short, it is typical. Some staff is obviously necessary to the conduct of office business and legislative affairs, but other staff members and work performed by them are almost entirely directed by the re-election obsession and constitute a blatant arrogation of public power and the dedication of it to the selfish goal of re-election.

The Administrative Assistant (the AA) serves as general office manager and coordinator of the different activities carried on by the Member's staff. For the most part his is a legitimate and necessary function.

The Legislative Aide, also called "Legislative Assistant" or "Legislative Counsel," is charged with studying bills or legislative

proposals, writing explications of bills, and in general keeping the Member briefed on pending legislation. This staffer, and there may well be more than one-especially in Senate offices, may be a specialist in the area or areas of the Member's special interest and/or his committee assignments. This position is also necessary due to the large number of bills introduced in every session of Congress. At the same time, it should be recognized that the avalanche of proposed legislation is due largely to political posturing and represents a use of the legislative process as a device to give the appearance of serious work by the Member. Elimination of the re-election obsession would reduce the volume of legislation and consequently would help restore the position of legislative assistant to its proper role.

The Personal Secretary of the Member is a necessary and legitimate position, although the occupant does often and inevitably become involved in performing political work.

"Constituent service," "secretary," or "case worker," or some variant form is the title given to the individuals who tend to the problems and inquiries from back home. Incidentally, when you write your legislator in Washington D.C., the odds are very good that your letter and the one you receive in return are handled entirely by this staff person. This revelation perhaps comes under the category of "suspicions confirmed" and is not really a revelation at all, but it is, nonetheless, of interest to call attention to the fact that the illusion of personal attention given by a Member's correspondence is usually nothing more than a "personal" signature on your answer which may have been subscribed by an automatic machine called a signature wheel.

In any event, citizens do write to their Congressmen and Senators and ask, demand, and suggest, and, in turn, expect answers. The volume of mail is usually substantial and the individuals who perform the responsive work must, in addition to being tactful and inventive, use some standardized approaches. The form letter or petition-type of incoming letter usually gets a form return. Letters stating problems with the executive branch bureaucracy are forwarded to the appropriate agency for information and/or an answer. The agency response is then incorporated into a letter to the constituent carefully designed to give the citizen a feeling that he has received the personal attention of the Member.

In the caseworker operation, we see the dilemma that is created when an attempt is made to evaluate the re-election nature of the office staff. On the one hand, the work is a necessary function for

one who is expected to represent people from his state. On the other, the constituent service machine is a well-oiled re-election device. Many Members go to great lengths to insure the smooth functioning of this service and strongly feel that good constituent service is one of the keys to re-election.

An illustration of the improper use of staff and of an abuse of the office entrusted to Members of Congress is seen in the broader notion of constituent service as practiced by many Members. For example, congressional employees are frequently assigned the task of scouring newspapers from back home and clipping out birth announcements, major stories about citizen accomplishments, weddings, graduations, and other similar stories. Letters are then prepared congratulating these subject citizens. Some offices send baby books to new parents, graduation certificates to new graduates, and calendars to anyone who is or seems likely to be a voter. This paraphernalia, including an endless array of pamphlets on every subject imaginable, is usually supplied to the Member's office free of charge by a bureaucracy hopeful of being well remembered when the Member votes on appropriations bills.

All this service type material is made freely available and is conspicuously stamped with the Member's name and is mailed in franked envelopes bearing the Member's name as a flowing signature in the return spot. The flowing signature and free mailing are rights granted to Congress by Congress. "At the request of a Member ... the Public Printer may print upon franks or envelopes ... the facsimile signature of the Member..." 44 U.S.C. 733. Result- the voter is grateful and inevitably flattered a bit by receiving mail from a Congressman or Senator; the Member has gotten his name in front of the citizen, created a debt, albeit small, which he hopes to enlarge by other methods and then to collect on election day.

Every Member has his Press Aide. No believable explanation has yet been concocted by the Congress to explain why every Member who wants one needs to have a press agent on his, or more correctly, the public's payroll. Yet there they are, paid with public money, for the almost exclusive purpose of ballyhooing imagined exploits of the Member to the voters. These individuals write news releases on any subject which he and the Member feel enhance the Member's image. These publicity stories are

distributed to home area newspapers, radio and television stations, and to any other medium which will accept and print them.

The work of these public relations experts is all the more outrageous when one realizes that if there is in fact anything newsworthy about the Member and his legislative work in serving the Republic, the matter is bound to be reported by the legitimate press. The Capital is swarming with reporters from television, radio, newspapers, syndicates, and press associations. The Congress is probably the most media-covered place in the Nation and this fact alone underscores the absence of any legitimate reason for every Member having his own publicity staff.

Even granting that there is a modest role to be played of answering news media queries and keeping the constituents informed about the Member's activities, that is a world away from the actual practice of the press agents of most Members. It is the press agent's task to maintain a steady flow of flattering articles proclaiming a special vote, the introduction of a bill, an appearance made, a statement issued, or a grant made or a contract awarded. (Even the grant and contract award functions of the executive branch have been shamefully politicized. Many, perhaps even all, agencies have a rule that requires them to give the first notice of a grant or contract to the office of the Senator and Congressman whose state and district are affected. This is for the sole purpose of enabling the Member to put out the press release and thus get the credit.

Speechwriter-the title describes the position, but in addition to speeches, the occupant of this job slot also often writes an assortment of other items for the Member. Most of the work product is purely political. Certainly the speeches are primarily fuel for the re-election machine.

Although not all Members have a staffer designated specifically as speech - writer, it is a fact that very few Congressmen and Senators write their own material. To the extent that staff members do, again the office and the resources of public office become instruments of the re-election obsession.

Almost every Member maintains and staffs at least one office in his district or state. These offices are to be found in such diverse places as shopping centers, office complexes, and Federal buildings. Those who work in these offices are given the ostensible assignment of providing constituent service. In fact they can and do provide on-the -scene availability to the citizen who is far from the highly centralized bureaucracy in Washington, D.C.

The difficulty with the district workers, as we have seen with the other staff positions outlined above, is that there is a duality of purpose. While providing the citizen with a means of dealing with the too often implacable Federal government, the district office frequently becomes a year-round campaign headquarters. The Member's name is displayed everywhere; everything in the office is done in the name of the Member smiling down on the humble petitioner from the picture covered walls. The district office can also be a storehouse and distribution point for campaign literature. The people who staff these offices are inevitably close and dear friends of the Member and they plan schedules for the Member and arrange speaking engagements, all the while keeping a close watch on the political pulse of the area. In these and other ways the district offices are political outposts in the re-election campaign.

The district office authority was given by the Congress to itself indirectly through Public Law 92-184, enacted on December 15, 197 1. Section 401 of that law is a license to streamline the re-election machine.

> Sec. 57. Adjustment of allowances by Committee on House Administration.
>
> (a) Until otherwise provided by law, the Committee on House Administration may, as the committee considers appropriate, fix and adjust from time to time, by order of the committee, the amounts of allowances (including the terms, conditions, and other provisions pertaining to those allowances) within the following categories:
>
> > (1) for Members of the House of Representatives, the Resident Commissioner from Puerto Rico, and the Delegate from the District of Columbia-allowances for clerk hire, postage stamps, stationery, telephone, and telegraph and other communications, official office space and official office expenses in the congressional district represented ... official telephone services in congressional district represented, and travel and mileage to and from the congressional district represented; and...
>
> (b) The contingent fund of the House of Representatives is made available to carry out the purposes of this section.
>
> 2 U.S.C. 57

In the above passage, the Congress wrote into the law conclusive evidence of the existence of its re-election obsession. It went underground with the cookie jar. The new privileges it wanted were too publicly objectionable to be handled by public laws so, in the case of the House, authority was given to a committee. The House Committee on Administration was given control over congressional district offices, travel, stationery allowances, and the other items mentioned in the statute. These sweeping powers were to be exercised in any manner deemed "appropriate." We shall see the Committee in action later in the area of travel, but for now we will be content to point out that the first order issued by the House Committee on Administration provided, in part:

> Resolved that effective January 25, 1972, each Member of the House of Representatives shall be entitled to office space suitable for his use in the district he represents at such places designated by him in such district.

The Order goes on to provide that the member may have two offices in post offices or Federal buildings, that the total allowance in lieu of provided space shall be $200 per month or $350, if the Member certifies that rents are high, and that Members are entitled to have a total of three offices "outfitted with office equipment, carpeting, and draperies at the expense of the General Services Administration."

Order Number 1 was rescinded by Order Number 12 which made certain technical adjustments in the original allowance and increased the "hardship" allowance to $500 per month.

The duality of the local office function is further illustrated by the recently devised "mobile office." It would be difficult to imagine a more overtly political operation and, as such, a more clear misuse of congressional power than these perpetually moving presences. They are another legislative gift from the Members to themselves.

> (A) senator may lease one mobile office for use in the state he represents and shall be reimbursed from the contingent fund of the Senate for the rental payments made under such lease.
>
> 2 U.S.C 59(e)(1)

Many Members have shunned the use of mobile offices out of a well-founded fear that they will be seen for what they are, an obvious re-election operation. Briefly, the mobile office has two functions. It is a mobile office, a recreation vehicle converted to an office, that, on some type of scheduled course, travels throughout the state or district giving the backwoods people a chance to talk to the Member's staff about local or individual problems. That is the service function.

The re-election function is too evident to really require comment. The Member's presence is carried to the far reaches of this district or state. The electorate is sought out and the traveling billboard makes no secret of who it is that is bringing "government to the people." Comparable advertising could not be purchased at any price and to the Member it is free. It is compelling evidence of the exercise of the power of public office for personal gain, i.e. re-election. In what is an ironic reflection of the value of the mobile office as a campaign tool, Members immobilize the mobile offices during the months immediately preceding an election. This is done to silence the criticism that they are being used for campaign purposes. When asked about the months and months of travel through the district prior to the immobilization, Members, as they so often do, simply go on the next question.

In Addition To the Staff…

Turning now from the staff as an instrument of the campaign for re-election, it might be interesting to consider some of the other ways in which the Congress has voted itself election advantages. As with the staff, the degree of use and abuse varies from one Member to another, but the practices described below are the rule.

The newsletter is a favorite of Members. This little publication prerogative which they dearly cherish is for some Members a regular event appearing every month or two and perhaps more frequently in election years.

In appearance the newsletter almost invariably displays the Member's picture and name. In one lawsuit wherein the Member was charged with abusing the franking of newsletters, evidence was introduced that the Member's picture appeared no less than six times in one edition of his newsletter. *Rising V. Brown,* 313 F. Supp. 824.

The newsletter is usually printed in eye-catching color or on colored paper or both. It often is conveniently printed on 8!6 X 14 paper folded to form four pages. The printing type varies greatly and some Members, either individually or collectively, own their own presses. More typically, the production work is contracted out. David R. Ramage seems to be a favorite contractor of the Democrats while Thomas **J.** Lankford receives much work from the Republicans.

Content of newsletters is as various as the people who write them. Some report ongoing major events in Congress. Some carry articles explaining the Member's position on issues. Yet others are, in form, questionnaires, seeking the reader's opinions on various issues.

Whatever the form or content the trick is to get the voter's attention, to make him aware of the Member's name, and to encourage the idea that the Member resolutely stands for the principles most near and dear to the people. The desire to get the reader personally involved probably accounts for the popularity of the opinion poll technique. It impliedly says that the Member is listening to his constituents; it gets the reader to take up a pen and participate; it makes that participating reader more aware of the Member and the Member's name.

