

## LEGISLATIVE TERM LIMITS: FRIEND OR FOE?

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*ABSTRACT: Beginning in the early 1990s a movement began in America to establish legislative term limits, which has so far resulted in 21 states passing some form of term limits. As the term limit movement turns its eye towards the implementation Congressional of term limits, it is important to look back at the effects these limits have had on state legislatures, and to determine whether they have been more effective or harmful to the legislative process. This article seeks to do just that, Part I will consider the background and history of federal and state term limits, including the legal challenges that have arisen as a result; Part II will look at the effects term limits have had on various governmental institutions and related parties, and Part III will conclude that term limits have, overall, damaged the political process of the Legislative Branch and that legislative term limits should not be instituted in the Congress of the United States of America.*

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ABC News radio broadcaster Paul Harvey once said, "Politicians are like diapers, they must be changed often, and for the same reason." Based on the same basic theory Mr. Harvey professes in his quote, there has been a movement over the past few decades in state legislatures to limit the number of terms a legislator can serve as an elected official. More recently, there has been multiple grassroots campaigns calling for the enactment of term limits on the Congressional level. Proponents of these term limits claim that they will make elected officials more accountable to the people who elected them and less likely to be influenced by special interests, that they will reduce corruption and partisan bickering, and that they will deter career politicians who are out of touch with their constituents from running for election. But have these benefits been seen in the states where term limits have been adopted?

The examination of term limits in states determines whether or not they have had a positive or negative effect on their respective legislatures. Part I of this paper will consider the background and history of federal and state term limits, including the legal challenges that have arisen as a result; Part II will look at the effects term limits have had on various governmental institutions and related parties. Part III concludes that term limits have, overall, damaged the political process of the Legislative Branch and that legislative term limits should not be instituted in the Congress of the United States of America.

## PART I: LOOKING BACK AT LIMITS

## A. HISTORICAL BACKGROUND OF TERM LIMITS

The roots of term limits can be traced back to the ancient democracy of Athens, where the five hundred members of the Athenian Assembly were mandated to serve only two year terms in order to assure that the interests of all Athenians were accurately represented.<sup>1</sup> Similarly, the Roman republic employed a system of elected magistrates that served one year terms and could not be reelected for ten years after serving.<sup>2</sup>

However, in the centuries between the demise of these civilizations and the rise of the United States, most governments were monarchies. In England, there was a representative branch of government in Parliament, but the hereditary nobility that made up the House of Lords was more powerful than the popularly elected House of Commons.<sup>3</sup> The members of the House of Commons were also not restricted to a number of terms, with many serving for several decades at a time.

It is in the struggle to find a balance between these two varying historical traditions to frame and explore the debate over term limits in America.. While America derives its laws from the Common Law of England, our governmental structure borrows heavily from the Athenians and Romans. It was with these differ-

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1 A.H.M. Jones, *ATHENIAN DEMOCRACY* 105 (Baltimore: John Hopkins University Press 1986).

2 Gordana Siljanovska-Davkova & Tanja Karakamisheva-Jovanovska, *Constitutional Aspects of the Limitation of Mandates* 4 *JUSTINIANUS PRIMUS L. REV.* 1, 4 (2007) available at <http://www.law-review.mk/pdf/07/Gordana%20Siljanovska-Davkova,%20Tanja%20Karakamisheva-Jovanovska.pdf>.

3 Ian Loveland, *CONSTITUTIONAL LAW, ADMINISTRATIVE LAW, AND HUMAN RIGHTS* 158 (5th ed. Oxford Univ. Press 2009).

ing traditions in mind that our Founding Fathers debated this very issue.

## B. FEDERAL TERM LIMITS IN AMERICA

### I. BACKGROUND

Most of the early discussion in regards to federal term limits focused not on the number of terms served, but rather the length of the individual terms. Early in the debate, Thomas Jefferson explained his feelings about federal terms:

My reason for fixing them in office for a term of years rather than for life, was that they might have an idea that they were at a certain period to return into the mass of the people and become the governed instead of the governor which might still keep alive that regard to the public good that otherwise they might perhaps be induced by their independence [sic] to forget.<sup>4</sup>

But the discussion of terms and term limits did not end with these early debates, and has extended even into the present day. To see the history of this debate, we must venture all the way back to the beginning of our government's history.

