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Stephen W. Stathis

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THE TWENTY-SECOND AMENDMENT: A PRACTICAL REMEDY OR PARTISAN MANEUVER?

*Stephen W. Stathis**

At a Republican fund-raiser during his second term, President Ronald Reagan cast a wistful glance at a "Reagan 88" banner in the Dallas Apparel Mart. While flying to the scene of his 1984 Republican Convention triumph, he recalled, "I started asking myself, 'I wonder how folks down there would feel about giving it one more try?' " With a roar of approval from the crowd, the President added, "I'm kidding, of course."¹

Standing in Reagan's way was the twenty-second amendment, which prohibits anyone from being elected president more than twice. Shortly thereafter a group of Reagan enthusiasts began a brief but high-spirited campaign to make it possible for him to run again. While the talk of a third term for Ronald Reagan may have been fantasy, the "Reagan 88" boomlet did give rise to a more serious development—a nascent movement to repeal the twenty-second amendment and a re-opening of debate over the amendment's merits.

Even before it was ratified in 1951, the amendment was widely regarded as an attempt by vengeful Republicans to strike back at Franklin D. Roosevelt, the only president in American history to be elected to more than two terms.² Ironically, the only two incum-

* Stephen W. Stathis is a specialist in American National Government and Head of the Executive Branch Organization and Presidency Section, Congressional Research Service, Library of Congress. He wishes to express his appreciation to his colleagues Dr. Harold Relyea, Dr. James Sayler, and Barbara Schwemle for their generous help and suggestions in the preparation of this article.

1. *Remarks at a Fundraiser for Republican Gubernatorial Candidate William Clements, July 23, 1986.* 22 WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS 981 (July 28, 1986); *Presidential Two-Term Limit Serves No Legitimate Purpose*, Courier-J. (Louisville, Kentucky), Aug. 6, 1986 at A8.

2. Louis W. Koenig has described the twenty-second amendment as "posthumous revenge against Franklin Roosevelt for breaking the two term tradition." L. KOENIG, *THE CHIEF EXECUTIVE* 70 (4th ed. 1981). Paul B. Davis also characterized the amendment as "a posthumous revenge against Franklin D. Roosevelt for breaking the two-term tradition." P. Davis, *Presidential Tenure: A Review and Reappraisal* 158 (1978) (unpublished Ph.D. dissertation, University of Utah).

bent presidents thus far affected by the amendment have been Republicans—Dwight D. Eisenhower and Ronald Reagan—both of whom might well have been able to win third terms.

Most people forget that twenty-eight of the forty-one men who have occupied the White House lived there less than two terms. The average length of their service has been five years and three months.³ Since the first half-century of the Republic, the one-term president has been the rule rather than the exception. During the past century and a half, only six Presidents have served two full elective terms and then retired. Within this context, "Franklin Delano Roosevelt's three plus terms must be considered an anomaly."⁴

Why then, given the failure of the majority of American presidents to win even a second term, was a limit imposed on the number of terms to which a president might be elected? Did adoption of the twenty-second amendment fill a perceived need or represent a partisan maneuver?

THE LONG DEBATE OVER PRESIDENTIAL TENURE

In both 1940 and 1944, the Republican party platform called for a constitutional amendment to limit a president to two terms.⁵ The Republicans, however, were unable to defeat the incumbent FDR at the polls. Then, in 1946, for the first time in almost two decades, they gained control of Congress. Only once during the next forty years would both Houses of Congress belong to the Republicans.⁶ One of the Republicans' first priorities in 1946 was a constitutional amendment to prevent any future president from gaining a Roosevelt-type hold on the White House. The ensuing controversy renewed a debate which began in the Constitutional Convention of 1787 and in the subsequent state ratifying conventions.

At the Constitutional Convention, the question of presidential tenure occupied extensive time and severely tried the patience of many of the Founding Fathers.⁷ Congress began its own struggle with the question in 1803, when the first proposal to limit presiden-

3. Smith, *The Third Term and the Dead Hand*, 29 SW. SOC. SCI. Q. 273, 274 (March 1949); J.N. KANE, *FACTS ABOUT THE PRESIDENTS* 420-21 (4th ed. 1981).

4. Bailey, *Presidential Tenure and the Two-Term Tradition*, 2 *PUBLIUS* 95, 105 (Fall 1972). "Of the 25 Presidents between [James] Monroe and Franklin Roosevelt, covering well over 100 years, Andrew Jackson was the only one who presumably could have had a third term if he had wanted it." Smith, *supra* note 3, at 274.

5. 1 D. JOHNSON, *NATIONAL PARTY PLATFORMS* 394, 412 (1978).

6. The only other time the Republicans controlled both Houses was during the Eighty-Third Congress (1953-1955).

7. Davis, *supra* note 2, at 12-38.

tial tenure was introduced.⁸ The idea of changing the length of the presidential term appeared in 1808.⁹ Resolutions proposing a variety of limitations followed, seeking to gain approval for a single one, four, five, six, seven, and eight-year term.¹⁰ In 1824 and again in 1826, the Senate approved resolutions calling for a two-term limit, but they died in the House. At the outset of the Civil War, the Congress of the Confederate States of America adopted a constitution limiting the president of the Confederacy to a single six-year term.

While Congress continued to examine the issue of presidential tenure, a quiet tradition was being established, one that would endure for more than a century-and-a-half. In 1796, President George Washington's refusal to run for a third term "received such official sanction that it became an almost unwritten law, virtually as sacred as any provision of the Constitution."¹¹ Within a decade, Thomas Jefferson added his support to the two-term presidency by making it clear he would not be a candidate for a third term. Subsequent decisions by James Madison, James Monroe, and Andrew Jackson not to seek a third term further promoted the two-term tradition.¹²

Not until Ulysses S. Grant would another president serve two complete terms and be in a position to challenge the two-term limit. Shortly after President Grant's reelection to a second term in 1872, Republican newspapers began pushing the idea of his candidacy for a third term. While Grant refrained from commenting on the proposition, a vigorous debate ensued. When the third term became a key issue in the 1874 midterm elections, "Grant's silence," at least

8. This resolution provided: "That no person who has been twice successively elected President of the United States shall be eligible as President until four years shall have elapsed: but any citizen who has been President of the United States may, after such intervention, be eligible to the office of President for four years and no longer." It was rejected by a vote of twenty-five to four. 13 ANNALS OF THE CONG. OF THE UNITED STATES 214 (Dec. 12, 1803).

9. This resolution, the only proposal to reduce the length of the presidential term, called for choosing the president by lot from retiring Senators. The term of office was to be fixed at one year. Hillhouse, *Amendments to the Constitution*, 17 ANNALS OF THE CONG. OF THE UNITED STATES 356-57 (April 12, 1808).

10. For background on the various proposals see Davis, *supra* note 2, at 82-86; S. Stathis, *Presidential Tenure: A History and Analysis of the President's Term of Office*, CONG. RES. SERV. REP. NO. 81-129 GOV, 49-64, 87-94 (1981); *Moves To Limit the Term*, 26 CONG. DIG. 14 (1947); and *The Question of a Single Six-Year Presidential Term*, 51 CONG. DIG. 71 (1972).

11. P. Davis, *supra* note 2, at 2. Davis points out that "[i]t is somewhat ironic that a man who never spoke against presidential reeligibility should be regarded as the symbol of the two-term tradition. There is certainly no argument that Washington refused to run [for] a third presidential term, but there is ample evidence that he never expected or desired his refusal to become a precedent for later Presidents." He suggests that it would be more "proper to consider Thomas Jefferson and not George Washington as the true founder . . . of the two-term tradition." *Id.* at 43.