The newsletter is prepared by staff on the public payroll and it is paid for with taxpayer money by each Member out of his office allowance. For example:

Cong. Les Aucoin paid $3,806.25 to David R. Ramage on 3/17/82 for "Official Newsletters"

Cong. Larry E. Craig paid $3,148.15 to Thomas J. Lankford on 3/23/82 for "Questionnaire Cards"

Cong. Robert H. Michel paid $3,417.25 to Thomas **J.** Lankford on 4/23/82 to "print Questionnaire 2-c TS"

Cong. Thomas P. O'Neill Jr. paid $2,058.20 to David R. Ramage on 6/16/82 to print "215,000 Newsletters"

With the exception of Speaker O'Neill and Minority Leader Michel, the above examples were selected at random from the Report of the Clerk of the House for the period April 1, 1982, to June 30, 1982. These few examples serve to illustrate that the printing and mailing of newsletters is a widespread, perhaps universal, practice in the House. It is also a very expensive practice, expensive, that is, for the taxpayers. Even a generalized estimate suggests that the total could be over a million dollars per quarter for the House.

The newsletters are mailed at public expense under the address, "Boxholder" or "Postal Patron." The practice of using the newsletters in campaigns is, like the mobile offices, so patently political, that in a 'reform' of the practice in 1981, Public Law 97-69, its use was restricted somewhat in the 60 days immediately preceding an election. It is impossible to understand why it is not political in the 22 months prior to the 2 months preceding an election, but such is the re-election mentality of Congress. The enactment of Public Law 97-69 is, however, typical of the congressional approach to reform, i.e., take note of an abusive practice but curtail only the most extreme and conspicuous aspects of it. It's something like the driver who, going 90 miles an hour, slows to 75 and then heatedly complains of police harassment when handed a speeding ticket.

The use and abuse of *the frank* is a tale unto itself. It must be recognized immediately that the frank is a necessity. Members simply cannot be expected to answer at their own expense the hundreds of letters they receive every week. It is the abuse of the franking privilege that illustrates and proves again how the re-election obsession has beguiled the Members and corrupted through excess a necessary prerogative of office.

As noted above, the newsletters are obviously political in nature yet they are mailed under the frank-free to the Members-full expense to the taxpayers. The same is true of other mass mailings such as the congratulations to graduates, the tons of

booklets, stamped with the Member's name, the calendars, and the many other materials that pour forth from congressional offices each day.

The franking privileges as a creature of statute appears in section 3 2 1 0 of title 39, United Stated Code. The broad and permissive sweep of that section can only be appreciated by reading the text itself.

> Franked mail transmitted by the Vice President, Members of Congress, and congressional officials.
> (a) (1) It is the policy of the Congress that the privilege of sending mail as franked mail shall be established under this section in order to assist and expedite the conduct of the official business, activities, and duties of the Congress of the United States.
> (2) It is the intent of the Congress that such official business, activities, and duties cover all matters which directly or indirectly pertain to the legislative process or to any congressional representative functions generally, or to the functioning, working, or operation of the Congress and the performance of official duties in connection therewith, and shall include, but not be limited to, the conveying of information to the public, and the requesting of the views of the public, or the views and information or other authority of government, as a guide or a means of assistance in the performance of those functions.
> (3) It is the intent of Congress that mail matter which is frankable specifically includes, but is not limited to-
> (A) mail matter, to any person and to all agencies and officials of Federal, State, and local governments regarding programs, decisions, and other related matters of public concern or public service, including any matter relating to actions of a past or current Congress;
> (B) the usual and customary congressional newsletter or press release which may deal with such matters as the impact of laws and decisions on State and local governments and individual citizens; reports on public and official actions taken by Members of Congress; and

discussions of proposed or pending legislation or governmental actions and the positions of the Members of Congress on, and arguments for or against, such matters;
(C) the usual and customary congressional questionnaire seeking public opinion on any law, pending or proposed legislation, public
issue, or subject;
(D) mail matter dispatched by a Member of Congress between his Washington office and any congressional district office, or between his district offices;
(E) mail matter directed by one Member of Congress to another Member of Congress or to representatives of the legislative bodies of State or local governments;
(F) mail matter expressing congratulations to a person who has achieved some public distinction;
(G) mail matter, including general mass mailings, which consists of Federal laws, Federal regulations, other Federal publications, publications purchased with Federal funds, or publications containing items of general information;
(H) mail matter which consists of voter registration or election information or assistance prepared and mailed in a nonpartisan manner;
(I) mail matter which constitutes or includes a biography or auto- biography of any Member of, or Member-elect to, Congress or any biographical or autobiographical material concerning such Member
or Member-elect or the spouse or other members of the family of such Member or Member-elect, and which is so mailed as a part of a Federal publication or in response to a specific request therefore and is not included for publicity purposes in a newsletter or other general mass mailing of the Member or Member-elect under the franking privilege; or
(J) mail matter which contains a picture, sketch, or other likeness of any Member or Member-elect and which is so mailed as a part of a Federal publication or in response to a specific request therefore and, when contained in a

> newsletter or other general mass mailing of any Member or Member-elect, is not of such size, or does not occur with such frequency in the mail matter concerned, as to lead to the conclusion that the purpose of such picture, sketch, or likeness is to advertise the Member or Member-elect rather than to illustrate accompanying text.

Save the necessity of answering constituent mail, this is purely and simply a re-election statute. It is a stark example of the use of legislative power for the self- interest of incumbents. It is designed to protect the privilege of sending out newsletters and other political mass mailings. Note, for example, how subsection (3) is simply an enumeration of what may be franked. Specifically, it permits the (B) franking of newsletters; (C) questionnaires; (G) mass mailings; and (J) pictures and biographical information on members.

If the practice of using the frank for political purposes were somewhat less obviously detrimental and painful to challengers, it would be amusing to note the anemic and cosmetic restrictions placed on the use of the frank by 39 U.S.C. 3 21 0. For example, the newsletters and other mass mailings are restricted in the 60 days immediately preceding an election, subsection (a) (5) (D). However, it must be noted that Congress has excluded from that 60 day restriction "news releases to the communications media," (a) (6) (E) (iii). No fair-minded person could seriously contend that such a restriction is meaningful in a campaign which lasts for months, indeed, a campaign which is for the incumbent, continuous.

Other equally meaningless restrictions include: a prohibition on letters to family members and for non-congressional business, (a)(5)(B). Of course, legislative lip service is paid to a prohibition on political material, (a)(5)(A). But, if newsletters, mass mailings, pictures, and biographies are not political, it defies the imagination to conceive of something that is.

Section 3210 was enacted as Public Law 91-375 and, since it became effective on August 12, 1970, it has been the subject of a number of court challenges. Challengers, however, have experienced little success.

One court did hold that a mass mailing by a Congressman to voters of a district which the Member did not represent was not official business. *Hoelien v. Annunzio,* 46 8 F2 5 22, cert. den. 412 U.S. 95 3. *The Hoelien* case only serves to show how grossly improper use of the frank can be. The Member there was obviously gearing up for a senatorial or gubernatorial race and went a bit too far for even the courts to ignore.

The attitude of the Federal judiciary toward the congressional use of the frank is better illustrated though by *Schiaffo v. Helstoski,* 492 F2 413, where the court held that the newsletters and copies of documents (free brochures and pamphlets supplied by executive branch agencies and departments) did not violate the franking privilege since the general purpose of the statute is to permit Congress - men to communicate with their constituents. Another court said that the separation of powers doctrine precludes the judiciary from controlling what Members of the legislature may send to voters. *Bowie v. Williams,* 351 F. Supp. 638.

The public interest group, Common Cause, has made at least one serious attempt to get the Federal courts to curtail the abuse of the frank by Members of Congress. For example, see *Common Cause v. Bolger,* 512 F. Supp. 26. To date that case has survived determined challenges to the right of Common Cause and challengers to some incumbents to even bring the suit. It is interesting to note that one of the opponents of Common Cause was the U.S. Senate.

The few examples noted above of using the frank to mail newsletters to non- constituents, of using it to mail bulk materials, and the repeated charges of misuse and abuse by citizens groups and challengers of incumbents illustrate the reluctance of the courts to embark upon a judicial adventure which would carry them perilously close to a conflict with the legislative branch. The unspoken position of the courts is founded upon their own self-interest. They fully realize that judicial curtailment of the misuse of the franking privilege would be interpreted by the Congress as interference in legislative affairs and would bring down upon the judiciary an avalanche of angry congressional reaction including

threats of retaliation, attempts to curtail jurisdiction, and general legislative animosity.

It is obvious to those who have been victimized in elections by franking abuses and to others who have observed this practice that the courts have been willing to sacrifice the public's right to scrupulously fair elections to an over-generalized right to conduct legislative business on terms defined solely by Congress, self-serving though those terms may be. It is not, however, the purpose of this tract nor is it within its scope to argue the legalities of the newsletter and mass mailings. Suffice it to say that they are essentially political and to the extent that they are, the printing and mailing of them at public expense is a tragic distortion of the representative principle of government. As widely used techniques of re-election they stand as classic examples of the institutionalization of self-interest through a cynical use of the lawmaking mandate.

There are, unknown to most citizens, *recording studios* in both the House and Senate. Like the frank, the recording studios are creatures of statute. Simply stated, the laws provides that:

> (a) There is established the House Recording Studio and the Senate Recording and Photographic Studio.
>
> 2 U.S.C. 123b(a)

The functions of the studios are also described by the statute.

> The House Recording Studio shall assist Members of the House of Representatives in making disk, film**,** and tape recordings, and in performing such other functions and duties in connection with the making of such recordings as may be necessary.
>
> 2 U.S.C. 123b(b)

The second sentence of 123b(b) is identical to one set out immediately above except that it is for the Senate. In fact, the entire provision is in parallel terms so that the House and Senate members are assured of perfectly equal treatment before the eye

and ear of the camera and microphone. These facilities are also exclusive.

> The House Recording Studio shall be for the exclusive use of Members of the House of Representatives. (same for the Senate.)
>
> U.S.C. 123b(b)

The Recording Studio of the House is operated by the Clerk of the House; the Senate Studio by the Sergeant of Arms of the Senate. The Clerk of the House and the Senate Committee on Rules and Administration are directed in section 123b to "set the price" of making recordings. No one has ever pretended that the 6 4price set" and the amounts paid into the respective revolving funds comes anywhere near the full costs of operating the studios and making disks, films**,** and tape recordings. A large portion of the costs probably, and the overhead certainly, are borne by the taxpayer.

In practice, the Member's office calls the studio, reserves a time, appears at the appointed hour, and places himself in the hands of the professional and skilled technicians whose job it is to make him look and sound as congressional as the marvels of electronics allow. If your Congressman or Senator is a frequenter of the recording studio, you probably have seen the backdrop of the Capitol building appearing behind the Member as he "communicates" with his constituents. Having recorded his message, the Member orders as many copies as he and his press agent feel can be usefully distributed to radio and television stations in the district or state. Distribution is, as you would expect, by franked mail.

As if having the recording studios was not enough, Congress decided to add a bit of frosting to its own cake. The lawmakers provided in the Federal Election Campaign Act (a "reform" measure) that Members would be exempt from reporting

> as contributions received or as expenditures made the value of photographic, matting, or recording studio services

> furnished to him by the Senate Recording Studio, the House Recording Studio, or by an individual ... (employees in the studios) ... This subsection does hot apply to such recording services furnished during the calendar year before the year in which the Member's term expires.
>
> 2 U.S.C. 434(d)

To be sure, the practice of making video and audio tapes about congressional affairs has an air of legitimacy about it. It cannot be disputed that it is communication with the people and, as such, it fulfills an information need that is vital to informed decision making. At the same time, it is media blitzing; it is self-aggrandizement at the extreme. In the final analysis, the message of the medium is political and the cost is further deterioration of free and open elections.

