U.S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

March 13, 2026

Donald Sherman
Chief Counsel & Vice President
CREW
foia@citizensforethics.org

Re: FOIA Tracking No. FY25-191; CREW v. DOJ, D.D.C. No. 25-1318

Dear Mr. Sherman:

This letter responds to your March 18, 2025 Freedom of Information Act ("FOIA") request to the Office of Legal Counsel ("OLC"), in which you sought "opinions, memoranda, or analyses issued by [OLC] concerning Section 1 of the Twenty-Second Amendment." Pursuant to 28 C.F.R. § 16.5(b), your request is being processed in the simple track, and as you know, the request is also a subject of the above-captioned litigation.

Since the last letter in this matter, we have completed our review of records, and identified three additional documents as responsive to your request. The records are enclosed in full without redaction. This completes our response to your request.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

For any further assistance and to discuss any aspect of your request, your counsel may contact Stephanie Johnson at Stephanie.Johnson5@usdoj.gov. Additionally, you may contact the Office of Government Information Services ("OGIS") at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Although your request is the subject of litigation and administrative appeals are normally not acted upon in that circumstance, I am required by regulation and statute to inform you of your right to an administrative appeal. You may administratively appeal by writing to the Director, Office of Information Policy ("OIP"), United States Department of Justice, 441 G

Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: https://www.justice.gov/oip/submit-and-track-request-or-appeal. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Jared Kaprove

Jared Kaprove
FOIA and Records Management Attorney

Enclosures

cc: Stephanie Johnson, Assistant U.S. Attorney
Office of the United States Attorney for the District of Columbia

Memorandum

Subject	Date
S.J. Res. 70.	30 JUN 1981

To Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

From Larry L. Simms
Deputy Assistant Attorney General
Office of Legal Counsel

Attached is a proposed response to Senator Thurmond's request for the views of the Department on S.J. Res. 70.

RAM:TBO:BRS:jal

cc: Solomon
Simms
Sudol
Retrieval
Files

United States Department of Justice

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

WASHINGTON, D.C. 20530

Honorable Strom Thurmond
Chairman, Committee on the
Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request of March 9, 1981, for the views of the Department of Justice on S.J. Res. 70, 97th Cong., 1st Sess., proposing an amendment to the Constitution with respect to the length of the term of offices of President and Vice President and the number of terms of the President. Under the amendment, the term of office for the President and Vice President shall be six years; and no person who has previously been elected President or who held the office or acted as President for more than two years shall be eligible to be elected President. The length of the term of office of the President and Vice President shall apply only to elections held after the date of ratification, although apparently the prohibition of successive terms shall apply to the President serving on the date of ratification.

By letter of June 25, 1981, we provided our views on S.J. Res. 37, 97th Cong., 1st Sess., which proposed an identical amendment except that the permissible service of another's term was three years instead of two. The difference does not affect our opinion, and we therefore adhere to our previously stated views. For your convenience, we enclosed a copy of the June 25 letter.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

Enclosure

Office of the Assistant Attorney General

Washington, D.C. 20530

JUN 25 1981

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for the views of the Department of Justice on S. J. Res. 37, proposing an amendment to the Constitution with respect to the length of the term of offices of President and Vice President and the number of terms of the President. Under the amendment, the term of office for the President and Vice President shall be six years; and no person who has previously been elected President or who held the office or acted as President for more than three years shall be eligible to be elected President. The length of the term of office of the President and Vice President shall apply only to elections held after the date of ratification, although apparently the prohibition of successive terms shall apply to the President serving on the date of ratification.

The Department of Justice opposes amending the Constitution in such a manner.

Similar amendments have been proposed in the past, and the Department has previously furnished its views on the issues of the length of the term of office and the ineligibility for reelection. Generally, the Department opposed the amendments on the basis of the considered judgment of the Framers, as further refined by the Twenty-Second Amendment, and also because we believed that a single six-year term would reduce the accountability of the President to the people who elected him.

The Department believes that the amendment proposed in S. J. Res. 37 is unnecessary and unwise. The limitations imposed by the Twenty-Second Amendment on the number of times that a person may be elected President and the total number of terms that he or she may serve impose sufficient limitations on length of service, and an absolute limitation to six years in all cases is not warranted. In fact, by creating a single six-year term instead of allowing the electorate the option of awarding or refusing a President a second four-year term, the amendment would at the same time reduce the length of service by an effective and popular President, who presumably would be reelected and thus serve a total of eight years, and yet increase the length of service by an ineffective and unpopular President, who presumably would not be reelected and would serve only four years.