12. *Id.* at 2, 47-49, 51-52.

one author has concluded, "was largely instrumental in bringing about Republican defeat in New York, Ohio, and many other states."¹³ Finally, the following spring, the Pennsylvania Republican State Convention adopted a resolution expressing its "unalterable opposition" to the election of any president for a third term. Almost immediately, Grant assured the president of the Pennsylvania convention that he was not, nor had he "ever been, a candidate for a renomination. I would not accept a nomination if it were tendered," he wrote, "unless it should come under such circumstances as to make it an imperative duty—circumstances not likely to arise."¹⁴

Although with this correspondence the third term movement lost much of its impetus, there were still many Americans who wanted to see Grant reelected, and in subtle ways they continued to encourage his candidacy. The death blow came suddenly on December 15, 1875, when the House of Representatives, by a decisive vote of two hundred thirty-three to eighteen, passed a resolution stating that the "precedent established by Washington and other presidents of the United States, in retiring from the presidential office after their second term, has become, by universal concurrence, a part of our republican system of government." The resolution contended that "any departure from this time honored custom would be unwise, unpatriotic, and fraught with peril to our free institutions."¹⁵

Grant, however, was destined to make one more run for the presidency. At the 1880 Republican Convention in Chicago, he was the leading candidate for the nomination through thirty-five ballots. On the thirty-sixth ballot, the stop-Grant forces combined to nominate James A. Garfield.¹⁶

By the time the Eightieth Congress convened in 1946, more than two hundred attempts had been made to amend the Constitution and fix the tenure of the president.¹⁷

Had Franklin D. Roosevelt lost the 1940 election, his third bid would have been but another interesting episode in the history of

13. C. STEIN, *THE THIRD TERM TRADITION* 76 (1943). See also, Davis, *supra* note 2, at 72-76.

14. E. MCPHERSON, *HANDBOOK OF POLITICS FOR 1876* 155 (1876). A week later, a similar resolution was approved by the Ohio Republican State Convention. *Id.* at 227.

15. H.R. Res., 44th Cong., 1st Sess., 4 CONG. REC. 228 (1875). The Senate adopted an identical resolution in 1928. S. Res. 118, 70th Cong., 1st Sess., 69 CONG. REC. 2842 (1928).

16. Thirty-two years later, Theodore Roosevelt achieved the distinction of seeking, though unsuccessfully, a third term. Davis, *supra* note 2, at 57-59, 64-65.

17. See, e.g., Graham, *Amendment to the Constitution Relating to the Terms of Office of the President*, 93 CONG. REC. 847 (1947); Graham, *Moves to Limit the Term, 1787-1947*, 26 CONG. DIG., 16 (1947).

the debate over presidential tenure. "Instead, his victory wrote the concluding chapter for the two-term custom, and, simultaneously, the opening chapter in the history of a successful drive to fasten a legal limit on presidential tenure into the Constitution."¹⁸

The third-term issue had little discernable effect on voters in the 1940 election, but it did generate widespread public interest during the campaign. In September and October, immediately prior to the election, a special subcommittee of the Senate Judiciary Committee devoted sixteen days of hearings on the propriety of a third term.¹⁹ On November 3, Republican standard bearer Wendell Willkie announced that in his very first message to Congress he would call for a constitutional amendment limiting presidents to two terms.²⁰

Between March 1940 and September 1943, in anticipation of Roosevelt's third and fourth campaigns, eight State legislatures passed resolutions calling for a limitation on presidential tenure.²¹ Gallup polls in April 1943, December 1943, April 1944, and July 1944 indicated that a majority of those polled favored a law which would prohibit presidents from serving more than two terms.²² "Widespread public interest in the third term issue," however, "existed only during the 1940 campaign." That concern was "tied to the outcome of the election rather than any fundamental principle."²³ Republican attempts to revive the third-term issue again in 1944 proved to be "decidedly anticlimactic and altogether a dismal failure." Finally, "realizing that the popular appeal of the issue was gone, the proponents of the amendment never again tried to arouse public sentiment behind them."²⁴

Late in 1945, some five months after Roosevelt's death, a poorly attended one-hour Senate Judiciary Committee hearing on presidential tenure, largely ignored by the press, began the process leading to the 1947 enactment of the twenty-second amendment. Informal hearings in the Senate and in the House failed to arouse

18. F. Zucker, *The Adoption of the Twenty-Second Amendment* 5 (1958) (unpublished Ph.D. dissertation, Pennsylvania State University).

19. *Third Term for President of the United States: Hearings on S.J. Res. 15 and S.J. Res. 289 Before the Subcomm. of the Comm. on the Judiciary*, 76th Cong., 3rd Sess. (1940).

20. Hagerty, *Willkie Would Bar 3d Term by Law*, N.Y. Times, Nov. 4, 1940, at 1, col. 10.

21. For a discussion of the petitions, see Zucker, *supra* note 18, at 30-36.

22. 1 G. GALLUP, *THE GALLUP POLL: PUBLIC OPINION 1935-1971*, at 381, 424, 422, 452 (1972). A November 1944 National Opinion Research Center (NORC) poll showed that fifty-eight percent favored a constitutional amendment that would prohibit presidents from serving more than two terms. *PUBLIC OPINION, 1935-1946* 649 (H. Cantril & M. Strunk eds. 1951).

23. Davis, *supra* note 2, at 147.

24. Zucker, *supra* note 18, at 120.

any interest whatsoever among those groups that normally would have been expected to testify. Even President Truman played a "strictly passive" role in opposing the amendment.²⁵

"By the time the battle over presidential tenure was renewed," when the Eightieth Congress convened on January 3, 1947, "the intra-party differences were sharply defined."²⁶ From the outset the House Republican leadership sought to avoid public hearings that might possibly arouse latent opposition. They hoped to secure quick passage in the House so that the amendment could reach the State legislatures while they were still in session. At the same time, House Speaker Joseph Martin proved to be the inspirational leader as well as the sustaining force behind the movement.²⁷

Early that February, attention in the House focused on two proposals, one introduced by Everett Dirksen of Illinois to limit the president to a single six-year term, and a second offered by Earl Michener of Michigan limiting the president to two four-year terms. Only Michener's proposal received serious consideration. It was taken up by a House Judiciary subcommittee on February 3 and reported favorably to the full Committee later the same day. Between sixteen and eighteen Members of Congress reportedly made statements before the subcommittee.²⁸

Two days later, Representative Michener's resolution was favorably reported by a majority of the full Committee. The heart of the *stated* Republican position was contained in the House Judiciary Committee's report, which declared:

By reason of the lack of a positive expression [in the Constitution] upon the subject of tenure of the office of President, and by reason of a well-defined custom which has arisen in the past that no President should have more than two terms in that office, much public discussion has resulted upon this subject. Hence it is the purpose of this legislation, if passed, to submit this question to the people so they, by and through the recognized processes, may express their views upon this question, and, if they shall elect, they may amend our Constitution and thereby set at rest this problem.

This is not a political question. The importance of the problem to the people transcends all political implications and considerations.²⁹

25. *Id.* at 120, 126-29, 131. See also Davis, *supra* note 2, at 147-48, 163. In 1950, while the amendment was still being considered by the States, President Truman felt he "could be elected again and continue to break precedent as it was broken by F.D.R.," but felt "it should not be done. That precedent should continue not by Constitutional amendment, but by custom based on the honor of the man in office." 2 H. TRUMAN, MEMOIRS BY HARRY S. TRUMAN 489 (1956).

26. P. Willis & G. Willis, *The Politics of the Twenty-Second Amendment*, 5 W. POL. Q. 469, 479 (1952).

27. Zucker, *supra* note 18, at 118, 137-39.

28. 93 Cong. Rec. 8634 (1947); see also Davis, *supra* note 2, at 95.

29. H.R. REP. NO. 17, 80th Cong., 1st Sess. 2 (1947). For a discussion of the minority views of the House Judiciary Committee report, see Willis, *supra* note 26, at 480-81.

During the emotion-filled debate of the following day, it quickly became evident that the three sets of minority views attached to the Committee's report represented the opinions of a significant number of Members. Several speakers favored a limitation of two four-year terms, while others felt any limitation was inappropriate, or wanted to limit future presidents to a single six-year term.³⁰ The Democrats charged that the amendment was "anti-Roosevelt." There were repeated assertions during the debate that a two-term limitation would tie the hands of the American people, but when the vote was taken later that afternoon, the House approved the two-term limitation by a vote of 285 to 121. All 238 Republican Members who voted supported the proposed amendment. Bolstering the vote were 47 Democrats, 37 of whom were from southern states. Their defection gave the Republicans the two-thirds majority needed to ensure passage of the amendment.³¹

Action in the Senate was protracted. Although the Senate Judiciary Committee enthusiastically supported the effort to give the American people a vote on the question of presidential tenure, its study of the issue had raised troubling concerns.

"Simply because a man might hold office or act as President for a few days or months," the Committee felt, "he should not arbitrarily be foreclosed from serving two further full terms of 4 years each." The House-passed version made any person ineligible for reelection to the presidency who had served any part of two terms, while the Senate Judiciary Committee proposal allowed a succeeding president to remain in office for up to nine years.³²

The Senate Judiciary Committee version also called for ratification by State constitutional conventions rather than the State legislatures, as provided in the House measure. The members of State legislatures, it was reasoned, "in many instances had no direct mandate from their constituencies on which to base a vote for or against the measure." Despite the contention that a constitutional conven-

30. 93 CONG. REC. 841-72 (1947). Excellent summaries of the debate are found in Davis, *supra* note 2, at 95-101 and A. GRIMES, *DEMOCRACY AND THE AMENDMENTS TO THE CONSTITUTION* 116-19 (1978).