Consider the *airline ticket.* Seldom is such a thing free unless, of course, you are an incumbent Member of Congress. A study of this subject is very instructive for it tells much about the Congress, its re-election obsession, and the length to which the love of power will drive even the "innocent."

That we may understand the subject, it will be necessary to trace a somewhat convoluted**,** tedious, and dim legislative pathway. With the reader's indulgence we can demonstrate how the Congress has re-enforced the eternal validity of Sir Walter Scott's couplet:

> Oh what a tangled web we weave
> When first we practice to deceive.

As of 1958, Public Law 85-570 permitted Members of the House and Senate to take 2 round trips per year between Washington D.C. and their "resident cities."

That law was amended in 1959 to allow 2 round trips between Washington D.C. and "any point in their home state."

The law was again amended in 1963 to allow Members of the House reimbursement for "transportation expenses."

The law was amended again in 1965 to increase House Member trips from 2 *to 4.*

The law was amended in 1966 to increase Senator round trips to the *equivalent of 6.*

In 1967, the law was amended to allow Members of the House an increase from *4 to a number equal to the number of months Congress was in session.* (This would probably average 8 to 10 round trips per year.)

The law was amended in 1969 to increase the number of trips allowed a Senator from *6 to 12.*

Now the plot thickens. The above changes were, as they should have been, made by the enactment of public laws. However the highly visible practice of actually voting for these now routine increases became something of a burden, a political burden anyhow. A little footwork combined with a very willing committee chairman to do the dirty work made many things possible.

On May 27, 197 1, the House passed Resolution No. 45 7. The substance of House Res. 457 was enacted by Congress as Public Law 92-184 on December 15, 1971. As noted above in our discussion of district offices, the infamous section 401 of that law was all things to all Members of the House. That law provided that the House Committee on House Administration could, *by order of the Committee,* set the terms, conditions, and allowances for travel and mileage to and from the district.

> It is of incidental interest that the same Act placed under the Committee on House Administration such matters as clerks hire, stamps, stationery, telephone, and office space, and district office expenses. All were to be set by *Committee action.*

Remembering that Committee action is dramatically less noticeable than a vote on the floor of the House or Senate and that it requires only the vote of a handful of Members and that a daring chairman can work wonders, we need to look now at the orders of the Committee.

Committee Order No. 2, issued on January 3, 1973, provided that each House Member be *allowed36roundtripsper Congress* (that's 18 round trips per calendar year). That same order granted to each office *6 round trips per Congress* (3 per calendar year) for use by employees.

Order No. 2 further provided that a member who did not travel could receive in lieu thereof a lump sum payment of $2,250 per Congress ($1,125 per calendar year).

Order No. 2 also provided, as translated, that junkets were not to be counted in any of the above allowances.

Committee Order No. 19 presumably was issued between April 1975 and June 1975. It reduced the number of round trips from *36 per Congress to 26 per Congress (13* per calendar year). This reduction seems out of character with what had been a runaway trend. Two points need to be made about the reduction. It came as part of a reform action that swept through Congress after the Chairman of the House Committee on Administration became the subject of much publicized embarrassing revelations. Second, as suggested earlier, the reform was consistent with the deceptive practice of the Congress in its other reforms. That is, there was a retreat from the most egregious and visible abuses, but the essence of the practice was retained.

Further reform was effected in 1976 when Congress enacted Public Law 94- 440 which provided that a Resolution of the House would be required for the types of changes in travel allowance that had been made under Committee Orders. Note again that the retreat was not back to the requirement that such changes be by enactment of a law, but only by full House action.

The next step in the "reform " was Committee Order No. 30 which provided that, effective January 3, 1977, House Members could transfer money from one operating account to another. Relevant to travel, the Order did not specify any number of trips which a Member could take to his district. Instead it set forth a mileage-based formula for travel with a minimum of $2,250 and a possible maximum of over $15,000. The flexibility introduced by this Order thus permits Members to travel almost at will.

In 1972, while the House was transferring travel authority to its Committee on House Administration, the Senate was also revising its authority for travel. In 1972, the Congress enacted Public Law 92-607. It provided that all travel authorization for Senators was to be eliminated from Public Law 85 -5 70. Public Law 92-607, codified, in part, as 2 U. S.C. 5 8, provided that the contingent fund of the Senate would be available for the travel of Senators traveling on official business to and from and within his state. Reference to number of trips was eliminated and Senators are free to travel and campaign at will. Senators also allowed themselves wide latitude in the area of travel by members of their staff.

The preceding outline illustrates the development of a classic case of malfeasance in office. In the space of twenty years, the number of yearly round trips from Washington D.C. to the district and back to Washington D.C. was increased for House Members from 2 to 18 and finally "reformed" back to 13; and from 2 to 12 for Senators. Then both Houses tossed all limits overboard and some Members travel to their campaign areas every weekend. All this was done with no justification since the length of sessions did not increase significantly nor did the number of bills introduced and the number of bills enacted into law. Appendix A, Chart 7.

Not only did the Congress give itself a gold plated travel ticket, it did so, in significant part, covertly. When caught with its hand under the ticket counter, it only reformed some of the worst aspects of the practice-lamely and partially.

Is all this travel politically inspired? Only the most naive would believe that the constant travel, and never-ending meetings, speechmaking, and appearances is anything but campaigning. For example, the fact that Senate travel is political in nature is evidenced by the fact that, on the average, Senators travel to their home states significantly more in the two years preceding an election than in the four years following a successful campaign. Older House Members who run unopposed seldom go home while newer Members travel constantly.

As with most activities, official travel on the business of Congress is not the issue since that kind of travel should be

reimbursed. The difficulty here is that Members are fully capable of distinguishing between official travel and campaign travel, but to their everlasting discredit they do not do so. The practice of engaging in taxpayer paid travel for partisan political purposes and the appropriation of monies in support of that travel is the re-election obsession in its most cynical and unadulterated form.

As the Nation's awareness of and involvement with *computers has* dramatically increased, so has the computer become a tool of the re-election obsession. Each House Member of the 97th Congress who used computer services paid to Dialcom Incorporated what appears to be a standard fee of $975 per month. Order No. 30 issued by the House Committee on Administration provides that "a Member may transfer a maximum of $12,000 per regular session for computer and related services..." Thus this generous allowance as consumed by monthly fees and by diverse and miscellaneous other computer related payments which appear in the quarterly reports of the Clerk of the House makes it quite evident that the computer has arrived on Capitol Hill.

One must wonder at this development. Most people who have even a passing familiarity with computers realize that they are marvels for information storage and high volume repetitive operations. Given these characteristics the question occurs, what legislative use can they serve in the individual offices of Congress - men? It is a safe bet that these machines store voter lists, contributor histories, and other election related information, again and, as always, at taxpayer expense.

A SHORT PERSPECTIVE

Thus far we have seen that incumbent Members of Congress have an astonishing record of success in managing to get themselves re-elected to Congress. Even 1982, which was hailed by the "political experts" as a year of significant change, saw House Members enjoy over a 90 percent chance of staying in office. Suspecting that Congressmen and Senators were not being re- elected in such impressive numbers solely because of their personal magnetism and realizing that credulity cannot abide the notion that incumbents are sent back to Washington D.C. because congressmen are loved for their achievements, we looked further.

Our look at certain key staffers, which was by any standard rather abbreviated, showed that their emphasis is on political activity and that the underlying goal of their efforts is the re-election of the Member. There is little with which to rationalize paid press agents, speechwriters, and district politicos, all on the public payroll.

We then took note of the newsletter, clearly political and re-election oriented, and saw how it is prepared and mailed at taxpayer expense. It is mailed with the frank which itself is used in a multitude of ways to advance the political cause of the Members of Congress.

In addition to the newsletter and frank, we became aware of the House and Senate recording studios, operated in the public houses of Congress at public expense, and used to extol the virtues of the Members through the electronic media. Indeed, the recording studios are such transparently political devices that many Members shun them, in the way that others avoid using the mobile offices allowed them under the law.

A close look at the growth of paid travel was most revealing for what it said about reform. The way in which the travel expansion took place was mute testimony to the very troubled congressional conscience which tried to hide wrongdoing behind the skirts of a corrupt committee chairman. It also seems to evidence the growing intensity of the re-election obsession as Members began spending less time in Congress and more time on

the road in what has become a perpetual struggle to retain their elected positions. The most recent of the lawmaker's gifts to themselves is computer service, including programming. We ask the obvious question-what legislative activity of the average Member could require programming of computers? Many re-election activities, however, lend themselves nicely to computer activities.

All of these aspects, taken together, tell, too well, a tale of re-election at any cost, of re-election at the expense of integrity, re-election covertly sacrificing sacred public trust, and re-election written into in the law of the land. The obsession lives in the hearts of Members who succumb to self-deception and rationalization in order to protect what they and the media refer to as their "seats." The obsession is also an irresistible temptation to interest groups who feed and cultivate it with the prospect of an abundant harvest among the thousands of unseen and obscure votes in the House, in committees of the House, in the Senate and in the committees of the Senate.

The re-election obsession is a personal tragedy to every Member who supports it with desperate excuses when confronted with its specific effects and who, at the same time, tries to conceal its general contours from the public by misdirection. The re-election obsession is a malignancy in the very heart of this Nation's public affairs and we have a public duty to look further into the effects it is having on our government and our affairs.

THE COSTS OF HARBORING A RE-ELECTION OBSESSION

Having considered some of the mechanisms by which the Members of Congress seek to guarantee their own re-election, it seems in order to offer a few observations on the effects of the re-election obsession. While doing so, it is important to remember that such effects come not from the use of one such device incidentally by a few members or the wholesale use of one device by all members. In fact, the detrimental effects we shall note derive from the persistent, continued, long-term collective and general use of such devices and from the fact that they have become "accepted" and have been given an aura of respectability by being implanted in our laws and generally ignored by a public hardened to political abuses.

Perhaps the most significant effect of the re-election obsession is the debilitating inflexibility it has imposed upon the legislative process. This is evidenced by the failure of recent sessions of Congress to revitalize social security, to reduce runaway domestic spending, to bring the budget into a semblance of order, to follow orderly budget procedures, to act coherently and consistently on energy matters, to deal with high interest rates, to reduce persistently high unemployment, to reform the farcical tax code it has bungled into its present state of chaos, and, in general, to reform its procedures and control its own excesses.

No better example of growing legislative inflexibility can be found than the one supplied by recent budget activities. The Congressional Budget and Impoundment Control Act of 1974 provides a statutory timetable for Congress to follow during the budget process. Beginning with the receipt of *a proposed* budget from the President in late January the schedule is:

MARCH 15 - Committees and joint committees to submit reports to the Budget Committees of the House and Senate

APRIL I - Congressional Budget Office submits report to Budget Committees

APRIL IS - Budget Committees report the first concurrent resolution on the budget to their respective Houses.

MAY 15 - Committees report bills and the resolutions authorizing new budget authority

MAY 15 - Congress completes action on first concurrent resolution on the budget

7TH DAY AFTER LABOR DAY - Congress completes action on bills and resolutions providing new budget authority and new spending authority

SEPTEMBER 15 - Congress completes action on second required concurrent resolution on the budget

SEPTEMBER 25 - Congress completes action on reconciliation bill or resolution, or both, implementing second concurrent resolution

OCTOBER I - Fiscal year begins for the entire government

If the above schedule is followed, all appropriations bills are enacted before October 1 which is the day the Federal government's financial year begins. In recent years, the budget calendar has been almost totally ignored.