We are unpersuaded that the asserted advantage of freeing the President from the pressures of seeking reelection justifies this limitation on the electorate's control. To the extent that the pressure results from the need to be responsive to the political climate, we would oppose a system designed to immunize the President from the popular will. To the extent that the pressure results from the need to participate in partisan politics, the pressure could not be eliminated even if the President were not eligible for reelection; political decisions must always be made and partisan support given and received. Accordingly, we recommend against amending the Constitution as proposed.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

SIGNED

Robert A. McConnell
Assistant Attorney General

LLS:HM:jal

Memorandum

cc: Olson
Simms
Marcuse
Sudoi ✓
Retrieval
Files

Subject	Date
S. J. Res. 115, 98th Cong.	JUL 12 1983

To: Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

From: Larry L. Simms
Deputy Assistant Attorney General
Office of Legal Counsel

Pursuant to your request, we are transmitting a letter to Senator Strom Thurmond for your signature regarding S.J. Res. 115, 98th Cong., proposing a constitutional amendment which would limit the terms which the President, the Members of the Senate and of the House of Representatives may serve. The letter is based in part on your letter to Senator Thurmond relating to S. J. Res. 37, 97th Cong., 1st Sess., dated June 25, 1981.

RAM:LLS:HM:jal

U. S. Department of Justice
Office of Legislative Affairs

cc: Olson
Simms
Marcuse
Sudol
Retrieval
Files

Office of the Assistant Attorney General

Washington, D.C. 20530

Honorable Strom Thurmond
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for the views of the Department of Justice on S.J. Res. 115, 98th Cong., proposing a constitutional amendment which would limit the terms which the President, the Members of the Senate and of the House of Representatives may serve.

Section 1 of the proposed amendment would establish a six-year term for the President and Vice President. It further provides that no person who had previously been elected to be President, or who had served for more than three years for an unexpired term to which another person had been elected, would be eligible for the Presidency.

Section 2 would provide that no person could be elected to the Senate more than twice, and that a person who had held the office for more than three years of an unexpired term could be elected to the office only once.

Section 3 would provide that no person could be elected to the House of Representatives more than six times.

Section 4 would provide that the term of office provided for in Secs. 1 to 3 would apply to the term of office of President, Senators, and Members of the House elected after the ratification of the proposed amendment.

The Department of Justice opposes this proposal to the extent that it applies to the terms of the President and the Vice President and the eligibility to the Presidency.

In commenting on this proposed amendment, the Department of Justice fully realizes that Article V of the Constitution assigns to Congress the responsibility for proposing constitutional amendments to the States and that the Executive branch

has no direct role in this process, in particular that the proposal is not subject to the veto power of the President, Hollingsworth v. Virginia, 3 Dallas (3 U.S.) 378 (1798). To the extent that the proposed amendment relates to the terms of Senators and Representatives, we defer to the expertise and judgment of the Congress.

These considerations, however, do not apply to § 1 of the proposed amendment to the Constitution which relates to the President and Vice President.

Similar amendments have been proposed in the past, and the Department has previously furnished its views on the issues of the length of the term of office and the ineligibility for reelection. Generally, the Department opposed the amendments on the basis of the considered judgment of the Framers, as further refined by the Twenty-Second Amendment, and also because we believed that a single six-year term would reduce the accountability of the President to the people who elected him.

The Department believes that this aspect of the amendment proposed in S. J. Res. 118 is unnecessary and unwise. The limitations imposed by the Twenty-Second Amendment on the number of times that a person may be elected President and the total number of terms that he or she may serve impose sufficient limitations on length of service, and an absolute limitation to six years in all cases is not warranted. In fact, by creating a single six-year term instead of allowing the electorate the option of awarding or refusing a President a second four-year term, the amendment would at the same time reduce the length of service by an effective and popular President, who presumably would be reelected and thus serve a total of eight years, and yet increase the length of service by an ineffective and unpopular President, who presumably would not be reelected and would serve only four years.