Written in 1777, the original governing document of the United States of America, The Articles of Confederation, included in Article V the first American federal term limit: "no per-

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4 Letter from Thomas Jefferson to Edmund Pendleton (Aug. 26, 1776), in 1 PAPERS OF THOMAS JEFFERSON, 1760-1776 503 (Julian P. Boyd ed., Princeton University Press 1950).

son shall be capable of being a delegate for more than three years in any term of six years..." These limits were strictly enforced, and in 1784, the Committee on Qualifications met to discharge those that had violated the proscribed limit from office.<sup>5</sup> However, three years later, the United States Constitution was written and contained no term limits on federal elected officials. Many have speculated on the reason behind this departure, but our Founding Fathers clearly chose not to carry these limits over to the new governmental structure. Perhaps the answer can be found in the Federalist Papers No. 62, which states:

The mutability in the public councils arising from a rapid succession of new members, however qualified they may be, points out, in the strongest manner, the necessity of some stable institution in the government. Every new election in the States is found to change one half of the representatives. From this change of men must proceed a change of opinions; and from a change of opinions, a change of measures. But a continual change even of good measures is inconsistent with every rule of prudence and every prospect of success.<sup>6</sup>

The basic theory is that in order to govern effectively, members of the legislature needed to stay in office long enough to develop "a knowledge of the means by which that object [good government] can be best attained."<sup>7</sup>

In reaction to the Federalist arguments against term lim-

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5 *Journals of the Continental Congress, 1774-1789*, ed. Worthington C. Ford et al. (Washington, D.C., 1904-37), 26:98-99 (1784).

6 James Madison, *Federalist Papers No. 62*, *Independent Journal*, Feb. 27, 1788.

7 *Id.*

its, in the First Congress, Representative Thomas Tucker of South Carolina brought forth two proposals dealing with term limits.<sup>8</sup> The first proposal would limit members of the House of Representatives to three consecutive terms within an eight year period; the second would make the term for Senators one year, with a limit of five consecutive terms within a six year period. There is no evidence that either of these proposals received any support nor a vote.

Term limits were not seriously discussed again until the early 1940s, in reaction to Franklin D. Roosevelt breaking the tradition established by George Washington of not seeking more than two terms as President of the United States, and this eventually led to the adoption of the 22<sup>nd</sup> Amendment.<sup>9</sup> After this time period, Congress has introduced proposals seeking to establish federal term limits fairly regularly but to no avail.<sup>10</sup>

In 1985, a group of Republican House members formed the Committee on Limiting Terms (COLT), whose stated goal was to convene a limited Constitutional Convention for the purpose of establishing legislative term limits in Congress. However, the effort soon fizzled out and amounted to nothing.<sup>11</sup> Then, in 1988, the Republican Party adopted Term Limits as a plank in their national party platform, and it has remained a prominent issue

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8 S. Rep. No. 104-158, at 2 (1995).

9 John David Rausch, Jr., *When a Popular Idea Meets Congress: The History of the Term Limit Debate in Congress*, 1 POL. BUREAUCRACY & JUST. 34, 36 (2009).

10 *Id.*

11 *Id.* at 40.

among Republican lawmakers.<sup>12</sup>

Despite these various efforts, overall the members of Congress have shown little support for limiting the number of terms they can serve as legislators. This makes sense to South Carolina Congressman Bob Inglis, who said, "Asking an incumbent member of Congress to vote for term limits is a bit like asking a chicken to vote for Colonel Sanders."<sup>13</sup>

#### 1. LEGAL ISSUES

In 1992, the citizens of Arkansas adopted a term limit proposal, Amendment 73, to their State Constitution. Part of this amendment affected Congressional elections by placing term limits on those seeking to be elected to the U.S. House of Representatives (three terms) or the U.S. Senate (two terms). The amendment led to a case that went before the Supreme Court of the United States as *United States Term Limits v. Thornton*.<sup>14</sup> The Court struck down the section affecting Congressional elections, holding that determining the qualifications of Congressional representatives was exclusive and fixed by the Constitution. The majority indicated that part of this finding was based on the belief that, "Such a state-imposed restriction is contrary to the fundamental principle of our representative democracy, embodied in the Constitution, that the people should choose whom they please to gov-

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12 *Id.*

13 *Famous Quotes About Politicians, Congress, and Government*. ACTNOWUS.ORG, <http://actnowus.org/famous%20quotes.html> (Last visited Nov. 14, 2013).