Congressman Leon Panetta, a member of the House Budget Committee, recently admitted budgetary failure and called for a 2-year budget schedule. He told the House of Representatives that in 5 of the last 7 years Congress failed to meet the May 15 deadline. In 1980 only 3 of more than a dozen appropriations bills were enacted before the fiscal year began, and in 1981 only 1 was passed on time.

When appropriations are not passed by the beginning of the new fiscal year, the agency or department whose money is not made available must shut down operations. To forestall that, Congress can enact a Continuing Resolution. That is simply a law authorizing the named agency to continue spending money for the same things and at the same level as the previous year. It is

properly used only for the most unusual or emergency type of situation.

Mr. Panetta, in his call for a two year schedule, bemoaned the fact that 6,continuing resolutions are becoming permanent fixtures in the congressional budget process." Cong. Record. January 25, 1983, H 104. He found many reasons for the dismal record of non-performance and failure by Congress to meet its responsibilities.

However, Congressman Panetta did not list in his litany of excuses, rampant absenteeism, constant travel on junkets and to the districts, 3 and 4 day workweeks, and long and frequent recesses which Congress now euphemistically calls "district work days." For example in both 1980 and 1981, the years mentioned above, Congress failed almost entirely to enact appropriation measures in a timely manner, but in both years it took an extended August recess and all the other customary recesses.

While much is written and said about the President's budget, the essential fact is that Congress and Congress alone has the responsibility to enact all laws including those appropriating money. The failure to enact appropriation laws has always been and must, under the Constitution, remain the failure of Congress. These and other issues are dealt with, if at all, in a piecemeal, indirect, and incoherent manner because to be comprehensive, to go directly to the point of these issues, and to be overt in their actions would be offensive to special interests, to contributors, and would be noted by the press. This timidity in the legislative process has come about because the Congress has become overly politicized.

The balance of values in the Congress has become so disproportionately weighted on the side of re-election that all events, all decisions, and the process itself are geared to serving the political needs of the incumbents. The work of the Congress is now entirely reactive, never prospective, and reaction occurs only when an issue has been sharpened into the obvious by an agony of necessity.

Former Senator Nicholas Brady of New Jersey who served the lag end of Harrison William's term said of the Senators and the legislative process;

> The people are bright and dedicated, but they come here (to the Senate) and something goes haywire. Most Senators ... no, every Senator knows it isn't working. We are forever distracted from the important questions facing the country.
>
> Editorial by syndicated columnist, Richard Reeves

Another effect of the re-election obsession now rising to haunt the Congress itself and the Nation is uncontrolled spending. The almost uncountable billions of dollars needlessly spent on public works projects for purely political purposes is frightening evidence of the toll of the "anything for re-election" mentality which is the fundamental reason for the enactment of pork barrel projects. The cumulative effects of such profligate spending is now beginning to overwhelm the Nation's ability to pay. The public works spending mania is very well documented in a recent book by William Ashworth entitled *Under the Influence. The* startling facts set forth in that excellent book show pork barrel politics on the rampage in Washington D.C. The underlying force which has been driving Congress to perform in such an irresponsible way is what the booklet you are now holding has called the "Re-election Obsession."

Another effect visited upon the taxpayer by the re-election obsession is a bureaucracy so large and with an appetite for money so enormous that it can scarcely be comprehended. In this area, another recent book has appeared which should be read by every concerned citizen. *Proposition Fourteen* by Richard Cummings states the proposition that the Federal government has grown so large that it simply can no longer govern. Cummings says that the only logical response to the gargantuan bureaucracy is to fragment power and responsibility and return government to local areas.

Not only has the Federal government grown too large, it is centralized with all power in Washington D.C. Occasionally one

hears a politician promise to decentralize Federal operations, but the notion usually dies stillborn. No President, although he has the power to do much in that regard, has ever taken the time or made the serious effort which would actually move the bureaucrats off the Potomac and back to the people they serve. Members of Congress who speak of decentralization do so politically and not in any sense of actually seeing such a thing happen. The pursuit of re-election does not necessitate such decentralization and this writer is not aware of any Member who has made it a re-election issue, thus the centralization continues.

Congressmen and Senators on the campaign trail inevitably complain about the size and growth of the Federal government. It would be an unusual incumbent, however, who would associate his own incumbency with excessive spending. Nevertheless, the penchant of members to campaign against the growth of the executive branch bureaucracy is, in fact, a display of shameful hypocrisy because Congress has itself become a bureaucracy.

In 1965, the Senate had :3,474 paid employees. During the ensuing sixteen years, that number increased steadily until, in 1981, it had doubled the 1965 number and had 7,301 people on the payroll. The House followed the same pattern. In 1965, it had 5,822 employees. Sixteen years later, in 1981, it had increased that number to 12,037. See Appendix A, Chart 8.

Together the House and Senate in 1981 had 19,338 employees- That makes the Congress a larger bureaucracy than most of the independent agencies such as the Interstate Commerce Commission, Nuclear Regulatory Commission, and the Federal Communications Commission, to name only a few. In fact, the congressional bureaucracy is more than twice as large as all three of the agencies mentioned above combined. With its almost 20,000 member bureaucracy, the Congress is now in the same league with the Departments of Energy and Housing and Urban Development, indeed, it is almost the same size as the State Department which had some 23,439 employees in 1981. .Appendix A, Chart 9.

As would be expected, the cost of the increases in the size of the "Department of Congress" has been commensurate with its expanding bulk. In 1965, the cost to the taxpayer for the

legislative payroll was 216 million dollars. The 1980 cost was more than four times that amount, a staggering 883 million dollars. Thus, we can expect to very soon see a billion dollar Congress. Appendix A, Chart 7.

A justification for this increase cannot be based upon increased workload nor upon increased production. The 88th Congress in 1963-64 enacted 1,026 public and private laws with its 3 to 4 thousand staff. By comparison the 96th Congress in 1979-80 enacted only 736 public and private laws with its close to nineteen thousand staff members. Appendix A, Chart 7.

There are few serious students of congress who would contend that the quality of legislation improved over the same period that the staff ballooned to its present size. Indeed it is more likely that the caliber of the work produced has declined. Illustrative of both the deteriorating quality of legislation and the politically motivated attempts by recent Congresses to conceal in the obscurity of complexity, acts which are voter-sensitive, is the handling by the Members of their own pay.

Compare for example the pristine elegance of:

> The compensation of the Speaker of the House of Representatives shall be at the rate of $15,000 per annum, and the compensation of Senators, Representatives in Congress, Delegates from Territories, Resident Commissioner from Porto (sic) Rico, and Resident Commissioners from the Philippine Islands shall be at the rate of $10,000 per annum each.
>
> 2 U.S.C. 31 as enacted March 4, 1925

with the following modern enactment.

> (1) The annual rate of pay for (A) each Senator, Member of the House of House of Representatives, and the Delegate to the House of Representatives, and the Resident commissioner from Puerto Rico,

(B) the President pro tempore of the Senate, the majority leader and the minority leader of the Senate, and the majority leader of the House of Representatives, and

(C) the Speaker of the House of Representatives, shall be the rate determined for such positions under sections 351 to 361 of this title, as adjusted by paragraph (2) of this section.

(2) Effective at the beginning of the first applicable pay period commencing on or after the first day of the month in which an adjustment takes effect under section 5305 of Title 5 in the rates of pay under the General Schedule, each annual rate referred to in paragraph (I) shall be adjusted by an amount, rounded to the nearest multiple of $ 100 (or if midway between multiples of $100, to the next higher multiple of $100), equal to the percentage of such annual rate which corresponds to the overall average percentage (as set forth in the report transmitted to the Congress under section 5305 of Title 5) of the adjustment in the rates of pay under the general schedule. 2 U.S.C. 31 as amended

Until 1969 whenever Congress wanted to raise its pay, it changed the numbers in the first section 31 cited above. However, the impulse to construct an elaborate formula finally became overpowering and the tortured second section 31 came into being. The general import of the 1969 revision, which was enacted as Public Law 90-206, was to toss the responsibility to the President for making a pay recommendation in his budget and the Congress by not doing anything can accept it.

The subject is entirely political and the complex, cumbersome process now in place is another example of what happens to the laws when incumbents struggle to work the system to their own advantage. The recent attempts to manipulate the tax code to the benefit of Members fall into the same category. The effort to conceal there was evidenced when the amendment was found tacked onto an unrelated provision for coal miners.

Many would agree that Congress has been abrogating much of the fundamental work of legislating to staffers with the result that Members of the House and Senate seldom comprehend the nuances of the legislation upon which they are voting. As staff do more and more of the negotiating and drafting of legislation, the Members retreat ever further into pure political activity. More and more our elected representatives posture as legislators by focusing on one or two bills and a very few limited issues, all the while living politically on slogans and generalizations, leaving the day-to-day business of government to non- elected staff members.

Another price we pay for persistent, guaranteed re-election of a few people to Congress is the alienation of the citizenry from their representatives. After a given Member is re -elected once, twice, three times and more, opposition is effectively suppressed and only token challengers appear. In fact, some Members now run unopposed.

Once election opposition disappears, the Member, now invulnerable, ceases to be truly sensitive to his constituency. Less and less must he represent home folks, more and more he is free to represent the contributing lobbyists and special interests who have continual access to him in Washington D.C. and who, in fact, finance his campaigns.

The evidence that this is happening is all around us. The favorable legislative treatment of various interest groups in tax and appropriations legislation is epidemic. The recent growth in the size and influence of Political Action Committees (PACs) is evidence of the same thing. Members who receive large sums of money from those groups vehemently deny that they are influenced by them and their enormous amounts of money. The voter is apparently expected to believe that the Member receives vast sums of money for some vague, ill-defined reason and that the Member who takes it retains all his fierce independence. Recent analyses have shown the contrary. The clear result of PAC money is votes.

The relevance of PAC influence, or that of any Washington D.C. lobby group, on a Member of Congress is the effect that such influence has on his fidelity to the people who have elected him to

office. To the extent there is a conflict or there is an inconsistency the voters all too often lose. That loss is often not felt nor perceived. The trick of responding to the influence peddlers is to conceal the Member's behavior from the general public in complex, technical enactments and in subcommittee and committee votes. Aside from a few major issues, it is fair to say that the votes in Congress are so poorly defined, so difficult to trace, so lost in procedural archaisms that accountability is a practical impossibility. Also lost is the meaningful association between voter and representative which, in theory at least, is the critical nexus of representative government.

As re-election dominates the time and attention of Members of the Congress, there is less time available for the essential business of oversight. Under our system of government the execution of the laws is the duty of the executive branch, but it is a legitimate and proper role for the legislative branch to follow up and see to it that the laws are carried out in accordance with the intent of the legislature.

Because oversight is, for the most part, a non-glamorous, tedious, and time consuming process. There is little in it that can be turned to re-election advantage. The exceptions are the cases where some real or imagined misdeeds of executive branch bureaucrats spell publicity. The refusal of the Environmental Protection Agency Administrator to yield up enforcement documents to a committee of Congress in 1982 is a case in point. Under the authority of the Congress to exercise its oversight authority a committee and subsequently the House, amid a flood of television and newspaper coverage, voted to hold the Administrator in contempt of Congress.