31. Davis, *supra* note 2, at 114-15. Frederick Donald Zucker found that "37 southern representatives constituting 22.5 percent of House Democrats . . . opposed their party's position and voted in favor of the Republican-sponsored amendment." "The 37 southern congressmen who voted against their party on the amendment collectively supported their party in 68.7 percent of all 1947 party votes, while those 57 southerners who supported their party in the vote on the amendment supported their party in 81.5 percent of the votes." The House "Democrats who opposed their party [on the Twenty-Second Amendment] were those who most frequently supported majorities of Republicans against their own party." Zucker, *supra* note 18, at 149, 153. Alan P. Grimes mistakenly places the number of Democrats supporting the Amendment at fifty instead of forty-seven. A. GRIMES, *supra* note 30, at 119.

32. S. Rep. No. 34, 80th Cong., 1st Sess. 1-3 (1947).

tion provided the "only adequate and expeditious manner of registering the sentiment of the citizens directly,"³³ the full Senate on March 10 overwhelmingly defeated the proposal. Only twenty Senators supported its adoption.³⁴

Resolution of other substantive concerns was essentially worked out during private conferences between Robert Taft, Millard Tydings and several other Senators, before being brought to the floor on March 12.³⁵ Although several changes would be subsequently proposed during the ensuing debate later that day, the Taft-Tydings compromise was enacted as the twenty-second amendment.

In place of the original House resolution, which carried a limit of eight years in office, the Senate extended the limit to a possible ten years. A person who succeeded to the presidency and served less than two years, would be eligible to be elected president twice in his own right. An individual who served for more than two years of a predecessor's term would be eligible to be elected president only once. The Senate also exempted Truman from the proposed amendment.

Thirteen Democrats joined forty-six Republicans in supporting the proposed amendment. All but four of the Democratic votes in the Senate came from southern states. Not one Republican in either House defected from the party position to vote against the measure.³⁶

The Senate returned its version of the amendment to the House on March 13.³⁷ The House approved the Senate version of H.J. Res. 27 by an amazingly small vote of eighty-one to twenty-nine a week later. Objections to the vote on the grounds of an absence of a quorum were made and then withdrawn.³⁸

WHY THE TWENTY SECOND AMENDMENT WAS ADOPTED

House and Senate debate on the twenty-second amendment clearly indicates that party politics played a key role in its adoption.

33. *Id.* at 2. The proposal was also supported by United States News. *Safeguards on the Presidency*, United States News, February 28, 1947, at 22-23.

34. 93 CONG. REC. 1862 (1947). See also Davis, *supra* note 2, at 102-07.

35. 93 CONG. REC. 1938-39 (1947). Frederick Zucker credits Taft with being the driving force behind the Amendment's passage in the Senate. Zucker, *supra* note 18, at 138. To understand why Taft supported the amendment, see *id.* at 174-75.

36. Davis, *supra* note 2, at 108-11, 114-15; A. GRIMES, *supra* note 30, at 120. Frederick Zucker found that the nine southern Senators who supported the amendment "collectively voted with a majority of their party against a majority of Republicans only on 57.8 percent of the rolls." Zucker, *supra* note 18, at 159.

37. 93 CONG. REC. 1978 (1947).

38. 93 CONG. REC. 2392 (1947).

The major impetus "for setting a two-term limit on the tenure of a president came from the Republicans, and the strongest opposition to it was offered by the Democrats who saw it [as] a slur on the memory of President Franklin D. Roosevelt." An examination of the most significant votes on the amendment, the two in committee and the two on the floor, clearly indicates "that a remarkable degree of unanimity was maintained by the Republicans on the issue, since not one Republican swayed from the party line." The success of the Republicans in maintaining "party unity and the failure of Democrats to do so," at least one scholar argues, "appears to be the major factor in the deliberations on the twenty-second amendment in Congress."³⁹

Although the impact of party unity cannot be denied, without the votes of thirty-seven southerners in the House and nine in the Senate, the Republicans would not have been able to attain the required two-thirds majority. "During the New Deal, Republicans and black-belt southerners formed a tight but relatively ineffective alliance against Roosevelt's economic policies." When President Roosevelt died, the "alliance expected a shift to the right," but instead "Harry Truman continued his predecessor's liberal effort 'to improve the lot of the common people.'" ⁴⁰ By 1947, southern resentment toward Truman's liberal economic reforms had grown even stronger and was a serious problem for the Democrats. "In most cases the opposing southerners were voting both in protest against what had gone on" under Roosevelt, "and to prevent its continuance in the future by reducing the leadership potentiality of the presidency." Had they known of Truman's forthcoming civil rights program, an even larger number of liberal southerners would have been driven "into the arms of the hard core that supported" the twenty-second amendment.⁴¹

"Implicit in the Republicans' view was the belief that the twenty-second amendment would strengthen and safeguard democracy from what they believed to be its greatest danger: the aggrandizement, consolidation, and even usurpation of political power by

39. Davis, *supra* note 2, at 113-14; see also, *id.* at 124, 140, 146; Zucker, *supra* note 18, at 175. Reo M. Christenson argues that the notion that the passage of the twenty-second amendment "was largely motivated by partisan consideration is almost beyond challenge." R. CHRISTENSON, HERESIES RIGHT AND LEFT: SOME POLITICAL ASSUMPTIONS REEXAMINED 139 (1973). Donald G. Morgan suggests that: "The Republicans, by enshrining the ban on the third term" in party platforms, by placing it at the head of their legislative program, and presumably by making it a test of party loyalty, "fostered an atmosphere and frame of mind which stifled mature and patient deliberation on the merits of the proposal." D. MORGAN, CONGRESS AND THE CONSTITUTION 243 (1966).

40. See Zucker, *supra* note 18, at 149-64, 168.

41. *Id.* at 172.

the executive branch of government." For them, "the twenty-second amendment was not an undemocratic restraint upon the popular will, but a democratic restraint upon any future, dangerously ambitious demagogue."⁴²

The Democrats argued that the "two-term tradition had been broken, and wisely so, by Roosevelt because of the extraordinary emergency which arose with the second world war, in which the survival of the nation was at stake." A change in the presidency at such a time, they reasoned, would have been dangerous to the country. The American people agreed in both 1940 and 1944. "This was the democratic way of deciding the question." To prohibit the reelection of "an experienced and popular President in a time of extreme national emergency," the Democrats reasoned, would invite rather than prevent dictatorship.⁴³

In late March 1947, the proposed twenty-second amendment was submitted to the States for ratification. Although the Republican Party was destined not to duplicate its perfect record for party loyalty at the state level, the ratification vote was nevertheless remarkable. Only twenty-five Republican state senators and fifty-eight Republican state representatives, out of 3,272 Republican state legislators whose votes were recorded, deserted their party.⁴⁴

During the ensuing nine months, eighteen states ratified the amendment. Every one had sizeable Republican majorities in both houses of their legislatures. The two states (Texas and Oklahoma) that rejected the amendment in 1947 were controlled by Democrats. Although only a few state legislatures convened in 1948, a major breakthrough occurred when Virginia and Mississippi, two solid southern Democratic states, joined New York in approving the proposed amendment.⁴⁵

By February 27, 1951, the constitutionally-required thirty-six states, including seven southern Democratic states, had approved the new amendment. Four more southern Democratic states increased the total to forty-one by May.⁴⁶

Those state legislators who supported the "amendment generally employed the arguments that it was designed to prevent dictatorship, and that it was nonpartisan in nature." Opponents contended that it was aimed "at the memory of Franklin D. Roosevelt," and the 1940 election "had already decided the issue."

