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The Political Year Strategy

By William Hartline*

I. Introduction

A frequent complaint, heard especially from freshman members, is that U.S. Representatives must start their re-election campaigns almost as soon as they win their first election, because their next campaign is only two short calendar years away.

The corollary to this argument is Representatives are so geared toward pleasing their contributors, they tend to vote more often for things they otherwise wouldn't, if they had greater autonomy. It hardly needs to be said, Representatives catering to their contributors instead of their country and their constituents leads to political expedience overtaking proper governance.

Indeed, like the rest of us, they only have so much available time — when members of Congress spend so much effort getting re-elected, they undoubtedly become pressured to delegate even more legislative authority over to bureaucrats of the alphabet agencies in the executive branch — who never face any election.

One could thereby argue giving members of Congress longer terms could allow them to keep more legislative authority within their own hands, to do what they were hired to do in the first place. In turn, longer terms may help to retain voter influence over the enactment of law and the imposition of regulations.

II. Review of Primary Constitutional Issues

This paper showcases a novel method for giving elected members of Congress four times longer terms, by a simple legislative enactment. At the same time, it would extend the terms for the President and the Vice President of the United States equally as long.

*Note: William Hartline is the protagonist in Matt Erickson's 10/28/2020 fictional novel, *Trapped by Political Desire: The Treatise*.

This paper — *The Political Year Strategy* — is the bait Will "writes" to trap federal servants' hands in the proverbial cookie jar, who seek to become our political masters.

Trapped by Political Desire is freely available electronically online at www.PatriotCorps.org.

Of course, the U.S. Constitution has a few things to say about the length of terms for members of Congress, the President and Vice President. Thus, it is important to start by covering the pertinent clauses.

Article I, Section 2, Clause 1 expressly details that U.S. Representatives are to be chosen “every second Year.”

Article I, Section 3, Clause 1, details that U.S. Senators are chosen for “six Years.”

And, Article II, Section 1, Clause 1 details that the President of the United States is to hold Office “during the Term of four Years,” with the V-P “chosen for the same Term.”

As an aside, U.S. Supreme Court justices hold their positions “during good Behaviour,” according to Article III, Section 1 (which essentially has come to mean, “for Life”).

While members of Congress suffer no sort of constitutionally-imposed term limits, the 22nd Amendment to the Constitution expressly limits the number of Presidential terms to two.

Given the words of the Constitution, it would appear — short of an amendment — there is no way to extend federal terms.

But, what if there was a way, without an amendment?

If there was a way to extend their terms by a simple legislative enactment, should government servants willingly extend their service? This is the one question that The Political Year Strategy does not seek to answer, believing that answer is best left to We The People themselves, and their representatives, to discuss and answer.

In any such possible discussion, The Political Year Strategy seeks to highlight a number of issues that should be considered, as it outlines a simple method for elected federal servants to serve four times longer terms, without having to propose and ratify a new constitutional amendment.

III. Review of Secondary Constitutional Issues

The Political Year Strategy centers upon the legislative discretion members of Congress are given in two clauses of the U.S. Constitution (one relating to members of Congress and the other for Presidents and Vice Presidents).

The first passage under consideration is found in Article I, Section 4, which discusses the scheduling and holding of federal elections for members of Congress. Clause 1 details:

“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.”

The Constitution, in Article II, Section 1, Clause 4, also details:

“The Congress may determine the Time of chusing the Electors and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”

IV. Primary Discussion

To begin an examination into extending the federal terms without an amendment, it is important to look first at Article I, Section 4, as Clause 1 specifically empowers members to “make or alter...Regulations” pertaining to “The Times” and “Manner” of “holding Elections for Senators and Representatives.”

Please note the rest of the clause specifically prohibits members of Congress from changing the polling “Places” designated by the State Legislatures themselves (to keep Congress from fatiguing the voters into compliance, by making them travel great distances to vote).

However, no other prohibitions are listed.

By listing one express prohibition, but omitting any other, it is presumed that no other prohibitions or limitations are expressly meant, including an express prohibition or exception from any day or date being chosen as the day or date specified for federal elections.

It is also important to realize Article II, Section 1 explicitly gives members of Congress the named power to determine “the Time of chusing the [presidential] Electors, and the Day on which they shall give their Votes, which Day shall be the same throughout the United States.”

By these two cited clauses, the Constitution gives to Congress the discretion and power to choose a day or date for federal elections, for members of Congress and also for Presidents and Vice Presidents, without any other express prohibition.

In conformance with that duty and honor, on January 23, 1845 (5 Stat. 721), Congress specified “the Tuesday next after the first Monday in the month of November” of pertinent election years as the day appointed for choosing Electors to elect the President and Vice President. This day has also been since used for electing U.S. Senators and U.S. Representatives (and State candidates, which are not here necessarily relevant [but could be included]).

The 1845 Act has been minorly amended, but the same simple discretion by which members of Congress chose that particular day as Election Day may be used to determine another.