Such items as imported carpet, decorator wallpaper, chandeliers, ornate furnishings, personal servants, administrative assistants, limousines, and private dining rooms have become commonplace in the executive branch. Senator Proxmire has made a career of exposing such executive branch extravagances with his Golden Fleece awards, but one cannot but believe that the publicity is more valuable to the Senator than any remedial effect is to the public. Such executive branch excesses are fairly obvious

and they do receive some attention by the media, but a thousand-fold more expensive is the contracting activity of the Federal government which is the open door through which billions of dollars are tossed each year.

The support service contracts, the feasibility studies, the contracts which net the government no useful product whatever cost the taxpayers millions every year. The "sweetheart" deals which involve former officials and which suggest preferential treatment of contractors who hire former military officers and former high level bureaucrats are a constant threat to fair execution of the laws. These are all areas which cry out for vigorous oversight.

Congress occasionally raises a protest against some particularity foul smelling deal, but after a few hearings and after the press loses attention, so does the Congress. That, of course, is the inevitable result of a Congress oriented so very heavily toward the re-election of its Members. Publicity is the most obvious and most viable means to an end, therefore, the spectacular is preferred to the mundane, and only that which will fuel the re-election effort gets attention.

Much of the lack of oversight and the incredibly poor job of legislation is due to the dismal attendance record of many members of the Congress. Congress today is generally a three-days-a-week operation. Mondays and Fridays are given over almost entirely to travel and it is impossible or difficult to get a quorum to convene and do business. As a matter of fact, the Senate has recently adopted the practice of not having roll call votes on Fridays.

Mr. Byrd ... I understand there will be no roll call votes on this Friday ... This has been the practice for the last 4 or 5 years.

Mr. Baker. It has indeed

Cong. Record, Jan. 31, 1983, 5688.

The rule of law which is supposed to control absenteeism provides:

> The Secretary of the Senate and Sergeant of Arms of the House, respectively, shall deduct from the monthly payments to each Member or Delegate the amount of his

> salary for each day that he has been absent from. the Senate or House, respectively, unless such Member or Delegate assigns as the reason for such absence the sickness of himself or of some member of his family.
>
> 2 U.S.C. 39

This law is simply not enforced. If it were, one might expect that either a great sickness would befall the Congress, or attendance to the business of the people would improve and constant campaigning at public expense would be slowed at least a bit. The sad fact is that arranging the business of Congress to accommodate the absent-campaigning-members has become a major problem.

Attendance at committee meetings is also scandalously poor. If the issue to be dealt with is a high visibility and attention getting one and if TV cameras are present, attendance typically is quite good. Witness the Watergate hearings of the House Judiciary committee which had nearly perfect attendance. If, on the other hand, the testimony or business is routine, the average attendance is usually limited to a handful of Members. Senate committee meetings frequently go on with only one Senator present. The same is true of House committee meetings.

Both Houses have now cleverly devised systems of proxy voting in committee, thus many Members do not now even appear for routine votes. it is not even clear if the voting records reflect which votes are by Members present and which are by proxy.

An illustration of where this inevitably leads is the reported sham hearings in the Senate for the Fiscal Year 1977 National Institutes of Health budget. An official hearing report was written which included testimony by the NIH officials, and questions by the Senators. *In actual fact, no such hearing ever occurred. The Report was pure fiction.*

In a report of this deplorable event, the observation was made:

> But senators, committee aides, and officials who can perpetrate and connive at a paper hearing to fool the public

> have attained a degree of cynicism at which they must presumably conceive of the public as paper people.
>
> *193 Science, 1100,* 1101, 17 Sept. 76

Thus is the people's business of legislating conducted by a perpetually re-elected Congress which, inevitably, loses sight of its high purpose and solemn obligations.

Another significant effect of the successful use of the re-election machinery is that Members lose the identity they once had with their districts. Every Member of the House of Representatives and every Senator came from a state and district where he had numerous and diverse ties of family, friends, business, home, church, and philosophical orientation. Once they are elected to Congress they leave all that was home behind. Because Congress now is in almost year around session, the newly elected Member must move to the Washington D.C., Northern Virginia, and Southern Maryland area. They buy homes there, their children go to school there, in every way they become citizens of the Washington D.C. area. The Member returns to campaign. Some try to maintain a residence, back "home" but this is expensive and difficult and many abandon the idea after the first few terms in Congress.

Despite the loud and agonizing denial which will arise when loss of " home" citizenship is alleged, the truth of the proposition lies in the fact that pitifully few former Members return to the place from which they were elected to Congress. Why would a resident of the picturesque and affluent suburbs of Maryland and Virginia return to Kansas, Iowa, Minnesota, or Oklahoma. Their friends are in the Washington D.C. area, and most contacts in the district and state have been lost. They can get well-paying jobs with lobbyists and, because of their membership in the former Members club, they can be quite effective.

Residency also helps explain some of the intensity of the re-election obsession. After a few terms in Congress, the machinery of re-election becomes a means of keeping one's job and staying employed in what has become one's home town.

A further serious effect of the re-election obsession is a notable deterioration in legislative attitude and abdication of legislative responsibility to staff which is reflected in the following comments by the late Senator Allen.

> Mr. President, I am not satisfied that the Senate truly functions as the deliberative body envisioned by the authors of the Constitution of the United States. Too often I have been impressed by the apparent lack of attention given by Senators to particular items of legislation which have been more or less rammed through the Senate assembly-line fashion with little actual examination by Senators voting passage. Platoons of aides flock into the Senate Chamber when legislation of interest to them is under consideration, yet numbers of Senators are entirely absent. Frankly, Mr. President, sometimes it seems to me- and I am sure to spectators in the gallery-that the activities of the U. S. Senate are being orchestrated and directed by staff assistants rather than by Senators themselves... Senators who have sponsored legislation arrive immediately prior to its final passage, having taken little or no part in its debate, and hurriedly read statements prepared for them and thrust into their hands by waiting aides.
>
> Cong. Record, January 4, 1977 S. 43

The Senate described by Senator Allen is a far cry from the senate imagined by most citizens. The Senate of today, in name only, resembles the Senate of decades past when Members did their own thinking, wrote their own speeches, voted their consciences, attended the Senate when it was in session, and took their chances in the free open election process at the end of their terms.

For a case study in the abuses of the congressional staff system, one should study the Tavoulareas affair. At least part of the story is told in the Congressional Record of December 21, 1982, on pages H 10771 through H 10780. There we see evidence that staff members leaked confidential documents to the press for

the purpose of creating a media event, that congressional staff members served on the payroll of Congress and at the same time served on the payroll of television networks, that incomplete subcommittee reports were published, and through it all there was the strong hint of close involvement by the subcommittee chairman himself. Although the full story is not told in the extract referenced above, there is enough there to give the reader a sense of the meaning of what is involved when the authority of public office is misdirected and mismanaged by those who seek power as an end unto itself.

Perpetual re-election bears yet another bitter fruit - the loss of the representative character of Congress. The influence of the PACs was mentioned above and it is closely akin to the lobbyist who represents a single corporation or a single interest group as opposed to the organized PAC. These more traditional type lobbyists do not attain their influence overnight with a few tickets to Redskins football games or with a quick payoff under the table. Influence is developed and nurtured year after year with many tickets to many games, to Kennedy Center performances, to Bullets basketball, and to countless other sports, cultural and social events. Not only is the Member cultivated, but so is his staff, flowers for the secretary, lunch with the press agent, chit chat with the Administrative Assistant and on and on ad infinitum. For the Member there is a contribution at the annual fund raiser, and at the birthday party there is a gift, golf clubs perhaps, an expensive bottle of what the Member drinks, there are rides on company planes, and for those so inclined, goose hunting in Maryland.

The point here is that influence is a product of years and years of careful and close association. The lobbyists become actual personal friends of the Members. Lobbyists are forgiving and understanding. They understand that the Member must on occasion "vote the district" which, translated, means the voters are watching and a particular vote will be visible and must go the way the constituents want. However, over the longer run and on the average, the Member will go the way of the friendly lobbyists.

The obvious conclusion is that the lobby factions in Washington D. C. clearly and strongly favor the return to office of the incumbents. Every freshman Member must be "educated" and must be brought along over a long period of time. During the first few years, while the Member is still fresh from back home, the influence of the lobbyist is weak and the Member tends to think first of his campaign promises. It is only after a few terms that he begins to fully understand the system, the role and value of a few close " friends " in the re-election game.

To the citizen who believes in the ideal of representative government, the most distasteful result of the re-election obsession is the creation of an elitist legislature. As Members die or retire, others survive and through the seniority system obtain and hold power. The chairmen of the committees of Congress hold power that is many times greater than each one's single vote. They control the Congress by controlling what the two houses are given the opportunity to vote on. If any given bill is repugnant to the chairman of the committee which has jurisdiction over the subject matter of the proposal, it is simply not brought up for consideration. The procedures for bringing it out over his objections are so cumbersome that it is simply never done.

Elitism takes yet another and more insidious form. Some Senators and House Members take the position in re-election contests that their years of experience qualify them for a return term to Congress. Experience becomes the byword of such a campaign; it appears in every advertisement, on every billboard, on every pamphlet; it is held up and waved like a flag before audiences from every stump in the state or district.

The value of experience is largely a myth. Few Members of the Congress could successfully pass even the most elementary quiz on the details of the majority of the measures for which they vote every day. Bills usually run on for many pages and contain references and cross references to the sections and subsections of existing laws. Long tenure in Congress does not make the Member an expert in the substance of the laws he is voting to enact. One might advance the observation that "experience" is the ingredient in Congress which wrought the present tax code, the

near wreck of social security, and deficits so large that they are calculated by the hundreds of billions of dollars.

If it is said that a Member is not supposed to be an expert in the details of the law, that is well enough. What then is he an expert about? Procedure, perhaps. Yet there are parliamentarians available to any one who cares to consult them. The rules are available to any Member who cares to read them. No Member is on record admitting that he cannot understand legislative procedures. First year legislators seem to get on very well and if they make mistakes they don't seem to show. Where then is the expertise in procedure?

If not procedure, then perhaps the expertise of an incumbent is in policy, in translating the wishes of the people into legislation. It is true that good legislating is largely just that-making policy decisions-general decisions on basic issues. Since the genius of our representative form of government is based upon the premise that any citizen is fully capable of serving as a Member of the national legislature, common logic would suggest that the closer a representative is to the people he represents the better representatives he will be. Elitists who are citizens of the Washington D.C. area are, therefore, not necessarily the best representatives for the Americans who do not live there. Thus, it would seem that expertise or experience in being a representative is to be sought from among the people rather than among the ranks of a cabal of professional politicians.

Members of Congress seldom vote with a view to what is best for the Nation or what is best for the citizens they represent. Instead, most votes are based upon political considerations. The predominate question is, "What effect will this have on my image and on my next election campaign?" Any person who has worked in close proximity with Congress knows this to be a fact; however, the constituency does not know that it is true, and it is in that arena of ignorance that the re-election obsession is able to perform with such dexterity.

The reality of re-election voting is concealed from the citizens back home in part by the false notion that the interests of the state or district are coincidental with the interests of the

Member seeking re-election. More specifically, a Member who is confronted with a question about re-election voting will immediately respond loudly that if he does a good job for his constituency, he will be re-elected. The conclusion he wants the public to draw is that a re-election vote is a good vote for the state or district. That is pure and simple claptrap.

Consider, first, that statistics, as developed earlier in this work, show that fewer than half the eligible voters participate in congressional elections. Thus, voter approval, if there is such a thing, is approval of approximately 25 to 30 percent of the citizens eligible to vote.