42. A. GRIMES, *supra* note 30, at 122.

43. *Id.*

44. Davis, *supra* note 2, at 125. For somewhat different figures see Zucker, *supra* note 18, at 197.

45. See Zucker, *supra* note 18, at 178, 184; Davis, *supra* note 2, at 130-34.

46. See Zucker, *supra* note 18, at 179-80.

They felt the American people "should have the right to select any leader they felt capable of doing the job. As in Washington, the halls of the state capitols rang with copious quotations from famous figures of American history."⁴⁷

Several common issues linked Republican state legislators with their counterparts in Washington. First and foremost was the reality that FDR's political coattails helped elect a sizeable number of Democrats at the state level. Also, many approved the amendment hoping it would discourage Harry Truman from running for reelection.⁴⁸

Despite the similarities between debate on the amendment on Capitol Hill and in the state legislatures, there appears to have been no organized effort to secure ratification. Neither congressional leaders, the Republican National Committee, nor the Democratic National Committee became involved in the process once the amendment was sent to the states. President Truman likewise "remained entirely aloof from the issue." Several governors, however, took prominent positions during the ratification process. "In only one case did a governor's stand fail to coincide with the decision of the legislature."⁴⁹

The twenty-second amendment, according to the *Nation*, "glided through legislatures in a fog of silence—passed by men whose election in no way involved their stand on the question—without hearings, without publicity, without any of that popular participation that should have accompanied a change in the organic law of the country."⁵⁰ The press and the public were equally lax. There was only spotty coverage in the local press, virtually none in national periodicals, and little public participation. Even interest groups most directly affected by the change in presidential tenure paid little attention to the ratification process.⁵¹

Except for states that desired to be the first or last to ratify the twenty-second amendment, there appears to be "no clearly definable reason for the state legislators to protect any specific state interest outside the South."⁵² Although popular support for FDR in the South was overwhelming, there were some unique pressures on southern legislators.

During the first year the amendment was before the states, not one Southern state ratified it. That fall, however, Democratic soli-

47. *Id.* at 190.

48. *Id.* at 198-99.

49. *Id.* at 202-03.

50. *The Two-Term Limit*, 172 *NATION* 216, 217 (1951).

51. Zucker, *supra* note 18, at 122-26, 208, 229, 236-37.

52. *Id.* at 229.

curity in the South began to crumble soon after President Truman's Committee on Civil Rights recommended that a broad program for the protection of the civil rights of minorities be implemented. Early in 1948, even before the Truman Administration had time to unveil its civil rights program, Virginia became the first Southern state to ratify the amendment. Soon after the President sent his special civil rights message to Congress on February 2, Governor Fielding L. Wright of Mississippi asked the Southern Governors' Conference to serve notice on Democratic Party leaders that they would no longer tolerate the repeated campaigns for enactment of civil rights legislation. Less than a week later, the Mississippi state legislature voted overwhelmingly for the ratification of the twenty-second amendment. That March, the Southern Governors' Conference recommended that state Democratic conventions resolve not to vote for any candidate favoring civil rights and that delegates to the Democratic National Convention be instructed to oppose Truman's nomination.⁵³

In 1950, Louisiana became the third southern state to approve the two-term limit. Between February and May of 1951, the remaining eight states of the old Confederacy "ratified the amendment as an expression of disapproval of Truman's program and to discourage any reelection ideas he might have been entertaining." Also, southerners "feared any change that even appeared to open the way to Federal intervention in the southern social system." The twenty-second amendment was seen as a viable way of suppressing what was "considered a threat to white supremacy in the South." Ratification of the amendment, "they hoped, would reduce the potentialities for strong presidential leadership of civil rights drives for which the South was the obvious target."⁵⁴ It would also eliminate the "crusading Chief Executive in Washington who was dedicated to the cause of civil rights" and the destruction of their social system.⁵⁵

SUBSEQUENT MISGIVINGS AND CONCERNS ABOUT THE AMENDMENT

Following the ratification of the twenty-second amendment in 1951, congressional interest in the question of presidential tenure lay virtually dormant for more than five years. Then in July 1956, during the waning moments of the Eighty-fourth Congress, two resolutions were introduced in the House calling for repeal of the

53. *Id.* at 157. See also, *id.* at 154, 156-57.

54. Zucker, *supra* note 18, at 230, 236, 239.

55. Davis, *supra* note 2, at 158.

amendment.⁵⁶ At a press conference on October 5, 1956, while Congress was in recess, President Eisenhower expressed his own misgivings regarding the amendment, arguing that the "United States ought to be able to choose for its President anybody that it wants, regardless of the number of terms he has served."⁵⁷

Shortly after the Eighty-fifth Congress convened in January 1957, five new resolutions were introduced to repeal the twenty-second amendment. The expressed intent of at least one of the five resolutions,⁵⁸ Senator Richard Neuberger stressed in a January 22 floor statement, was to restore "to the American people the right to continue Dwight Eisenhower in office" after the termination of his second term in 1960. "The idea of imposing a constitutional limit of two terms on the Presidency," Neuberger argued, "was conceived primarily by the political opponents of the only President in our history who, in a supreme national crisis, was elected to more than two terms."⁵⁹ Senator Neuberger's hopes were quickly squelched when president Eisenhower, at a January 1957 news conference, formally renounced any intention of seeking a third term, even if the twenty-second amendment were repealed.⁶⁰

Representative Stewart Udall readily conceded that there was little likelihood of a repeal movement being successful, but he felt there were ample reasons for such a course of action. To assist his House colleagues "in reappraising the wisdom of the amendment," Udall, with the help of the American Historical Association and the American Political Science Association, surveyed more than thirty of the nation's leading historians and political scientists on the question.⁶¹

Of the twenty-nine scholars who responded to Udall's survey, twenty-four favored immediate repeal of the twenty-second amendment. Only five considered repeal inappropriate at that time. While political scientist Carl Swisher of Johns Hopkins University viewed the twenty-second amendment as a mistake, he doubted the "advisability of repealing the amendment without very careful consideration." Repeal, Swisher felt, "would do more than obliterate

56. H.R.J. Res. 694, 84th Cong., 2d Sess., 102 CONG. REC. 13784 (1956); H.R.J. Res. 701, 89th Cong. 2d Sess., 102 CONG. REC. 15297 (1956).

57. *President's News Conference of Oct. 5, 1956*, PUB. PAPERS: DWIGHT D. EISENHOWER 850, 862 (1956).

58. S.J. Res. 37, 85th Cong., 1st Sess., 103 Cong. Rec. 822 (1957).

59. 103 Cong. Rec. 825 (1957) (statement by Sen. Neuberger).

60. *President's News Conference of January 30, 1957*, PUB. PAPERS: DWIGHT D. EISENHOWER 97, 106 (1957); *President Bars a 3d-Term Race Even If 'They Repeal' Ban on It*, N.Y. Times, January 31, 1957, at 14.

61. 103 CONG. REC. 843 (1957) (statement of Rep. Udall). See also, Trussell, *Bills Ask Repeal of the 3d Term Ban*, N.Y. Times, January 23, 1957, at 14.

the amendment itself. It would revitalize what remains of the tradition against service for more than two consecutive terms and carry with it an implication of approval of continued reelection of 'indispensable' presidents—an approval that ought to be given under most unusual circumstances."⁶²

Historian Arthur Link, as well as political scientists Arthur Holcombe, and Frank Prescott, also had serious misgivings about the amendment, but like Swisher, saw no need for its immediate repeal. Dr. Holcombe told Representative Udall he feared "that it [was] impossible to arouse enough interest" to repeal the amendment "without arousing an amount of interest that would throw the question into politics." There were, in his opinion, far "more promising and more urgent subjects for consideration by thoughtful Congressmen with a taste for constitutional reform."⁶³

Professor Link believed we would "be a very poor democracy, indeed, if we ever reach the stage where any single man is indispensable beyond two terms of the Presidency."⁶⁴ Dr. Prescott saw "no reason to rush into a repeal before we have the benefit of a few more years experience with the limitation."⁶⁵

By far the most comprehensive defense of the twenty-second amendment was offered by Thomas Barclay, professor of political science at Stanford University. He argued that the amendment had not been in operation long enough "to supply conclusive evidence of either the necessity or desirability of repealing it." Even more important were the political realities of the presidency that, in his opinion, supported the notion that two terms were enough. For Dr. Barclay, the two-term limit constituted "an effective check on prolonged power."⁶⁶

The remaining twenty-four presidential scholars who responded to the Udall survey issued a resounding call for the repeal of the twenty-second amendment, but their appeal had no appreciable impact. Neither the Senate nor the House took any action on repeal proposals during the Eighty-fifth Congress.

During 1959, the movement to repeal the twenty-second amendment captured widespread public attention during Senate and House hearings. Supporters of repeal were bolstered by the personal endorsement of former President Truman in a telegram to a House Judiciary subcommittee in early February, and by his sub-

62. 103 CONG. REC. 4322 (1957); 103 CONG. REC. app., A3555.

63. 103 CONG. REC. app., A3075 (1957).

64. 103 CONG. REC. app., A2686 (1957).

65. 103 CONG. REC. app., A3116 (1957).