14 *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 115 S. Ct. 1842, 131 L. Ed. 2d 881, 1995 U.S. LEXIS 3487 (1995).

ern them.”<sup>15</sup>

The Court also looked at the debates the Founding Fathers of our nation engaged in while determining the qualifications; many of the most well-known Fathers implied that there should be no qualifications beyond those listed by them in the Constitution.

These implications might lend support for those who disagree with term limits. For instance, the Court quotes Robert Livingston saying, “The people are the best judges who ought to represent them. To dictate and control them, to tell them whom they shall not elect, is to abridge their natural rights.”<sup>16</sup> They further quoted Alexander Hamilton at the New York Constitutional Convention, arguing against the delegates that: “The true principle of a republic is, that the people should choose whom they please to govern them. Representation is imperfect in proportion as the current of popular favor is checked. This great source of free government, popular election, should be perfectly pure, and the most unbounded liberty allowed.”

Based on these quotes and others, the Court reaffirmed their previous statement in *Powell v. McCormack*, “That the right of the electors to be represented by men of their own choice, was so essential for the preservation of all their other rights, that it ought to be considered as one of the most sacred parts of our constitution.”<sup>17</sup>

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15 *Id.* at 783, 115 S. Ct. 1842, 131 L. Ed. 2d 881 (internal quotation marks omitted).

16 *Id.* at 794, 115 S. Ct. 1842, 131 L. Ed. 2d 881.

17 *Powell v. McCormack*, 395 U.S. 486, 534, 89 S. Ct. 1944, 23 L. Ed. 2d 491, 1969 U.S. LEXIS 3103 (1969).

Thus, the essential lesson to be learned from this case is that the Supreme Court is unlikely to accept anything less than a Constitutional Amendment as sufficient to impose term limits on Congressional representatives.

### C. STATE TERM LIMITS IN AMERICA

#### I. BACKGROUND

In the early 1990s, some states began implementing legislative term limits. In total, 21 of the 50 states have passed legislative term limits in some form, but due to repeals and court cases, only 15 states currently have legislative term limits on their books<sup>18</sup>. This chart shows the term limits passed in the various states:

State	House Term Limit By Years	Senate Term Limit by Years
Arkansas <sup>1</sup>	6	8
Arizona	8	8
California	12 (consecutive)	12 (consecutive)
Colorado	8	8
Florida	8	8
idaho	Legislative Repeal in 2002	
Louisiana	12 (consecutive)	12 (consecutive)
Maine	8	8

18 "TERM LIMITED STATES" (National Conference of State Legislatures, 2013) available at: <http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx>.

Massachusetts	Ruled Unconstitutional by State Supreme Court <sup>2</sup>	
Michigan	6	8
Missouri	8	8
Montana	8	8
Nebraska	n/a	8
Nevada	12	12
Ohio	8	8
Oklahoma	12 (consecutive)	12 (consecutive)
Oregon	Ruled Unconstitutional by State Supreme Court <sup>3</sup>	
South Dakota	8	8
Utah	Legislative Repeal in 2003	
Washington	Ruled Unconstitutional by State Supreme Court <sup>4</sup>	
Wyoming	Ruled Unconstitutional by State Supreme Court <sup>5</sup>	

As this chart demonstrates, there have been varied approaches to the idea of legislative term limits, with some states choosing to vary the limits by house, and some implementing lifetime bans, while others only limit the number of consecutive terms that can be served. As can be seen in the chart, some of these approaches have led to legal challenges.