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The Political Year Strategy suggests members of Congress consider choosing February 29th as the date for future elections.

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The inevitable effect of choosing February 29th as the date for federal elections would be the creation of a new “Political Year.”

The Political Year would come to be defined as the amount of time that passes until the date chosen for federal elections again shows up on the calendar.

Thereafter, and thereby, this new Political Year would be the type of year used to determine the length of congressional and presidential terms, equal in time to one “Leap Year.”

Choosing February 29th as the date for federal elections would necessarily alter the frequency of elections.

Assuming members of Congress pick February 29th as the date for federal elections, after the November 3, 2020 elections, then the next time February 29th rolls around — 2024 — then [only] one “Political Year” will have passed.

February 29th, 2028 would be two “Political Years” from the 2020 general election, or the time the 2020-elected U.S. Representatives thus need to run for re-election or new Representatives chosen. February 29, 2028 would also mark the election for the class of U.S. Senators who would have otherwise been up for re-election in 2022.

In accordance with the 20th Amendment, the terms of 2020-elected U.S. Representatives and pertinent-third of U.S. Senators would end on January 3rd that follows the election, at noon.

February 29th, 2036 would be four “Political Years,” or the time for the next Presidential election, after the 2020 election. The term for the 2020-elected President would end on January 20th, at noon, 2037, also by the command of the 20th Amendment (being the next January 20th following the most-recent Presidential election).

February 29th, 2036 would also be the re-election date for the second-third of U.S. Senators, who would have otherwise been up for re-election in 2024. 2036 would also see, of course, another election of Representatives.

And, February 29th, 2044 would be the date for electing the last class of U.S. Senators, who were chosen in the 2020 election, ending their term the following January 3rd, 2045 (again according to the dictates of the 20th Amendment), ending the six “Political Year” term for those Senators.

While many people may initially object to the holding of a “Political Year” as the length of time until the date used for federal elections again shows up on the calendar, this isn’t much different from the “Calendar Year” being the passage of time for every other date appearing on the calendar.

Indeed, January 1, 2021 is but one [calendar] year after the previous January 1 (2020). Specifying a “Political Year” to be the length of time from one February 29th until the next is not inherently different, so long as federal law designates the election date to be the applicable standard involved in determining the passage of one Political Year, for the express political purposes regarding elections and term lengths.

It must be noted that the Constitution specifically leaves it up to Congress to determine the day or date used for federal elections, and for appointing Electors. And, without any day or date being expressly prohibited from being chosen, then even February 29th must be considered within their discretion, since it is not expressly prohibited.

It is not as if the Framers of the Constitution, or those who ratified it, didn’t know of the concept of Leap Years, after all.

Leap Years go back to the time even before Christ. In 46 B.C., Julius Caesar put into his famed calendar — his Julian Calendar — a Leap Year every fourth year.

And, it is not as if the U.S. Supreme Court hasn't redefined words and phrases found in the Constitution, at will.

For instance, in 1942, the Supreme Court, in *Wickard v. Filburn* (317 U.S. 111), held that wheat grown and consumed on the same farm may nevertheless be federally regulated, even though the Constitution only empowers Congress to regulate interstate Commerce ("Commerce among the States"). That the particular activity was neither "interstate" [but intrastate] nor "commerce" [but merely a crop grown and used on one farm] didn't seem to enter into the equation.

Another example, found in the 1871 *The Legal Tender Cases* Supreme Court decision, in a concurring opinion, all but bragged that the 1819 *McCulloch v. Maryland* Court reinterpreted "necessary and proper" to mean only "convenient."

Of course, "general Welfare" is another phrase of the Constitution that has come to reach even its opposite meaning (to the specific detriment of the many, for the decided advantage of the few or one).

So, if the Court can reinterpret some words and phrases of the Constitution, what is stopping them or Congress from reinterpreting other words and phrases?

In reality, if the Court can justify hundreds of decisions within their seemingly inherent discretion as they have long done in the past, then there is little or nothing stopping Congress and the Court from now reinterpreting "Year" as found in the Constitution, for term lengths and elections, to being a special type of year — a "Political Year" — at least once the date for federal elections has been designated within a congressional Act, as February 29th.

The Calendar Year, of course, can be left to mean the normal 12-month passage of time, for all other purposes, including minimum ages for Representatives, Senators, Presidents, and voters, meeting times for Congress, appropriations, and federal pay, for example.

V. Secondary Discussions

Given the far-reaching implications and perhaps initial resistance to the redefining of a "Year" to be a Political Year, it is proper to go beyond a cursory discussion of the principles involved.

In Section V of this strategy paper, it is therefore appropriate to dig more deeply into such matters, to show no new ground is actually being plowed in the redefining the term "Years," as found in the Constitution, for term lengths and elections, as compared with reinterpreting other words and phrases.

a. Political Years v. Calendar Years.

Perhaps the first matter to investigate more deeply is the creation of a special type of year, a "Political Year," different from the "Calendar Year."