66. 103 CONG. REC. app., A4484 (1957).

sequent testimony before the Senate Judiciary Committee's Constitutional Amendment Subcommittee on May 4.⁶⁷ In addition, President Eisenhower, during press conferences on January 21 and February 10, reiterated his belief that although there were good arguments both for and against the two-term limitation, he personally did not believe it was a particularly nice amendment.⁶⁸

Truman told the Senate Judiciary Subcommittee on Constitutional Amendments that the twenty-second amendment was a "bad amendment and it ought to be repealed." When Congress was persuaded to approve it in 1947, Truman was convinced, it let itself be "sold . . . a bill of goods" by the "Roosevelt haters." "What they actually accomplished," he believed, "was to make a 'lame duck' out of every second term President for all time in the future." Truman continued by suggesting that "[y]ou do not have to be very smart to know that an officeholder who is not eligible for reelection loses a lot of influence." If a man is not a good president, then "you do not have to reelect him." That is the "way to get rid of him and it does not require a constitutional amendment to do it."⁶⁹

Enthusiasm over Truman's endorsement was short-lived. The following day, President Eisenhower publicly recanted his earlier misgivings regarding the amendment and spoke out in favor of it. A week later, the President once again supported the amendment when, in response to a question from a *New York Times* correspondent, he told reporters that the Constitution was "something that ought to be amended only after careful thought, not with any purpose in mind except that of what over the years and over the long term [was,] good for the United States. So, as of now," he concluded, "I would say, let's let it lay on the shelf for a while and see how it works."⁷⁰

Supporters of repeal were further jolted on July 26, when the Senate Constitutional Amendments Subcommittee released a letter from Attorney General William Rogers expressing his opposition to the repeal on the grounds that the two-term ban had not yet had a

67. *Presidential Terms of Office: Hearings on S.J. Res. II Before the Subcomm. on Constitutional Amendments of the Senate Comm. on the Judiciary*, 86th Cong., 1st Sess. 5-13 (1959) (statement of Harry S. Truman).

68. *President's News Conferences of January 21, 1959 and February 10, 1959*, PUB. PAPERS: DWIGHT D. EISENHOWER 130, 176 (1959). In memoirs Eisenhower wrote that he "originally thought the Twenty-second Amendment was unwise; but long before I left the Presidency I publicly stated that I had changed my mind and had come to believe, on balance, that the amendment was good for the nation." D. EISENHOWER, *THE WHITE HOUSE YEARS: WAGING PEACE 1956-1961*, 643 (1965).

69. Truman, *supra* note 67, at 5-7.

70. *President's News Conferences of May 5, 1959 and May 13, 1959*, PUB. PAPERS: DWIGHT D. EISENHOWER, 362-376, 387 (1959).

fair test.⁷¹

The Subcommittee finally approved a resolution to repeal the twenty-second amendment on September 1, 1959, but no further action was taken.⁷² Similar proposals were to be introduced for the next three Congresses, each having the same fate.⁷³

Although Eisenhower was not eligible for a third term as president in 1960, in jest he raised the intriguing possibility that he just might run for vice president. When asked during a press conference on January 13 whether he was ready to support Vice President Nixon officially as his choice for the Republican nomination, Ike responded with a quip. "You know," he told William Knighton of the *Baltimore Sun*, "the only thing I know about the Presidency the next time is this: I can't run. [Laughter] But someone has raised the question that were I invited, could I constitutionally run for Vice President, and you might find out about that one. [Laughter]"⁷⁴

Eisenhower's comment sent students of the presidency scurrying to see what would happen if he actually became Vice President, and his running mate died or resigned. Could he then become president and serve what would be equivalent to a third term? Syndicated columnist George Dixon took the question to Senator Thomas C. Hennings Jr. of Missouri, whom he regarded as the "outstanding authority in Congress on Constitutional Law." Senator Hennings concluded that "Ike not only [could] run for the Vice Presidency but [could] also inherit the Presidency." Dixon also asked former Secretary of State Dean Acheson if he thought it would be unconstitutional for Ike to run for Veep. After weighing the question, Mr. Acheson replied "that he thought it was more unlikely than unconstitutional." When Justice William J. Brennan, Jr. was asked about the matter, he "shied away from the question."⁷⁵

At the President's next press conference two weeks later, Mr. Knighton reminded Eisenhower of his suggestion that the White House press corps "get an opinion on whether a second term President should run for Vice President." "Not 'should,' the President responded, "I said 'could.'" Immediately Knighton corrected him-

71. *Third-Term Amendment*, 17 CONG. Q. WEEKLY REP. 1029 (July, 1959).

72. *Senate Unit Backs Two-Term Repeal*, N.Y. Times, September 2, 1959, at 32.

73. A review of the CONGRESSIONAL RECORD indicates that joint resolutions to repeal the twenty-second amendment were introduced in the Eighty-Seventh to Eighty-Ninth Congresses (1961-1966).

74. *The President's News Conference of January 13, 1960*, PUB. PAPERS: DWIGHT D. EISENHOWER 21, 23 (1960-61).

75. Dixon, *Ike's Right to V.P. Spot*, Washington Post, January 21, 1960, at A-23.

self, and then asked Ike if he had received an "official opinion" on the question, and if he could run, would he?

"I'll tell you this much," the President responded, "I'll be more like these non-running candidates; I'll be cagey—the afternoon of that press conference, there was a note on my desk saying a report from the Justice Department—I don't know whether the Attorney General himself signed this, but the report was, it was absolutely legal for me to do so. That stopped it right there, as far as I'm concerned."⁷⁶ President Eisenhower never brought up the subject again. Others, however, continued to discuss the question until well into the summer.⁷⁷

That August, former President Herbert Hoover came out in favor of the twenty-second amendment and emphasized that "eight years in the White House was enough exhaustion for any mortal."⁷⁸

The following May, four months after seeing his successor John F. Kennedy sworn in as the nation's thirty-fifth president, Eisenhower admitted that the thought of pursuing a third term had crossed his mind during the previous few weeks. Without hesitation, the former President indicated that he might have sought a third term if the Constitution had permitted and he could have foreseen Richard Nixon's defeat.⁷⁹

When asked during a December 1962 television and radio interview whether he would repeat his vote as a "young Congressman" to limit presidents to two terms, President Kennedy told William H. Lawrence of ABC: "Yes I would. I know the conditions were special in '47, but eight years is enough, and I am not sure that a President, in my case if I were reelected, that you are at such a disadvantage." Kennedy felt "there [were] many powers of the Presidency that run in the second term as well as the first."⁸⁰

For the next several years, proposals to modify presidential tenure focused on a single six-year term. The next serious effort to repeal the twenty-second amendment came only a few short months after Richard Nixon's overwhelming reelection victory of 1972. The following March, Projects for Peace, Inc., a New York adver-

76. *The President's News Conference of January 26, 1960*, PUB. PAPERS: DWIGHT D. EISENHOWER 133 (1960-61).

77. Shapiro, *V.P. Eisenhower?*, N.Y. TIMES MAG., July 17, 1960, at 4; *Vote for Eisenhower*, N.Y. Times, July 22, 1960, at 8; Nadelman, *12 Plus 22*, N.Y. TIMES MAG., July 31, 1960, at 41.

78. Bigart, *Hoover, 86 Today. Scores Bigotry in Voting*, N.Y. Times, August 10, 1960, at 21.

79. *Eisenhower Says He'll Speak Out on Issues Confronting the Nation*, N.Y. Times, May 9, 1961, at 1.

80. *Television and Radio Interview: "After Two Years—A Conversation with the President,"* December 17, 1962, PUB. PAPERS: JOHN F. KENNEDY 892 (1962).

tising agency, was retained by a nonpartisan voters group, "Citizens for Nixon '76," to begin a campaign aimed at repealing the amendment.⁸¹ On July 5, 1973, "Citizens for Nixon '76" kicked off its campaign at the Overseas Press Club in New York. The movement quickly fell apart a few weeks later when the disclosures of Watergate began to engulf the White House.⁸² Meanwhile, congressional reformers had again shifted their attention, as they had so often before, to limiting presidents to a single six-year term.

A decade later, President Ronald Reagan revived the idea of repeal during a September 1985 meeting with about a dozen members of the American Legislative Exchange Council, an organization of conservative legislators. The President told the group it was "ridiculous" to limit presidents to two terms if the American people wanted them to serve longer. The American people, he argued, "ought to have a right to decide who their leadership would be."⁸³ Subsequently, during a December 1985 interview, First Lady Nancy Reagan echoed her husband's enthusiasm for the proposal, but emphasized that a third term is "not for us."⁸⁴

"No President can ever come out" in favor of repealing the twenty-second amendment "with himself in mind," President Reagan emphasized in an interview the following February with Lou Cannon and David Hoffman of the *Washington Post*. Mr. Reagan did think, however, "that we ought to take a serious look and see if we haven't interfered with the democratic rights of the people."⁸⁵

While none of the previous repeal efforts had aroused a great deal of support, either on Capitol Hill or among voters, President Reagan's backing stimulated considerable enthusiasm among Republican partisans.

