



EDITORIALS

Spare the drama on budget dealings

Upcoming negotiations should not become the next government crisis.

When the story is written of this period in American history, one of the facts that will surely seem most curious to future generations will be the nation's repeated insistence on careening from one near-crisis to another. Whether it was tax increases, the sequester, Obamacare or a potential government shut-down, Washington has waited until the 11th hour to address virtually every time-sensitive issue of the past few years, sowing chaos and uncertainty in the process. Unfortunately, that cycle looks ready to repeat itself again soon.

Treasury Secretary Jacob Lew has recently been making the rounds in the press, warning of yet another calamity that will arrive later this year when the federal debt ceiling will need to be increased. The Obama administration contends that the prospect of defaulting on the national debt would be catastrophic, which is an utterly reasonable position. It has also declared, however, that the White House won't negotiate on the issue. Count us confused: it's a national disaster waiting to happen, yet the Administration won't deign to visit the negotiating table?

Not that Republicans are much better. Congress needs to pass a continuing resolution by Oct. 1 to keep the federal government open. Yet a cadre of congressional conservatives are proposing that passage of that measure be contingent on defunding Obamacare. No one would like to see that monstrosity jettisoned more than us,

but it is simply implausible that the law could be gutted while Democrats control the U.S. Senate and Barack Obama sits in the White House. The GOP already has the public firmly on their side when it comes to the deficiencies of Obamacare. Why they'd want to sacrifice that advantage on the altar of a government shutdown is beyond us.

It's well past time for both parties to realize that divided government limits their range of available actions and necessitates often-unpleasant compromises. That means that both Republicans and Democrats should be focusing on narrower, achievable goals.

We think there are workable solutions to these impasses. If President Obama wants to avoid another debt ceiling drama, he could offer to negotiate with Republicans on their desired spending reductions in exchange for an agreement that any solution will be hammered out well before the nation reaches the cusp of default. If Republicans want to rein in Obamacare, they can make passage of a continuing resolution contingent on more realistic goals, such as delaying the implementation of the individual mandate (to match the White House's delay of the employer mandate) or repealing the unloved medical device tax.

Such solutions won't thrill the ideological hard-liners of either party. Indeed, they fall well short of what we'd like to see. That's the nature of divided government, however. Our lawmakers shouldn't make the perfect the enemy of the good.

Keep information flowing

Congress should OK journalist shield law.

The Senate Judiciary Committee this past Thursday approved legislation that would create a federal media shield law.

It comes in the wake of recent disquieting revelations that the Justice Department secretly subpoenaed the records for 21 telephone lines used by Associated Press reporters and editors and exercised a secret warrant to trace the phone calls and emails of Fox News journalist James Rosen.

Under the proposed Free Flow of Information Act, co-sponsored by Sen. Chuck Schumer, D-N.Y., and Lindsey Graham, R-S.C., federal prosecutors seeking names of journalists' confidential sources or other privileged information would have to make a convincing case to a federal judge that the government's need for the information outweighed the public interest in the free and unfettered flow of information.

We think that a reasonable protection for working journalists, though it concerns us that an exception can be made if a reporter is him- or herself the target of a criminal investigation.

Indeed, in its warrant for Mr. Rosen's phone and email records, the Justice Department identified the journalist as a possible criminal co-conspirator because he allegedly received leaked information from a State Department employee.

No less troubling is the unre-

solved question among lawmakers of who may be considered a journalist - and thereby would be, and not be, protected by the proposed media shield law.

The Senate bill currently defines a journalist as a person who has a "primary intent to investigate events and procure material in order to disseminate to the public news or information concerning local, national or international events or other matters of public interest."

Some lawmakers, including California Sen. Dianne Feinstein, consider that definition too broad. "I'm concerned," she said during deliberations of the proposed shield law, "this would provide special privilege to those who are not reporters at all."

The Golden State's senior senator suggested that federal protection should apply only to journalists who earn salaries - which would exclude most bloggers, including those who might be considered unaffiliated reporters, and maybe even freelance writers, who get paid by commission.