Next, consider the effect of the application of the many and diverse re-election devices available to the incumbent. The sheer power of incumbency alone is significant, but when combined with the advantages Congress has voted for itself and the use of them for months and years before any given election, the result is an almost overwhelming force.

As if the re-election machinery were not enough, incumbents have campaign treasuries that make those of the challengers pale by comparison. Campaign spending by incumbents far exceeds spending by challengers in most races. That happens for the simple reason that the incumbents have more money. They are the beneficiaries of PACs, of lobbyists, and big spenders in Washington D.C. who, for reasons already suggested, prefer the "known" of an incumbent to a freshman Member who might actually "vote his district" as a matter of course rather than incidentally.

Still, in response to the argument that Members are re-elected because they do a good job, it might be well to reflect on the awareness of voters. It is an unfortunate fact, but a fact nevertheless, that very few of those who vote could state with any degree of certainty which way their Senator or Representative voted on any given bill.

We must remember that the adviser-professionals who are experts on election campaigns place simple name identification above all other factors. This means only that the individual whose name is recognized by the greatest number of voters will

probably win an election, other factors being equal. Ask yourself, do you know how your Senator or House Member voted on the Continuing Resolution by which the Defense Department was funded for Fiscal Year 1983, or on the Tax Equity and Fiscal Responsibility Act of 1982, or on such issues as foreign aid, the nuclear freeze resolution, or the last gasp of the 97th Congress- the increase in the tax on gasoline. These are some of the more conspicuous votes. How much voter cognizance is there of their representative's votes on the multitudes of other votes taken in the House and Senate. There were, for example, over 600 public and private laws enacted by the 96th Congress. There were only about 450 enacted by the dismal 97th Congress. Keeping track of the votes of any Member on all these enactments would be a significant undertaking for any citizen. The upshot of all this is that there is very little intelligence among the electorate on voting behavior and the attempt to correlate re-election with voter approbation is a foolish and empty rationalization for re-election.

There is a line of reasoning that Members are re-elected if the voters feel that the Member has been successful in bringing projects into the area. This would include contracts, employment, and other forms of Federal activity associated with economic development. This opens the door to arguments about the proper role of the Federal government and admits points of view ranging from drastic reduction in the size and elimination of many functions and programs to more government, more programs and more spending on everything from defense to social programs. Suffice it say that with some notable exceptions, this is more impression and image than fact. If an incumbent can persuade voters that he has performed as they feel he should, they will probably vote for him.

These are but a few of the more obvious effects which can be expected when the free elective process is subverted for the benefit of a clique of " in " individuals. That the abuses of the system must be corrected and that the re-election obsession must be rooted out of our system seems self-evident. Each successive failure to deal with a problem, be it social security, runaway spending, urban decay, unemployment, usurious interest rates, or

waste in government, speaks eloquently of the need for remedial action. The recent spectacles of Congress on extended election and Thanksgiving leave while even basic appropriation acts for the government were left unenacted must persuade even the most sanguine among us that something must be done.

This work assumes that Americans do care about their government and that they will listen to and discuss ways of improving it and making it more responsive to their needs. It further assumes that those who are alarmed by what they see going on in Washington D.C. and who are unwilling to permit the corrosive effects of the re-election obsession to further weaken representative government will work together to find a solution.

If, after considering the issues, we are willing to surrender the business of government to a small clique of self-appointed elitists, we should do so consciously and deliberately and not suffer that our fundamental right to representative government be quietly piecemealed away by indirection and by infamous, incumbency-serving legislation. We must face the question of whether we are less competent to govern ourselves, less responsible and less interested than were the contemporaries of Jefferson and Washington. We must ask, as some have suggested, whether we have become cynically insensitive to the drumbeat of abuses and have become lethargic in the face of congressional misbehavior that to our forebearers would have been unthinkable and intolerable.

If reform is to come, it must come from outside Congress. That body will never impose upon itself the discipline needed to curb its own excesses and bring organization to its disarray. The Congress controlled by self-interest will never surrender its self-granted re-election advantages. Any solution, to be truly meaningful, must be fundamental and must come from the people who, if they act in concert, still hold ultimate political power in this Nation.

It is to reform - *citizens reform* - that the remainder of this work is addressed.

Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the covenant, too sacred to be touched. They ascribe to the men of the preceding age a wisdom more than human, and suppose what they did to be beyond amendment. I knew that age well; I belonged to it, and labored with it. It deserved well of its country. It was very like the present, but without the experience of the present; and forty years of experience in government is worth a century of book reading; and this they would say themselves, were they to rise from the dead. I am certainly not an advocate for frequent and untried changes in laws and constitutions. I think moderate imperfections had better be borne with; because, when once known, we accommodate ourselves to them, and find practical means of correcting their ill effects. But I know also, that laws and institutions must go hand in hand with the progress of the human mind. As that becomes more developed, more enlightened, as new discoveries are made, new truths disclosed, and manners and opinions change with the change of circumstances, institutions must advance also, and keep pace with the times.

Thomas Jefferson
Letter to Samuel Kercheval
On amending the Constitution
of Virginia, July 12, 1816

PROPOSED AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA

Section 1. No person shall be elected to the Congress more than one time. An individual elected to the Congress may serve only the term to which he is elected; an individual appointed to serve the unexpired term of another who has, for any reason, vacated the office, may serve only the unexpired portion of the term to which he is appointed; and no person may be appointed to Congress who has previously served in Congress. Persons holding office in the Congress in session at the time this Amendment is adopted may complete the term to which they have been elected or appointed, but may thereafter not be elected nor appointed to Congress.

Section 2. The term of office for members of the House of Representatives shall be four years. Immediately upon adoption of this Amendment, the House shall identify and designate two hundred and eighteen seats as Class One seats; the remaining seats shall be designated Class Two seats. The designation shall be such that the seats from each State are as equally divided between Class One seats and Class two seats as possible. In the next general election following the adoption of this Amendment, all seats shall be filled; however, the term of office for Class One seats shall be two years; thereafter, all terms for both Classes shall be four years.

Section 3. No person who has served in Congress shall, for a period of five years immediately following the expiration of his term, be appointed to or hold any position in any branch of the government of the United States; however this shall not apply to persons appointed to judicial or executive branch positions by the President and confirmed by the Senate.

Section 4. The Congress shall have the power to enforce this Amendment by appropriate legislation.

THE PROPOSED AMENDMENT

What exactly is being proposed by this limitation-of-term Amendment? The proposed amendment to the Constitution, if adopted, would limit the time

that any person could serve in the United States Congress. A person could serve in the Senate one term of six years or one term of four years in the House of Representatives. It is important to point out that the amendment is cast in the disjunctive, that is **to** say that it would permit a term in the Senate or a term in the House and *not* a term in each. Perhaps a more emphatic way of expressing the idea is to say that the proposed amendment would permit a person to serve one term only in the United States Congress.

What does the proposed amendment provide on later government service, that is, service after the single term in Congress?

The amendment would simply foreclose any person from serving a term in the House or Senate and then going to work for the Federal government. That restriction is limited to five years and an exception is made for presidential appointments. Thus, former members of Congress would be eligible to serve as cabinet and sub-cabinet officers and to serve on Boards and Commissions and to accept judicial appointments.

Isn't there also a change in the length of terms of members of the House of Representatives?

Yes. The term is changed from the present two years to four years. One term of two years would not allow for the continuity now provided for in the Senate.

What is the reason for the division of the House seats into two classes?

This is done solely for the purpose of staggering the turnover. It would be applicable only to the first election following the adoption of the amendment. At the first election after adoption, one half of the Representatives would be elected to two year terms and approximately one half would be elected to four year terms. Thereafter, all Representatives would be elected to four-year

terms. This system of staggering terms is patterned after the one devised for the Senate and written into the original Constitution, Article 1, Section 3. For the Senate, approximately one third of its members are chosen every second year; that would remain unchanged by the proposed amendment, except that the incumbent Senators could not stand for re-election.

Then about one half of the House would be new every two years?

Correct. The reason for increasing the term to four years and then having one- half of the seats vacated every two years is that it would give the House continuity in the same way that the Senate now has continuity with two thirds of the body remaining in **office** through each election. Leadership positions would in all probability be filled by members in their third or fourth years of service, although that is not required by the amendment.

The Senate is not mentioned in the proposed amendment.

While the Senate is not explicitly mentioned, there is no doubt whatever that it is included since the reference on limitation of term is to the *Congress*. It is perhaps somewhat confusing to some people when we refer to "Congressmen" and then to "members of Congress," but throughout the Constitution the term "Congress" means both the Senate and the House of Representatives. Thus, in the proposed amendment, references to "Congress" include both the House and Senate.

Then the Senate term of six years would not be changed?

That is correct. The six-year term would be as it is today. The only change is that no person could be re-elected to the Senate, and every two years approximately one third of the Senate would be replaced with citizens who had never before served in Congress.

Explain the reference in the amendment to appointments to Congress.

The amendment says that an individual appointed to Congress to fill the unexpired term of one who, for any reason, vacated his office would be limited to serving out that unexpired term only. Otherwise, in the case of a Senate seat, a person could be appointed to serve two years of an unexpired term, be elected to the seat and thus be able to serve a total of eight years. It could not

be for three years or longer on the unexpired term since a Senate seat vacated with more than two remaining in the term will be filled by election.

In the House the prohibition is more significant in terms of years because of the change to four year terms. Absent the provision in the amendment, a person could be appointed to serve three years of an unexpired term, then be elected to serve a full four year term thus serving a total of seven years, almost two full terms.

This is not a major aspect of the amendment, but it is included to avoid the inequity that would result from appointments followed by elections to full terms thereby giving some individuals greater seniority than their peers, and it also serves to make the amendment consistent with the underlying purpose i.e. eliminate all of the re-election obsession.

What is the meaning of Section 4 of the amendment?

The granting of the power to enforce the amendment by appropriate legislation is a standard provision of constitutional amendments of this sort where some action of Congress is anticipated. Here the sitting Congress would have to make the Class One and Class Two designations and perhaps enact other legislation to bring the amendment into full effect.

What is the purpose of the statement that the Class One and Class Two seats be evenly divided among the seats of each state?

That is done to insure that there will be some seats filled from almost every state every two years. This is merely an assurance of geographical distribution. Otherwise, some states might find themselves without a Congressional election every two years. There are, of course, some necessary exceptions for those states which have only one House member. In those cases it would perhaps be appropriate, if possible, to adjust the designation so that the House election occurs off the Senate elections so that there still would be a congressional election every two years.

Where did the idea of this amendment originate?

It is probably impossible to determine when or with whom the limitation-of- term concept originated. It certainly is not new

and, in fact, is quite common among the states where Governors are not permitted to succeed themselves in office. The restriction on re-election already applies to the President of the United States. The 22nd Amendment to the Constitution limits the President to eight years in office. That amendment is of fairly recent origin; it was proposed in 1947 and ratified and made a part of the Constitution in 1951.

More recently, criticism of the Congress has been rising. There have been a number of comments and speculations in the press and by political observers that such abuses as have been mentioned in this tract will inevitably lead to reform and some may have suggested term limitations as one approach. This booklet is the first formalized statement calling for a one term limit and actually proposing that it be done by Constitutional amendment. The proposed amendment is original and was written specifically for the *Re-Election Obsession.*

Would it not be less severe to allow two or three terms instead of the absolute prohibition on re-election?