Despite President Reagan's repeated pronouncements that he sought the repeal only for future presidents, not for himself, Representative Guy Vander Jagt of Michigan, chairman of the National Republican Congressional Committee, was not easily deterred. In a July 1986 fund-raising letter to 300,000 GOP faithful, Rep. Vander Jagt enclosed an "Official Constitutional Petition" calling "for the immediate repeal of the 22nd Amendment which limits a president

81. *Four More Years More?*, NEWSWEEK, March 5, 1973, at 20; Davis, *The Future of Pres. Tenure*, 10 PRES. STUDIES Q. 472 (Summer 1980).

82. Davis, *The Results and Implications of the Enactment of the Twenty-Second Amendment*, 9 PRES. STUDIES Q. 289, 301 (Summer 1979).

83. *Reagan Favors Repeal of Ban on Third Term*, N.Y. Times, September 15, 1985, at 33.

84. Thomas, *First Lady Favors Lifting Two-Term Limit for Presidents*, Washington Post, December 12, 1985, at F4.

85. *Foreign and Domestic Issues Interview with Lou Cannon and David Hoffman of the Washington Post*, February 10, 1986, 22 WEEKLY COMP. PRES. DOC. 20 (February 17, 1986).

to only two terms." There were, he explained "a number of exceptionally well-qualified Republican presidential candidates . . . [b]ut why shouldn't we hold on to the 'original' as long as possible?" If enough petitions were received, Rep. Vander Jagt promised to 'personally introduce the legislation to repeal the 22nd Amendment.'⁸⁶

On July 28, Rep. Vander Jagt formalized his offer with the introduction of a joint resolution calling for the amendment's repeal. During the next three weeks, he was able to garner sixty-five cosponsors for H.J. Res. 687.⁸⁷ On August 7 he told a cheering crowd of two hundred supporters gathered in Lafayette Park, "We are collectively sending a message to the man across the street in the White House . . . We're telling him, 'Get ready, Mr. President, for four more years.' " "When Ronald Reagan raises his hand to take the oath of office for the third time, history will record that it all began right here today in Lafayette Park."⁸⁸

The following Monday evening, Charles Gibson anchored a segment of ABC News' "Nightline" devoted to the twenty-second amendment. Gibson's guests included Rep. Vander Jagt, *Washington Post* columnist Mark Shields, and political scientist Thomas Cronin. In Mark Shields' opinion, the amendment was "an act of posthumous vengeance upon the memory of a man [the Republicans] couldn't beat in life, so they decided to get even with him in death." Rep. Vander Jagt readily conceded the "Republicans made a mistake" in 1947, and they now want "to correct that mistake." Also, "[w]e want Ronald Reagan to run again. . . . If you had the greatest all-time standard bearer and a chance to have him on the ballot" a third time, "of course politically you [would] want him again."⁸⁹ Professor Cronin agreed that the amendment had been "passed for the wrong reasons" and "does limit, to some extent, the choice of the American voter." Still, he argued, it has "several virtues" which "ought to be debated and taken a little more seriously." He felt it created "a liveliness in the two political parties to nurture, recruit and to look for good candidates in the future." The Ameri-

86. Schwartz, *Four More Years?*, Washington Post, July 20, 1986, at A9. For specific mention of the 300,000 fund raising letters, see Schafly, *Lets Not Repeal 22nd Amendment*, Washington Times, August 22, 1986, at 3D; and *Promoting Reagan for a Third Term*, N.Y. Times, July 22, 1986, at A16.

87. H.R.J. Res. 687, 99th Cong., 2d Sess., 132 Cong. Rec. H4960 (1986); 132 Cong. Rec. H6297 (1986). For the reaction of the lone Democrat to co-sponsor the proposal, see Coelho, *A Democrat Backs Repeal of the Two Term Limit*, Christian Science Monitor, Aug. 13, 1986 at A14; Coelho, *Petrified Without Reagan*, Washington Post, August 12, 1986, at A16.

88. Grove, *Terms of Endearment: Reagan Zealots Rally for Four More Years*, Washington Post, August 8, 1986, at C1.

89. *Nightline: 22nd Amendment* (ABC television broadcast, August 11, 1986) (transcript on file at Library of Congress).

can people, the polls show, may well favor the twenty-second amendment, Cronin further explained, "because of the fact that we want [a] strong presidency but we don't want to see the abuse of power in such a terribly powerful office."⁹⁰

Others viewed the repeal effort somewhat differently. "Conceptually," Democratic National Committee chairman Paul Kirk Jr. had no objection to the proposal. Kirk, however, saw the Republican effort as a "smokescreen" since the real reason it had been made was because Reagan was "all Republicans have to go on." Senate Majority Leader Robert Dole of Kansas doubted that Congress "would repeal the 22nd Amendment in time" for Reagan to seek reelection, but felt the repeal campaign was "a great fund-raising idea."⁹¹ For the *Los Angeles Times*, the purpose of the campaign was also clear. "Given the President's firm declaration on the matter—and Democratic control of the U.S. House and sufficient state legislatures—one can assume that Vander Jagt's drive is a fund-raising gimmick."⁹² Similarly, the *Washington Post* characterized the movement as an effort to "bamboozle potential contributors into thinking that they're trying to change the Constitution so that Mr. Reagan could seek a third term in 1988."⁹³

While much of the press viewed repeal as a good idea, most were skeptical about the campaign to win Reagan a third term. A sizeable number of the Nation's newspapers agreed with the *Los Angeles Times* and *Washington Post* that the whole effort was little more than a GOP fund-raising gimmick.⁹⁴ *Newsweek* conversely felt the President's "public flirtation with the issue [was] deliberately designed to delay the inevitable movement when he [became],

90. *Id.* at 5-6. In 1987, Cronin characterized the twenty-second amendment as "one of our least important amendments." Still, he goes on to argue that "its repeal could cause more harm than good, and it could send the wrong signals. It would for example, affirm positively the virtues of multiterm presidencies" and "might further strengthen the institution of the presidency in a century when this has already taken place in nearly every decade—usually at the expense of countervailing checks and balances." As a consequence, "until a better amendment is devised, it is better to retain it." Cronin, *Two Cheers for the 22nd Amendment*, *Christian Science Monitor*, February 23, 1987, at A16. Ironically, a year later, Mr. Cronin wrote that "it was profoundly anti-democratic and undesirable to limit the discretion of the voters to choose who will rule them or represent them. . . . Imposing a restriction on the freedom to reelect a president is to violate an essential principle of democracy, namely the voters have the right to exercise a free and uncensored ballot." Cronin, *Pro/Con: A Single Six-Year Term*, 18 *THIS CONSTITUTION* 75 (Spring-Summer 1988).

91. Benesch, *Top Democrat Dismisses Republicans' Third-Term Dream*, *Washington Post*, August 1, 1986, at A12.

92. *Worm in the Constitution*, *L.A. Times*, August 1, 1986, § 2, at 4.

93. *On the Hustings*, *Washington Post*, July 28, 1986, at A10.

94. See, e.g., *Keep Limit on Presidential Term?*, *U.S. NEWS & WORLD REPORT*, Sept. 1, 1986, at 70; Dove, *Presidential Terms of Office: Should They Be Limited by the 22nd Amendment?*, VU8609 Congressional Research Service: U.S. Library of Congress (September, 1986).

once and for all, a lame duck.”⁹⁵ Despite Reagan’s immense popularity, an August 1986 *Newsweek* poll showed that sixty-two percent of the voters interviewed did not want him to have a third term. Sixty percent opposed repeal of the twenty-second amendment.⁹⁶

During the next few weeks, widespread criticism of the President’s performance at the Iceland Summit, the devastating results of the 1986 mid-term elections, and the revelations of the Iran-Contra scandal brought an abrupt end to any prospect of repeal. Mr. Reagan continued to speak out in favor of repeal, but public support declined sharply. Thirty-three percent of those surveyed for an October 1986 Gallup Poll said that they would like to see the twenty-second amendment repealed.⁹⁷ By the spring of 1988, only thirteen percent of those responding to a Media General/Associated Press national poll favored having a president serve more than two four-year terms.⁹⁸

Although support for the President’s effort waned appreciably, there continued to be considerable enthusiasm for Ronald Reagan as a candidate. More than thirty percent of poll respondents (thirty-nine percent in 1986 and thirty-two percent in 1988) indicated that if the twenty-second amendment was repealed they would like to see President Reagan as a candidate in 1988 even though he would be eighty-one at the end of his third term.