A comparison with the First Amendment is helpful in this discussion. The pertinent words of this amendment plainly declare that Congress "shall make no law...abridging the freedom of speech..."

Yet, the Court has long given different qualifications and differing standards for regulating or allowing various types of “speech.” For example, “commercial” speech is held to a much lower standard of judicial review than “political” speech (allowing far greater government restrictions on commercial speech).

If “speech” can be parsed out into different types with differing standards, what difference is there in the creation of differing types of “Years” — Political Years versus Calendar Years?

In truth, there is no material difference in holding different types of years to differing standards than different types of speech — the Constitution only details “Years,” just like it only details “speech.”

What has been allowed elsewhere may thus be allowed here.

b. Daylight Savings Time.

Congress enacted the Uniform Time Act of 1966 setting a uniform standard for States to follow regarding Daylight Savings Time (the “springing forward” of clocks one hour in the spring and “falling back” in the fall, to maximize daylight in the evenings when more people are out and about).

If Congress may enact a law regarding the altering of time by an hour, what difference is there, in principle, to altering the allotted time members of Congress and the President and Vice President may serve, according to their terms designated by a number of [different types of] years?

In truth, once one accepts the premise of the altering of time for any purpose, one opens the door for other purposes also. Once one accepts the principle of altered time to even the smallest extent, one must accept the principle of altering time to a greater extent.

What has been allowed elsewhere may be allowed here.

c. “Day” vs. “Date”

Article II, Section 1, Clause 4 specifically details that “The Congress may determine the Time of chusing the Electors, and the Day on which they shall give their Votes; which Day shall be the same throughout the United States.”

Does that mean members of Congress may only designate Election Day to be a particular “Day” — like the Tuesday that follows the first Monday in November, for example? Does that foreclose Congress from picking a specific “Date” — like February 29th?

People who would argue this point miss the different wording found in Clause 4 pertaining to the passage of time. The choosing of Electors points to the election itself and here the clause specifically only points to “Time” — which can be either “Day” or “Date.”

The wording about “the Day on which [the Electors] shall give their Votes” points to the day when the Electoral Votes are counted in the Senate — which is currently in December. The

Political Year Strategy doesn't necessarily care when the Electoral Votes are counted. The day which the votes are counted can remain the same, or moved to a day or date closer to the [earlier] election.

Of course, Article II simply points to the Electoral process used for choosing the President and Vice President.

It is Article I, Section 4, Clause 1 that discusses the choosing of U.S. Senators and U.S. Representatives. It is pertinent to note that this clause also discusses only "Time" regarding the electing of members of Congress, saying:

"The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators."

Since "Time" pertains equally to either "Day" or "Date," neither Article I nor Article II forecloses members of Congress from picking February 29th to be the date for federal elections.

d. Inauguration Day

The Twentieth Amendment specifies that:

"The terms of President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3rd day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin."

Since this amendment uses the like term "years" to determine the affected year for terms to end, then the new Political Year created by a legislative Act that designates February 29th as the date for federal elections may easily conform also to the Twentieth Amendment.

Thus, the Twentieth Amendment does not foreclose extending federal elected terms, after February 29th is chosen as the date for elections.

Of course, with Elections being on February 29th, but the terms not ending for another 10 or 11 months, the so-called "Lame Duck" period would be lengthened.

Though hardly ideal, that it would only affect Representatives every two Political Years (eight calendar years), the President/VP every four Political Years (16 calendar years) and each class of Senators only every six Political Years (24 calendar years), meaning the issue should be only a minor inconvenience on relatively rare occasions.

e. Weekend Elections

Picking a particular "date" for federal elections means that the date will eventually land on a weekend (which picking of a "Day" otherwise necessarily avoids).

It should be noted that February 29th will fall on a weekend only five times over the next century (on a Saturday, in 2048 and 2116, and on a Sunday, in 2032, 2060, and 2088), but none of them are even Presidential Election Years (which would take place, after 2020, in 2036, 2052, 2068, 2084, 2104 [there is no Leap Year in 2100 {being a century mark, not divisible by 400}, giving incumbents that term a bonus four calendar years], and 2120).

That election workers may have to work on the weekend five times in 100 years shouldn't preclude choosing February 29th as the date for federal elections. Weekends — even Sundays — hardly hold the historically-once-relevant [religious] significance they once did.

VI. Conclusion

There can be no question that members of Congress have the discretion to pick another day or date for federal elections, beyond the current standard set in place 175 years ago —the Tuesday after the first Monday in November.

With no express words found in the Constitution barring members from choosing any day or date for federal elections, including February 29th, members of Congress may enact a new law specifying the date for federal elections, including February 29th.

With enactment of this simple law, the terms for Representatives may become two Political Years, or eight calendar years; the terms for Presidents' and Vice Presidents' may become four Political Years, or 16 calendar years; and the terms for Senators may become six Political Years, or 24 calendar years.