We are unpersuaded that the asserted advantage of freeing the President from the pressures of seeking reelection justifies this limitation on the electorate's control. To the extent that the pressure results from the need to be responsive to the political climate, we would oppose a system designed to immunize the President from the popular will. To the extent that the pressure results from the need to participate in partisan politics, the pressure could not be eliminated

even if the President were not eligible for reelection; political decisions must always be made and partisan support given and received. Accordingly, we recommend against amending the Constitution as proposed in § 1.

We note that § 4 of the proposed amendment would limit the applicability of the amendment to the terms of office of Presidents, Vice Presidents, Senators and Representatives elected after the ratification of the amendment. The proposal, however, is silent on its effect on the eligibility of those officials. This leaves open the question whether a person who had been elected President prior to the effective date of the amendment could be reelected after its ratification. An analogous question is whether a Representative who has served five terms prior to the effective date of the amendment would be once or six times eligible for reelection. In short, the question is whether the terms to which an officer had been elected prior to the effective date of the amendment are to be counted in order to determine his eligibility for office under the amendment. While § 4 could be read to the effect that this question is to be answered in the affirmative, we nevertheless recommend that this issue be clarified.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

U.S. Department of Justice

Office of Legal Counsel

RBS:DAV:nag

cc: Olson
Shanks*
Simms
Tarr
Valentine(2)
Giancoli
Sadol
Newman (DAG OFC.)
Retrieval
Files

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

MAY 29 1984

Honorable Aviata F. Faalevao
Attorney General
American Samoa Government
Pago Pago, American Samoa 96799

Dear Mr. Faalevao:

The Attorney General has asked me to respond to your inquiry of March 20, 1984, concerning the treatment of limitations on successive terms in office under American law. We note that this Department has express congressional authority to give legal opinions only to the President and to the heads of Executive departments. As a matter of consistent policy, we have declined to provide legal advice to most other governmental officials, Congress, or private citizens. Nevertheless, although our authority does not extend to providing legal opinions in instances such as the present one, we are happy to offer the following background information to assist you.

Because you requested information on United States legal precedents and practical experience with succession issues, we have made no attempt to examine the potentially relevant legislative history of the applicable American Samoan statutes or Art. IV, § 1 of the Revised Constitution of American Samoa. It is important to note that the interpretations of American constitutional practices discussed below are not necessarily applicable to what is in fact an issue of statutory interpretation of American Samoan law. Presumably the issue you have described will be resolved by reference to the relevant American Samoan statutory provisions and their legislative history.

We have identified two amendments to the United States Constitution that aid in analyzing whether a term shorter than that conventionally accepted as a "full" term may nevertheless be regarded as a full term for purposes of eligibility

for successive terms in office. The Twentieth Amendment, ratified on January 23, 1933, provides in relevant part that:

> The terms of the 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 3d 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.

U.S. Const., Amend. XX, § 1. Prior to the adoption of this Amendment, a new Congress did not convene in regular session until a year and one month after its Members had been elected. See S. Rep. No. 26, 72d Cong., 1st Sess. 2 (1932). To reduce the delay between the expression of the citizens' wishes at the general election in November and the time at which those wishes might be crystallized into legislation, the Amendment provided, inter alia, that congressional terms would commence on January 3d, and presidential terms on January 20th, rather than on the 4th day of March. See id. at 5-6. The effect of § 1 of the Amendment, declared adopted on February 6, 1933, was to shorten, by the interval between January 20 and March 4, 1937, the terms of the President and Vice President elected in 1932. Similarly, it shortened, by the interval between January 3 and March 4, the terms of incumbent Senators elected in 1928, 1930 and 1932 for terms ending, respectively, March 4, 1935, 1937 and 1939. 1/ The Amendment thus temporarily modified the Seventeenth Amendment, which fixes the terms of Senators at six years. It also shortened, by the interval beween January 3 and March 4, 1935, the terms of Representatives elected to the Seventy-third Congress, and temporarily modified Art. I, § 2, cl. 1 of the Constitution, which fixes the terms of Representatives at two years. See S. Rep. No. 26, 72d Cong., 1st Sess. 5-6 (1932); E. Corwin, The Constitution of the United States at 1575-76 (1972 ed.).

1/ The Twentieth Amendment clearly applied to incumbents insofar as it affected Senators elected in 1928 and 1930. Whether the persons elected in 1932 (the President, Vice President, Senators and Representatives) were incumbents for purposes of the Twentieth Amendment is more questionable. At the time of their election they expected their term to last until March 4 (of 1935 or 1937 or 1939). However, the Amendment took effect on February 6, 1933, before they actually took office on March 4, 1933.