THE AMENDMENT’S IMPACT

When the twenty-second amendment was debated in 1947, Henry Steele Commanger wrote that “there is one principle that is inescapably involved in [the] question of limited tenure and that is the principle of democracy.” Limiting presidents to two terms was in Commanger’s opinion a “vote of no confidence in democracy.”⁹⁹ Four years later, just prior to ratification, former Secretary of the Interior Harold Ickes warned that the amendment was “a sinister plot on the part of the anti-social agencies to frighten [the American people] into mutilating their own precious democracy to the advantage of those who have always exploited the people and always

95. Morgenthau, *Four More Years?*, *NEWSWEEK*, September 8, 1986, at 17.

96. *Id.* at 16.

97. Molotsky, *Reagan Wants End of Two-Term Limit*, *N.Y. Times*, November 29, 1987, at 31; and G. GALLUP, *THE GALLUP POLL: PUBLIC OPINION 1986*, 217-220 (1987).

98. Media General/Associated Press National Poll, April-May 1988, at 1.

99. Commanger, *Only Two Terms for a President?*, *N.Y. TIMES MAG.*, April 27, 1947, at 13.

will."¹⁰⁰

"Aside from its allegedly undemocratic aspects," it has been suggested that the twenty-second amendment is quite unique among twentieth century constitutional modifications. Other amendments have been designed "to increase public control over" the election of Federal officials (seventeenth, nineteenth, twenty-third, twenty-fourth, twenty-sixth amendments) "or to enhance the scope and power of the central government (sixteenth amendment)." The twenty-second amendment does neither. Instead, it "narrows the scope of the electoral choice of the people by putting a limit on the number of times they may vote for the same chief executive."¹⁰¹

Despite this historical paradox and the apprehensions of Mr. Commanger and Mr. Ickes, public opinion polls during the past half-century repeatedly have shown that a majority of Americans favored a two-term limit.¹⁰² Still, FDR was reelected a fourth time in 1944, and approximately six out of ten Americans expressed a willingness fifteen years later to elect Eisenhower "if he could run for a third term."¹⁰³

After more than three decades, the impact of the twenty-second amendment on the Eisenhower presidency is still unclear. Some say that it hurt Ike. Others say it had no effect. President Eisenhower himself seemed unsure.¹⁰⁴ There will undoubtedly be equally diverse views regarding how it might have constrained Ronald Reagan's final four years in the White House.

Popular Support. Both men were extremely popular presidents. In March 1959, George Gallup found that only one out of three Americans (thirty-four percent) favored repeal of the twenty-second amendment, but fifty-eight percent indicated that if Dwight Eisenhower could run against Adlai Stevenson a third time, they

100. Ickes, *Twenty-second Amendment Lags*, THE NEW REPUBLIC, January 29, 1951, at 18.

101. Sigel & Butler, *The Public and the No Third Term Tradition: Inquiry Into Attitudes Toward Power*, 8 MIDWEST J. OF POL. SCI. 40-41 (Feb. 1964).

102. See, e.g., G. GALLUP, THE GALLUP POLL: PUBLIC OPINION 1935-1971, v. 1, at 25-26 (1936), at 381, 424 (1943), at 442, 452 (1944); v. 2, at 1460 (1956); v. 3, at 1596 (1959); and G. GALLUP, THE GALLUP POLL: PUBLIC OPINION 1986, 216-20 (1987). The lone exception was a September 18, 1938, Gallup poll which found that fifty-two percent did not "favor a constitutional amendment prohibiting any President of the United States from serving a third term." 1 G. GALLUP, THE GALLUP POLL: PUBLIC OPINION 1935-1971, at 119. Interestingly, sixty-nine percent of those polled for an August 17, 1938 poll said that they did not want Franklin D. Roosevelt to run for a third term, and sixty percent said that they would not vote for him if he did. *Id.* at 115. By December 1938, those opposed to Roosevelt seeking a third term had risen to seventy percent, *Id.* at 129.

103. 3 G. GALLUP, THE GALLUP POLL: PUBLIC OPINION 1935-1971 at 1596.

104. Davis, *supra* note 82, at 290-96.

would vote for him.¹⁰⁵

Three decades later, Ronald Reagan left office enjoying more popularity than when he entered it. He was elected in 1980 with fifty-one percent of the vote. In January 1989, his approval rating had risen to sixty-eight percent, "the highest given to any president at the end of his term since World War II." None of Mr. Reagan's predecessors during the previous four decades, according to the *New York Times*, "ever reached a sixty percent approval rating at the end of their tenure. Mr. Eisenhower had the next highest score, fifty-nine percent, and Mr. Nixon, who resigned under threat of impeachment, had the lowest, twenty-four percent."¹⁰⁶ What distinguished Ronald Reagan from other second-term presidents was "his administration's superior management of political communications and its exploitation of the symbolic properties of the presidency. Particularly striking (prior to the Iran-contra affair) was Reagan's ability to remain untarred when things went badly." Few if any "presidents could have escaped unscathed, as Reagan did, from the debris of the summit meeting with Soviet Premier Mikhail Gorbachev in 1986."¹⁰⁷

Legislative Impact. On Capitol Hill, Eisenhower and Reagan enjoyed their greatest successes with Congress during their first year in office. Eisenhower won eighty-nine percent of the roll-call votes on issues for which he had staked out a position. Reagan was victorious eighty-two percent of the time. "Each bottomed out during their seventh year," and then recovered slightly before leaving the White House. Both had lost partisan control of Congress by then. President Reagan during his final year in office "arrested the steady, downhill slide of his fortunes on Capitol Hill. But doing better wasn't the same as doing well. For the second year in a row, Reagan lost more roll-call votes than he won." In 1988, he prevailed on

105. 3 G. GALLUP, *THE GALLUP POLL* 1596. In 1986, an almost identical thirty-three percent voted for repeal, while thirty-nine percent expressed a desire to see Ronald Reagan run for a third term. Interestingly, almost six out of ten (fifty-nine percent) of those polled thought Reagan—who would be eighty-one at the end of his third term—would run for President again if permitted by the Constitution. G. GALLUP, *THE GALLUP POLL: PUBLIC OPINION* 1986 at 217-20.

106. Roberts, *Reagan's Final Rating is Best of Any President Since 40's*, N.Y. Times, January 18, 1989, at A1. A Harris Poll released on January 22, placed Reagan's approval rate at fifty-eight percent. *Final Reagan Rating of 58 Percent Positive Not the Highest*, THE HARRIS POLL, January 22, 1989, at 3. A Wall Street Journal/NBC Poll released on January 20, at sixty-four percent. *Reagan Rides Away*, Wall St. J., January 20, 1989, at 1. Forty-one percent of those polled in a Time Magazine/CNN survey in mid-January 1989, indicated they would vote for Reagan if he could have run for another term. Barrett, *Going Home a Winner*, TIME, January 23, 1989, at 16.

107. Grossman, Kumar, & Rourke, *Second-Term Presidencies: The Aging of Administrations*, THE PRESIDENCY AND THE POLITICAL SYSTEM 207, 222 (2nd ed. 1988).

forty-seven percent of the roll-call votes on which he took a stand, up from forty-three percent the previous year.¹⁰⁸ President Eisenhower conversely registered successful roll-call percentage rates of fifty-two and sixty-five during his final two years in the Oval Office.¹⁰⁹ Ironically, "[w]ith all the hoopla of Reagan's success as president, in every single year his success scores were lower than Eisenhower's."¹¹⁰

The Democrats, in control of both the House and Senate in 1959-60 and in 1987-88, played offense; Reagan and Eisenhower played defense. They lacked the troops to take the offensive. "Despite public support scores in the mid-to high-sixties" early in his second term, Reagan was, one writer has suggested, "a notably less politically potent President . . . than he was during his initial year in office. The significant difference, of course, was that by virtue of the twenty-second amendment, Reagan was not eligible for reelection." What this suggests, is "that unless public support is convertible into electoral clout for the president and those who support him, it becomes significantly less effective as a political resource."¹¹¹

Role of Party Leader. Although the reelection of a president might be expected to inaugurate a period of accomplishment equal to his success at the polls, exactly the opposite has most often occurred. Every president in the twentieth century has found his second term more difficult than the first. There are several reasons for this phenomenon.