We hope the Senate will close the loophole allowing the government to secretly snoop on reporters by simply naming them targets of criminal investigations and resist efforts to narrow the definition of journalists.

Otherwise, we heartily support the proposed Free Flow of Information Act.

PAT OLIPHANT / WASHINGTON POST



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GUEST COLUMN

Limit Supreme Court terms

Three-decade stints on the high court are too long.

By ERWIN CHEREMINSKY FOR THE REGISTER

Increasingly, I am asked, by lawyers and nonlawyers, whether there should be term limits for Supreme Court justices. During the 2012 Republican primaries, Texas Gov. Rick Perry advocated 18-year terms for appointees to the Supreme Court. I rarely find myself in agreement with Gov. Perry, but, here, I think, he and others who have proposed this are right.

The idea is that justices would be appointed for an 18-year, nonrenewable term, staggered so that a vacancy would occur every two years. Vacancies that occur through resignation or death would be filled by appointing someone to serve the unfinished part of the term.

There are many virtues to this approach. Life expectancy is dramatically longer today than when the Constitution was written in 1787. The result is that Supreme Court justices are serving ever longer. From 1789-1970, justices served an average of 15 years. From 1970 until early 2005, the average tenure had expanded to almost 26 years. The four justices leaving since then had served an average 28 years.

William Rehnquist, who died in 2005, had been appointed by Richard Nixon in 1971. John Paul Stevens, who retired in 2010, had been appointed by Gerald Ford in 1975.

Clarence Thomas was 43 when he was appointed to the court, and John Roberts and Elena Kagan were 50 at the time of their appointments. If these justices serve until they are 90 - the age at which Justice Stevens retired - Thomas will have been a justice for 47 years and Roberts and Kagan each for 40 years. A person should not exercise that much power for such a long time.

The only democratic check on the Supreme Court is the appointment and confirmation process. This is as it should be because the court was meant to be a constraint on the majoritarian process and to be large-



Supreme Court Justices Ruth Bader Ginsburg and Antonin Scalia have served longer than the 18 years proposed by some proponents of high court term limits.

ASSOCIATED PRESS PHOTO

ly insulated from direct political accountability. But the democratic control of the Court cannot work when justices are each serving for three decades or longer.

The absence of term limits also means that a president's ability to select justices is based on the fortuity of when vacancies occur. Jimmy Carter, for example, had no vacancies to fill. By contrast, Richard Nixon got to select four justices in his first two years in office and reshaped the Supreme Court in a way that lasted for decades. Having a vacancy every two years would give all presidents the chance to influence the court.

Eighteen years is long enough to allow a justice to master the job, but not so long as to risk creating a court that reflects political choices from decades earlier. Making the appointment nonrenewable helps ensure that a justice won't decide cases in a way to help ensure reappointment.

Although this would be a change from how things have been done, it is not a radical proposal. No other major country gives life tenure to its equivalent of Supreme Court justices. Neither do any of the 50 states.

This does not mean that the justices would have to leave judicial service. Throughout American history, retired justices have sat on lower federal courts. Sandra Day O'Connor and David Souter still regularly

hear cases on federal courts of appeals. Also, a procedure could be created where, if a Supreme Court justice cannot participate in a case, a retired justice would be chosen at random from among those available and fill in. Today, if a justice cannot participate in a case because of disqualification or illness, the court decides with eight justices, which sometimes results in a tie.

Liberals might bemoan that term limits would push a Ruth Bader Ginsburg (who has served 20 years) off the court, while conservatives could lament the loss of an Antonin Scalia (who has served 27 years). But this proposal would treat all justices the same, and knowing what vacancies will occur during a coming presidential term, it likely would make Supreme Court appointments much more important in presidential elections.

Term limits for Supreme Court justices likely would require a constitutional amendment since the Constitution says that federal judges have life terms. A group of law professors have argued that this change could be made by federal statute. This can be debated, but, either way, my strong sense is that there is increasing support among liberals and conservatives for term limits for justices.

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MALLARD FILLMORE



Quote of the Day

"There are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpation."

JAMES MADISON

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