It would be less severe to allow re-election, but that does not solve the essential problem. Re-election is the underlying impulse that has led to the abuse and corruption of the system. If re-election is still a possibility and is not eliminated, there seems little reason to make the effort to change at all. However, if thorough and honest reforms were made in the Congress whereby the misuse of staff, the unconscionable accumulations of money, the absences from Congress, the campaigning on taxpayer time and at taxpayer expense, and other such practices could be eliminated, then there would be less of a need for the limitation-of-term-amendment. The difficulty with that notion is that procedural reform must come from the Congress and Congress has proven time and time again that it is simply incapable of controlling its own abuses. Meaningful and fundamental change must originate with and be carried forward by the people. Unfortunately the kind of change discussed in this booklet will be vigorously resisted by the Congress itself.

What are the purposes of the restriction of Federal service after a term in Congress.

This is included to absolutely guarantee that former Members do not serve a term in Congress then go to work for the Federal bureaucracy. The reasons are obvious. An individual who could not be re-elected might otherwise be tempted to use his congressional service to secure for himself a position in Federal service. That's pessimism, but it is realistic pessimism based upon experience and the clear evidence that Potomac fever is highly contagious.

More important, however, is the fact that one of the purposes of the amendment is to recycle members, for the people who go to Washington D.C. to return to their home areas. Those people will provide the states with a reservoir of experienced leaders -leaders who have had valuable national government experience. This will inevitably strengthen and revitalize state and local government. Today those people go to Washington D.C. and seldom return.

It is possible for a citizen to go to Congress for only a four year term and really be effective?

Certainly! The effectiveness of a Congressman is a result of many things-his intelligence, personality, and willingness to work and learn. Remember that he is not going to be thrown in with a crowd of professional politicians or long time incumbents. At least half the House will be as new as the newest member and no Senatorial peer will have been around for more than six years. Even today it is not uncommon for an active and dedicated freshman to have a positive effect in Congress although the seniority system and the re-election obsession tend in the opposite direction.

Remember also that the purpose of the amendment is to restore representative government. There is no basis in fact for the myth that only incumbents can represent, and as has been argued elsewhere in this tract, incumbents become stale and tend to lose their association with their districts after living many years in the Washington D.C. environment.

There are many who would further argue that freshmen members almost always have more enthusiasm than the retreads and that they have new ideas and are not awed by the enormity of the task of legislating.

Isn't there a very real risk that all these new members would be unable to cope with the procedures and that we might get very poor quality legislation?

In all seriousness, its very difficult to imagine a group of 535 citizens doing a worse job than is now being done. The 97th Congress, for example, consistently missed deadlines in the budget process, failed to enact timely appropriation measures, and ignored such serious problems as social security reform while it campaigned for re-election. By its ineptitude and failure to do the work it was elected to do, the 97th Congress caused itself to be called into a lame duck session which was such a shameful performance that one of its own members, Senator David Boren of Oklahoma, was quoted as saying, "The lame duck is a turkey." Senator Boren went on to call for major reforms in Congress and in a moment of candor uncharacteristic of an incumbent observed that, "To preserve Congress, we must reform it." *Tulsa World,* Dec. 18, 1982, See. F.

To respond another way to the question, with two-thirds of the Senate and one-half of the House holding over after each election, there is no real possibility of there being a stalemate stemming from an inability to proceed with legislative business in an orderly way.

With members actually present rather than absent campaigning and with Congress in session more consistently rather than on frequent and extended recesses, the amount of productive work would be certain to increase dramatically. The consistent effort and the attention to business would also bring forth a much improved work product.

Does not the possibility exist that given the loss of experienced members the executive branch would tend to become less responsive to Congress knowing that chairmen and others were only "temporary?"

This might very well pose a problem. However, under the present system the bureaucracy is already surprisingly non-responsive and that stems in part from the knowledge that a re-election minded Congress does not have the time for proper oversight.

Ideally, a truly representative Congress would be working a full five day week, and would set aside at least one-half of its productive time for an in-depth review of how well the laws in place were being implemented. This would be a meaningful attack on bureaucratic waste and would necessarily curb the excesses of the executive branch. Keep in mind also that under the Constitution the executive branch undergoes a change at the top levels at least every eight years.

If the amendment were adopted, would we not be denying ourselves the benefit of capable, dedicated, and proven legislators?

Yes and no. Certainly we would lose the "benefit"-depending upon your political persuasion-of the likes of Ted Kennedy, Howard Baker, Tip O'Neil, Robert Michaels, William Proxmire, and Barry Goldwater. These and others who have been proven to be useful and capable legislators would no longer be serving in Congress. However, they would not be lost to the Nation; they would be serving as governors, state legislators, cabinet officers, and judges. No man or woman is indispensable to the operation of our government. As long as ours is a representative form of government, people will be found willing to serve and fully able to do so. It would be an admission of a poverty of human resources if we were to not act on the proposed amendment out a fear of not finding others equally as capable as those who went before. Further, it would be an unacceptable accession to the cult of elitism to allow affection for a few present incumbents to stand in the path of the greater need for fundamental reform.

Yet another observation needs to be made here. As we would lose some good and capable people to be replaced by others equally good and capable, so also would we rid ourselves of the dregs of Congress whose only mark of distinction is their mastery of the use of the re-election machinery. The bribe takers, those who sell their office, and those who seek power for its own sake would be put out of Congress, hopefully to obscurity.

Still the loss of experienced leaders....

The "experience" issue has been visited earlier in this tract, but a further comment might be useful. The average citizen, if

such a creature exists, may entertain the fear of losing experienced leaders out of a misapprehension of what is involved in the legislative process. As an example, one might consider how a bill is written and how it becomes law.

Each committee and subcommittee which has jurisdiction over a particular area has paid staff whose job it is to be experts on the existing law in that area. When legislation is felt to be necessary, the staff will, at the chairman's direction, schedule hearings to explore the problem and the need for changes in the law or enactment of a new one. Following the hearings, the staff or Office of Legislative Counsel (that is an Office which is set up for the specific and express purpose of writing legislation for Members of Congress) will draft a bill. Members are briefed by either their own staff or by committee staff on the bill and at any level of detail desired by the Member. The bill is then considered by the subcommittee and "marked up." That means that amendments are offered, discussed and then voted on. The **final** bill is then sent on to the full committee where the process is repeated. The bill is then sent to the House floor by way of the Rules Committee or the Senate where it is considered and finally voted on by the Members.

The above very generalized version of the legislative process is presented for the purpose of showing some of the interaction between staff and Members and showing that Members have more than enough assistance in understanding and working on the bills that pass through the process. The essential fact is that any well-intentioned, reasonably capable citizen can function as a legislator and that is as it should be in a government by the people. In actual fact, Members come to Congress from all walks of life and many of them, before coming to Washington D.C., never before participated in a legislative body. They learn very quickly that theirs is job of dealing with general concepts, policy matters, not the excruciating details and specifies of all the bills they vote on.

To be sure, some incumbents are more familiar with the process of using staff to implement policy and to translate ideas into legislation than the average citizen. That is not a legitimate

argument for re-election since others can learn that same process and experience is not the essential factor.

Therefore, the notion that the proposed amendment would result in the loss of experienced leaders is to miss entirely the point of representative government. If government is to be truly representative, the opportunity for citizen participation must be real and must be an opportunity open at all times to all people. No person or group can be permitted to comer opportunity in the name of experience.

What kind of **people could be found to go to Washington D.C. for only one term?**

Concerned and interested citizens. People who feel that they have a duty of public service. Many such people are not now participating in the elective process because they are persuaded that they do not have an honest chance of being heard or of winning in an election contest. They understand that the process is rigged by the incumbents for the incumbents and that service in Congress is too often a life of compromise with special interests whose money is too frequently the controlling factor in legislative decisions.

As an example of the exemplary work that dedicated and public-spirited citizens can accomplish, if given the opportunity, one might examine the work of some of the recent state constitutional conventions. People there have served unselfishly and under difficult and trying circumstances with limited resources and with the knowledge that theirs was a one-time effort. The products of those efforts have been uniformly excellent and are inspiring examples of what people can do for themselves given a purpose and an opportunity.

The prospect of citizens recapturing the national legislature is one of the most stimulating ideas to come along in decades. A *Citizens Congress* as opposed to *our present politicians Congress* is an exciting idea and since it could not do a less credible job than the present legislature, it would have the potential for restoring popular interest in government and making people feel that it is truly representative of all Americans.

Yes, but to go to Washington D.C. for one four or six year term and to interrupt one's life and career with no chance of being re-elected, that's something different.

Indeed it is. Admittedly it is a serious request to ask a citizen to sacrifice time and money to serve in Congress for one term. Yet, if we are unwilling to make that sacrifice and to participate in the business of governing ourselves, then we shall live with the alternative which is of government by elitists, sham elections, lip service to principles of popular government, and perhaps worst of all the reality that the present course is bringing us to the point of the failure of government. When we reach that point of crisis, we will be under a double threat. Government will not function well, if at all. But of greater moment, there will inevitably be a movement by the Congress to arrogate to itself even greater and more sweeping power than any dreamed of before. The proposed amendment was conceived from the belief that we still have, for a brief time, the luxury of anticipation, of deciding for ourselves the way in which we will be governed. Only a lack of resolve can undo that opportunity.

What's the process for amending the Constitution?

The Constitution itself describes the methods by which it may be amended. The method that has been used in all cases to date is the one whereby Congress passes a proposed amendment then sends it to the states for their consideration. The amendment becomes a part of the Constitution only when three-fourths of the state legislatures ratify it.

Since Congress will vigorously resist the limitation-of-term amendment and, in fact, will never even consider it, the only avenue open is the never- before-used second method. By that procedure, two-thirds of the state legislatures call for a constitutional convention. Congress must then call a convention. The convention thus called prepares an amendment which is submitted to the states for ratification. As with the first method, the proposed amendment must then be ratified by three-fourths of the state legislatures. Article V, of the Constitution. See Appendix C, Mode of Amendment.

Isn't that a long process?

It might be. Amending the Constitution is not and should not be an easy task. The Equal Rights Amendment was given a total of ten years for ratification and yet, for all the support it had, it failed. On the other hand, the 17th Amendment was ratified in one year. The 18th Amendment, prohibition, took over a year. Its repeal by the 21st Amendment took even less than a year.

APPENDIX A

CHARTS

[This material is not reproduced here.]

APPENDIX B

RESOLUTION

RESOLUTION

WHEREAS it is necessary and desirable to increase public participation in our legislative process, and

WHEREAS the quality of legislation enacted by the United States Congress is in serious and continual decline, and

WHEREAS the demonstrated inclination of the United States Congress is to enact additional legislation rather than perform needed oversight over the execution of existing laws, and

WHEREAS the United States Congress has enacted numerous laws and passed numerous resolutions with the effect of law solely for the benefit of incumbent members thereby prejudicing and undermining the free election process, and

WHEREAS the absentee rate among Members of Congress seeking re- election is inordinately high and is inimical to legislative affairs, and

WHEREAS Congress has raised staff levels and Congressional salaries, and has built ornate office buildings all at great expense to the public and Members customarily use office space and staff for re-election efforts, and

WHEREAS there have been diverse indictments, convictions, and investigations of Members of Congress, all detracting from the dignity of the Congress, reducing it in the esteem of the public, and subjecting the legislative branch to scorn and ridicule, and

WHEREAS the substantive work of the Congress is to determine policy, a task suitable for any informed citizen, and

WHEREAS special interest groups cultivate long term Members and develop the greatest influence over multiple term incumbents, and

WHEREAS the privilege and the duty of legislative service should not be servile to the re-election obsession of incumbents,

BE IT THEREFORE RESOLVED BY _____
THAT THE CONSTITUTION OF THE UNITED STATES BE AMENDED TO LIMIT ANY AMERICAN CITIZEN ELECTED TO THE CONGRESS TO ONE TERM.