Reelection campaigns are most often designed as a referendum on the President's first term rather than on his promises for the future. The financial and organizational needs of the party's other candidates become secondary. "Although such a strategy probably increases the President's margin of victory, it also contributes to his governing problems in the second term by making it easier for adversaries to separate opposition to his program from opposition to him."¹¹²

Following the election, the result is a stalled agenda presided over by an incumbent president who has distanced himself from his party and lost the chance to establish useful and important bonds that will help him govern during his second term. Still, during "a President's fifth and sixth years—as in his third—there is considera-

108. Alston, *Reagan's Support Index Up—But Not Much*, 46 CONG. Q. WEEKLY REP. 3323-24 (November, 1988).

109. 42 CONG. Q. ALMANAC 21-C, 99th Cong., 2d Sess. (1986).

110. Alston, *supra* note 108, at 3324.

111. Buchanan, *The Six-Year One Term Presidency: A New Look at an Old Proposal*, 18 PRES. STUDIES Q. 139 (Winter 1988).

112. Grossman, Kumar & Rourke, *supra* note 107, at 209.

ble maneuvering room to shape events."¹¹³ Then the two-term tradition, which was formalized by the twenty-second amendment, operates decisively to weaken his influence. The midterm elections of a second term signal the beginning of the end.

In the twentieth century, only "Theodore Roosevelt had more members of his own party in either the House or Senate when he left office than when he entered, and his case is a historical fluke, because both Houses were enlarged during his second term."¹¹⁴ Despite Reagan's sustained personal appeal for voters to continue Republican control of the Senate in 1986, the Democrats easily gained eight seats in the Senate, while maintaining a comfortable majority in the House of Representatives. "Mr. Reagan was very much like Mr. Eisenhower in his tremendous personal popularity, as well as in his inability to use that popularity to promote the Republican party."¹¹⁵

Increased Emphasis on Foreign Policy. As their personal popularity dropped midway through the second term, Reagan and Eisenhower found it increasingly more difficult to build a majority on domestic issues. Potential supporters demanded a larger reward for their support and opponents became more effective.

Both Eisenhower and Reagan, however, maintained enormous influence in foreign affairs and to bear the major responsibility for international relations. They were able to retain the nation's attention by placing greater emphasis on foreign relations through summit conferences, by traveling abroad, and by hosting foreign dignitaries.

In his first term, Dwight Eisenhower visited five foreign nations, spent a total of eighteen days abroad, and hosted fifty heads of state or heads of governments. Thirty-eight percent of his nationally televised addresses to the country focused on foreign affairs. During his final four years in office, these figures increased dramatically as Ike spent seventy-three days in twenty-nine different countries, devoted sixty percent of his nationwide speeches to foreign affairs, and was visited by sixty-eight foreign leaders.¹¹⁶

113. S. HESS, *ORGANIZING THE PRESIDENCY* 24 (1976).

114. Grossman, Kumar & Rourke, *supra* note 107, at 217.

115. Ambrose, *Reagan: How Great a President?*, Washington Times, November 22, 1988, at F3. See also Germond & Witcover, *Reagan Did Little to Strengthen His Party's Hand*, 21 NATIONAL JOURNAL 145 (January 21, 1989). At least one author, however, contends "that as president, Eisenhower exerted considerable influence over the Republican party and pursued a well-informed and sustained program to strengthen it. Arguably, he was the most constructive and consistent intervener in party organizational matters of any president after Franklin D. Roosevelt." Cotter, *Eisenhower as Party Leader*, 98 POL. SCI. Q. 265 (1983).

116. E. PLISCHKE, *PRESIDENTIAL DIPLOMACY: A CHRONOLOGY OF SUMMIT VISITS*,

Although Ronald Reagan's transformation three decades later was not nearly as dramatic statistically as Eisenhower's, it was nevertheless significant.¹¹⁷ Twice during his 1988 Moscow Summit, Reagan even found an opportunity to espouse his views on how denying American presidents a third term "was an interference with the democratic rights of the [American] people."¹¹⁸

Eisenhower's efforts came to an abrupt conclusion when Soviet Premier Nikita Khrushchev used the U-2 incident to break up the Paris Summit Conference of May 1960. "His journeys in 1959 and 1960 across Asia, Africa, and Latin America," however, "pushed relations with those regions" to the forefront of American foreign policy.¹¹⁹ At the same time, he bequeathed to John F. Kennedy situations in Cuba and Vietnam that led to grave crises in the 1960s.

Reagan's gestures culminated in five meetings with Soviet leader Mikhail Gorbachev during the last three years of his presidency. This was remarkable, considering that in his first four years in office, he had the distinction of being the first president since Franklin Roosevelt to go through a term without meeting a Soviet leader. Progress on many other foreign policy problems—the Middle East, Central America, and Southern Africa—remained elusive to the end. Ronald Reagan's most enduring legacy may well be that he turned the arms race around and brought us back from the brink of nuclear disaster. This assessment must, however, await the test of time.

THE FUTURE OF THE AMENDMENT

President Reagan may also be remembered sometime in the future as the impetus behind the repeal of the twenty-second amendment. One of his first pronouncements as a former president was a reiteration of his desire to fight for the repeal of what he charged

TRIPS AND MEETINGS 13-15, 84-91 (1986); G. KING & L. RAGSDALE, *THE ELUSIVE EXECUTIVE: DISCOVERING STATISTICAL PATTERNS IN THE PRESIDENCY* 263-65 (1988).

117. During his first term, by my count, twenty-eight percent of Reagan's weekly radio addresses to the nation, and forty percent of his national televised addresses were devoted to foreign policy. In his second term these figures rose to almost thirty-nine percent and fifty-three percent respectively. President Reagan between 1981 and 1984 visited twenty-two countries, and spent fifty-three days abroad. From 1985 through 1988, he spent sixty-five days in twenty-one countries. The only figures that do not indicate an increase in the second term are the number of foreign dignitaries hosted. That figure declined from one hundred eighty-three foreign dignitaries (1981-1984) to one hundred twenty-three (1985-1988).

118. *Remarks at a Luncheon Hosted by Leaders of the Cultural and Art Community in Moscow, May 31, 1988*, 24 WEEKLY COMP. PRES. DOC. 711 (June 6, 1988).

119. H.W. BRANDS, *COLD WARRIORS: EISENHOWER'S GENERATION AND AMERICAN FOREIGN POLICY* 180 (1988).

was "an infringement upon [our] democratic rights."¹²⁰

Using an entirely different reasoning, Alexander Hamilton in *Federalist No. 72*, argued that placing a limit on the tenure of the president took away "one of the strongest incentives of human conduct"—the desire to be rewarded.¹²¹

While most Americans today support the two-term tradition, they also consider it "too restrictive to be cemented into the Constitution." Because there is no great groundswell for its repeal, probably only a national "emergency near the end of a popular president's second term might trigger a major repeal effort." Even then it would be extremely difficult to complete a successful repeal effort before the next election. Also the "repeal effort might run head on into an equally strong constitutional amendment drive to adopt the widely publicized single six-year presidential term."¹²² Thus we are left with what political scientist Clinton Rossiter called "a tainted amendment," one "based on the sharp anger of a moment rather than the studied wisdom of a generation." The Constitution, Rossiter argued, is "not the place to engage in a display of rancor."¹²³

Debate over the twenty-second amendment has brought two entirely different democratic traditions into conflict. One contends that placing a limit on presidential tenure constrains the will of the American people and is antidemocratic; the other argues it is more appropriate to support the notion that rotation in office is desirable and healthy.

In 1947, Congress determined that the infusion of new leadership was the essence of democracy and rotation in office a principle bulwark of freedom. During the ensuing four years, forty-one state legislatures ratified that perspective. While many have since questioned the motives that produced the twenty-second amendment, no one in nearly four decades has been able to marshal support for a serious repeal effort.

Americans have amended their Constitution but twenty-six times in two centuries. Only once, in 1933, has the United States been able to repeal a constitutional amendment. The Founding Fathers meant for the process to be difficult, and it has been. When Congress repealed the Prohibition Amendment in 1933, the states were more eager to rescind it than they had been to approve it fif-

120. May & Becklund, *Citizen Reagans are Home After Bittersweet Farewell*, L.A. Times, January 21, 1989, § 1 at 21.

121. B.F. WRIGHT, *THE FEDERALISTS* 464 (1961).

122. J.W. DAVIS, *THE AMERICAN PRESIDENCY: A NEW PERSPECTIVE* 439 (1987).

123. 103 CONG. REC. 4323 (1957).

teen years earlier. Unless there is a similar public upheaval, repeal of the twenty-second amendment appears unlikely in the foreseeable future.