The Twentieth Amendment does not directly resolve any succession issues because, at the time it was adopted, there was no limit on the number of terms that could be served by the President, Vice President, Senators or Representatives. Nevertheless, it illustrates that an authorized term of office can constitutionally be shortened--even with respect to incumbents --and the shortened term will be regarded as a "full" term. 2/

More pertinent to the succession question that you have raised is the Twenty-second Amendment, governing presidential tenure. That Amendment provides that:

> No person shall be elected to the office of the President more than twice, and no person who has held the office of President, or acted as President, for more than two years of a term to which some other person was elected President shall be elected to the office of the President more than once. But this Article shall not apply to any person holding the office of President when this Article was proposed by Congress, and shall not prevent any person who may be holding the office of President, or acting as President, during the term within which this Article becomes operative from holding the office of President or acting as President during the remainder of such term.

U.S. Const., Amend. XXII, § 1. Although a custom had arisen that no President should have more than two terms in office, there was no legal limitation on the tenure of the office of President until this Amendment was adopted in 1951. See H.R. Rep. No. 17, 80th Cong., 1st Sess. 2 (1947). The Amendment prospectively prohibited any person--excepting the incumbent at the time the Amendment was proposed (President Truman)-- from serving more than two terms as President. Significantly, the Amendment regarded anyone who had served as President for more than two years of a term as having served a full term.

2/ Although a constitutional amendment was necessary to alter the terms of Senators and Representatives, since the Constitution had established those terms, presumably only a statutory change would be necessary to alter a statutorily defined term. We do not address, however, whether such a new statutory provision could or should be applied to an incumbent.

Earlier proposed versions of the Amendment would even have prohibited persons who had served as President during all, or portions, of any two terms from holding office for a third term. See H.R. Rep. No. 17, 80th Cong., 1st Sess. 1 (1947). Thus, the Twenty-second Amendment indicates that the norm in the United States is to regard any period exceeding half a term as the equivalent of a full presidential term for purposes of succession.

It might be argued that the Twenty-second Amendment was necessary precisely because, absent any specific statutory or constitutional language, a partial term was not customarily regarded as a full term. Thus, for example, if it were agreed that a full term was a four year term, and nothing specifically stated that any period of more than two years would be treated as a full term, then a three year term might not be a full term, and an incumbent might be eligible for another successive term in office. However, at least with respect to United States practice, we would find this argument unpersuasive. Although several Presidents served less than a full four year initial term, none--with the single exception of President Franklin D. Roosevelt--served more than one additional four year term. 3/ Even before the enactment of the Twenty-Second Amendment then, it was a well-defined custom that no President should serve more than two terms or eight years in office. See H.R. Rep. No. 17, 80th Cong., 1st Sess 2 (1947).

We derive the following principles from the Twentieth and Twenty-second Amendments: (1) in order to accommodate a change in the date on which a term is to commence, a shortened term can be regarded as a full term; (2) there has been a preference

---

3/ After President McKinley died in office, President Theodore Roosevelt served the remainder of that term and one subsequent full term. Similarly, after President Harding died in office, President Coolidge served the remainder of Harding's term and another full term. And after President Franklin D. Roosevelt died, President Truman served a partial term and then successfully ran and served one full term.

President Roosevelt's first term was shortened by the Twentieth Amendment, as described above. He served a second four year term, a third four year term, and would have served a fourth four year term, had death not intervened. President Roosevelt, however, is the sole exception to the rule that no President may serve more than eight years in office.

in the United States for regarding a shortened, rather than a lengthened, term as the equivalent of a full term; and (3) given specific language, a portion of a term--in the Twenty-second Amendment, in excess of one half--may be regarded as a full term for purposes of succession.

We must reiterate, however, that we have not examined the American Samoan statutory scheme, its legislative history or any potentially relevant Samoan practices or institutions that might serve as helpful analogies in analyzing the succession issue that is pending in American Samoa. We do not intend this summary of American federal practices to bind in any manner the appropriate authorities who ultimately will decide the issue under American Samoan law. We do hope, however, that this discussion of the practice under American federal law will be of some assistance to you.

Very truly yours,

Robert B. Shanks
Deputy Assistant Attorney
General
Office of Legal Counsel