BE IT FURTHER RESOLVED THAT THIS ORGANIZATION PETITIONS THE STATE LEGISLATURE TO FORMALLY CALL FOR AND DEMAND THE CONVOCATION OF A CONSTITUTIONAL CONVENTION TO WRITE A LIMITATION-OF-TERM AMENDMENT.

APPENDIX C

MODE OF AMENDMENT

MODE OF AMENDMENT

Article V

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent shall be deprived of its equal Suffrage in the Senate.

AMENDMENT OF THE CONSTITUTION

Scope of the Amending Power

When this Article was before the Constitutional Convention, a motion to insert a provision that " no State shall without its consent be affected in its internal policy" was made and rejected. A further attempt to impose a substantive limitation on the amending power was made in 186 1, when Congress submitted to the States a proposal to bar any future amendments which would authorize congress to " interfere within any State, with the domestic institutions thereof. . . . " Three States ratified this article before the outbreak of the Civil War made it academic. Members of Congress opposed passage by Congress of the Thirteenth Amendment on the basis that the amending process could not be utilized to work such a major change in the internal affairs of the States but the protest was in vain. Many years later the validity of both the Eighteenth and Nineteenth Amendments was challenged

because of their content. The arguments against the former took a wide range. Counsel urged that the power of amendment is limited to the correction of errors in the framing of the Constitution and that it does not comprehend the adoption of additional or supplementary provisions. They contended further that ordinary legislation cannot be embodied in a constitutional amendment and that Congress cannot constitutionally propose any amendment which involves the exercise or relinquishment of the sovereign powers of a State. The Nineteenth Amendment was attacked on the narrower ground that a State which had not ratified the amendment would be deprived of its equal suffrage in the Senate because its representatives in the body would be persons not of its choosing, i.e., persons chosen by voters whom the State itself had not authorized to vote for Senators. Brushing aside these arguments as unworthy of serious attention, the Supreme Court held both amendments valid.

Proposing a **Constitutional Amendment**

Thirty-two proposed amendments to the Constitution have been submitted to the States pursuant to this Article, all of them upon the vote of the requisite majorities in Congress and none, of course, by the alternative convention method. In the Convention, much controversy surrounded the issue of the process by which the document then being drawn should be amended. At first**,** it was voted that "provision ought to be made for the amendment [of the Constitution] whensoever it shall seem necessary" without the agency of Congress being at all involved. Acting upon this instruction, the Committee on Detail submitted a section providing that upon the application of the legislatures of two-thirds of the States Congress was to call a convention for purposes of amending the Constitution. Adopted, the section was soon reconsidered on the motion of Framers of quite different intent, some who worried that the provision would allow two-thirds of the States to subvert the others and some who thought that Congress would be the first to perceive the need for amendment and that to leave the matter to the discretion of the States would mean that no alterations but

those increasing the powers of the States would ever be proposed. Madison's proposal was adopted, empowering Congress to propose amendments either on its own initiative or upon application by the legislatures of two-thirds of the States. When this provision came back from the Committee on Style, however, Gouverneur Morris and Gerry succeeded in inserting the language providing for a convention upon the application of the legislatures of two-thirds of the States.

Proposals by Congress. -Few difficulties of a constitutional nature have arisen with regard to this method of initiating constitutional change, the only method, as was noted above, so far successfully resorted to. When Madison submitted to the House of Representatives the proposals from which the Bill of Rights evolved, he contemplated that they should be incorporated in the text of the original instrument. Instead, the House decided to propose them as supplementary articles, a method followed since. It ignored a suggestion that the two Houses should first resolve that amendments are necessary before considering specific proposals. In the *National Prohibition Cases,* 253 U.S. 350, 386 (1920) the Court ruled that in proposing an amendment, the two Houses of Congress thereby indicated that they deemed revision necessary. The same case also established the proposition that the vote required to propose an amendment was a vote of two-thirds of the Members present-assuming the presence of a quorum-and not a vote of two-thirds of the entire membership. The approval of the President is not necessary for a proposed amendment.

The Convention Alternative.-Because it has never successfully been invoked, the convention method of amendment is surrounded by a lengthy list of questions. When and how is a convention to be convened? Must the applications of the requisite number of States be identical or ask for substantially the same amendment or merely deal with the same subject matter? Must the requisite number of petitions be contemporaneous with each other, substantially contemporaneous, or strung out over several years? Could a convention be limited to consideration of the amendment or the subject matter which it is called to consider? These are only a few of the obvious questions and others lurk to be revealed on

deeper consideration. This method has been close to utilization several times. Only one State was lacking when the Senate finally permitted passage of an amendment providing for the direct election of Senators. Two States were lacking in a petition drive for a constitutional limitation on income tax rates. The drive for an amendment to limit the Supreme Court's legislative apportionment decisions came within one State of the required. Arguments existed in each instance against counting all the petitions, but the political realities no doubt are that if there is an authentic national movement underlying a petitioning by two-thirds of the States there will be a response by Congress.

Ratification. Congress may, in proposing an amendment, set a reasonable time limit for its ratification. Two amendments proposed in 1789, one submitted in 1810 and one in 1861, were never ratified. In *Dillon v. Gloss,* 256 U.S. 368, 375 (1921) the Court intimated that proposals which were clearly out of date were no longer open for ratification. However, in *Coleman v. Miller,* 307 U.S. 433 (1939) it refused to pass upon the question whether the proposed child labor amendment, submitted to the States in 1924, was open to ratification thirteen years later. It held this to be a political question which would have to be resolved by Congress in the event three fourths of the States ever gave their assent to the proposal. Congress has included in all proposed amendments since the Eighteenth, excluding the Nineteenth, a section stating that the amendment should be inoperative unless ratified within seven years. In *Dillon v. Gloss* the Court sustained this limitation on the ground that it gave effect to the implication of Article V that ratification "must be within some reasonable time after the proposal." Congress has complete freedom of choice between the two methods of ratification recognized by Article V-by the legislatures of the States or by conventions in the States. In *United States v. Sprague,* 282 U.S. 716 (193 1) counsel advanced the contention that the Tenth Amendment recognized a distinction between powers reserved to the States and powers reserved to the people, and that state legislatures were competent to delegate only the former to the National Government; delegation of the latter required action of the people through conventions in the several

States. The Eighteenth Amendment being of the latter character, the ratification by state legislatures, so the argument ran, was invalid. The Supreme Court rejected the argument. It found the language of Article V too clear to admit of reading any exception into it by implication.

The term "legislatures " as used in Article V means deliberative, representative bodies of the type which in 1789 exercised the legislative power in the several States. It does not comprehend the popular referendum which has subsequently become a part of the legislative process in many of the States, nor may a State validly condition ratification of a proposed constitutional amendment on its approval by such a referendum. In the words of the Court: "(T)he function of a state legislature is ratifying a proposed amendment to the Federal Constitution, like the function of Congress in proposing the amendment, is a federal function derived from the Federal Constitution; and it transcends any limitations sought to be imposed by the people of a State."

Authentication and Proclamation.-Formerly official notice from a state legislature, duly authenticated, that it had ratified a proposed amendment went to the Secretary of State, upon whom it was binding, "being certified by his proclamation, (was) conclusive upon the courts" as against any objection which might be subsequently raised as to the regularity of the legislative procedure by which ratification was brought about. This function of the Secretary, purely ministerial in character, was, however, derived from an act of Congress, and has been transferred to a functionary called Administrator of General Services. In *Dillon v. Gloss,* the Supreme Court held that the eighteenth Amendment became operative on the date of ratification by the thirty-sixth State, rather than on the later date of the proclamation issued by the Secretary of State, and doubtless the same rule holds as to a similar proclamation by the Administrator.

Judicial Review Under Article V

Prior to 1939, the Supreme Court had taken cognizance of a number of diverse objections to the validity of specific amendments. Apart from holding that official notice of ratification

by the several States was conclusive upon the courts, it had treated these questions as justiciable, although it had uniformly rejected them on the merits. In that year, however, the whole subject was thrown into confusion by the inconclusive decision in *Coleman v. Miller.* This case came up on a writ of *certiorari* to the Supreme Court of Kansas to review the denial of a writ of mandamus to compel the Secretary of the Kansas Senate to erase an endorsement on a resolution ratifying the proposed child labor amendment to the Constitution to the effect that it had been adopted by the Kansas Senate. The attempted ratification was assailed on three grounds: (1) that the amendment had been previously rejected by the state legislature; (2) that it was no longer open to ratification because an unreasonable period of time, thirteen years, had elapsed since its submission to the States, and (3) that the lieutenant governor had no right to cast the deciding vote in the Kansas Senate in favor of ratification.

Four opinions were written in the Supreme Court, no one of which commanded the support of more than four members of the Court. The majority ruled that the plaintiffs, members of the Kansas State Senate, had a sufficient interest in the controversy to give the federal courts jurisdiction to review the case. Without agreement with regard to the grounds for their decision, a different majority affirmed the judgment of the Kansas court denying the relief sought. Four members who concurred in the result had voted to dismiss the writ on the ground that the amending process "is 'political' in its entirety, from submission until an amendment becomes part of the Constitution, and is not subject to judicial guidance, control or interference at any point." Whether the contention that the lieutenant governor should have been permitted to cast the deciding vote in favor of ratification presented a justiciable controversy was left undecided, the Court being equally divided on the point. In an opinion reported as "the opinion of the Court," but in which it appears that only three Justices concurred, Chief Justice Hughes declared that the writ of mandamus was properly denied because the question as to the effect of the previous rejection of the amendment and the lapse of time since it was submitted to the States were political questions which should

be left to Congress. On the same day, the Court dismissed a writ of *certiorari* to review a decision of the Kentucky Court of Appeals declaring the action of the Kentucky General Assembly purporting to ratify the child labor amendment illegal and void. Inasmuch as the governor had forwarded the certified copy of the resolution to the Secretary of State before being served with a copy of the restraining order issued by the state court, the Supreme Court found that there was no longer a controversy susceptible of judicial determination.

Reprinted from *The Constitution of the United States of America,* Senate Document 92-82, 92nd Congress, 2d Section, 855-861.

APPENDIX D IS NOT REPRODUCED

FROM HERE TO THERE

Wrapping upon wrinkled wrapping
Into carton after carton
Our fragile memories
We move.

Leaving the past in solitude and
In forever fading afterthought
Our yesterday world.
Apprehending the promise, the perhaps, the possible
Of a vague tomorrow; yet
We know

That family sharing and
Loved ones caring call us near
And give us the will to remember
That what's left behind is not forgot,
And the mellow past is near as near it should be.
So we'll smile away that moving tear
And be glad, very glad
When moving's done.

TIME WITHOUT DIMENSION

He, in sad and disappointed rage
At Adam's iniquitous choice to rebel,
Cast 'round the compass of his universal stage
Until with final eye and thoughts of Hell,

He laid the mantling mask of Time
Over man, his mind and his domain,
Binding life to marking, measuring rhyme,
Where he feels by Time his time's toll of pain.

And ever thus, an eternal moment
Between the soul and mind doth stand,
Where pieced by parts and from heaven sent,
Man counts, alone, and seeks his savior's hand,

Presuming himself to know His great intention-
Forgetting that, to God, Time hath no dimension.

TO REPROACH

God damned by time

Man-not fallen but

Committed to mark, to note, to endure

Time’s pulse

Helplessly