## II. LEGAL CHALLENGES

Two states, Idaho and Utah, legislatively repealed their term limits in the early 2000s, but four states, Massachusetts, Oregon, Washington, and Wyoming, had their statutes mandating

legislative term limits struck down as unconstitutional by their respective State Supreme Courts, and the reasoning in each of the cases followed similar themes and logic.

### 1. MASSACHUSETTS

In *League of Women Voters v. Secretary of the Commonwealth*, the Massachusetts Supreme Court struck down a statute imposing term limits on certain public officials, including legislators.<sup>19</sup> The decision, which held that the State Constitution was the exclusive authority for qualifications of elected officials, relied in part on the Supreme Court's decision in *United States Term Limits v. Thornton*, applying the same standard regarding the Massachusetts Constitution. The court indicated that if the people of Massachusetts wanted term limits, they would elect legislators that would pass a Constitutional Amendment dealing with state legislative term limits.<sup>20</sup>

### 2. OREGON

Oregon's term limit amendment to their State Constitution was challenged and struck down in the 2002 case, *Lehman v. Bradbury*.<sup>21</sup> In this instance, the constitutional issue was one of procedure and not merit, and the term limit amendment was struck down on a procedural technicality. However, it is worth noting that after this decision, Oregon did not subsequently pass a procedurally correct version of state legislative term limits.

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19 *League of Women Voters*, 425 Mass. 424, 681 N.E.2d 842.

20 *Id.* at 432, 681 N.E.2d 842.

21 *Lehman*, 333 Or. 231, 37 P.3d 989.

### 3. WASHINGTON

Washington voters approved a term limit initiative in 1992. In 1997, they were challenged in *Gerberding v. Munro*, and were struck down as unconstitutional under the Washington State Constitution.<sup>22</sup> The majority opinion uses the same theory as the Massachusetts Supreme Court, even quoting them, and found that the Washington State Constitution is the exclusive authority for establishing qualifications for state elected officials such as legislators.<sup>23</sup>

### 4. WYOMING

State legislative term limits were established in Wyoming by the voter initiative process in 1992 and were not challenged until 2004's *Cathcart v. Meyer*.<sup>24</sup> While the Wyoming Supreme Court acknowledged that the State Constitution recognized the right of the people to "alter, reform, or abolish" the government, they relied on the Supreme Court's logic in *Thornton* and held that this right did not extend to statutorily changing the constitutionally mandated qualifications for office.<sup>25</sup> In addition to citing *Thornton*, since Wyoming's term limits were the last to be challenged, the court also cites all three of the previously mentioned cases as prior persuasive precedent.

Term limits in other states have been accomplished by

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22 *Gerberding*, 134 Wash. 2d 188, 949 P.2d 1366.

23 *Id.* at 201-11, 949 P.2d 1366.

24 *Cathcart v. Meyer*, 2004 WY 49, 88 P.3d 1050, No. 04-33, No. 04-32, No. 04-34, 2004 Wyo. LEXIS 62 (Wyo).

25 *Id.* at 67.

amendments to the respective state constitutions, and have therefore not been challenged. It follows to reason that any attempt to implement national term limits would have to be an amendment to the United States Constitution.

#### PART II: EFFECTS ON EFFECTIVENESS

If the various arguments utilized by supporters of term limits were to be aggregated, the unifying theme is that term limits would make legislatures more "effective." For the purposes of this paper, and based on the common themes presented in arguments on both sides of the debate, the following will be considered indicative of effective legislatures:

- A. Diversity
- B. Independence from Executive Influence
- C. Independence from Lobbyist Influence
- D. Experience and Leadership
- E. Civility and Bipartisanship
- F. Perception of Effectiveness by Public

Based on whether these qualities have increased since term limits were implemented the effectiveness of those legislatures can be evaluated, and by inference so can the effectiveness of the term limits. In 2005, The National Conference of State Legislatures commissioned reports by academics within six states with legislative term limits, looking at the various affects the limits may have had regarding these very issues. The studies looked at the following states: Arizona, Arkansas, California, Colorado, Maine, and Ohio.

## A. DIVERSITY

One of the most common claims by proponents of legislative term limits is that they will result in a more diverse legislature, increasing the number of women and minorities, while introducing younger, “fresher” representatives into the political process. But in most of the states, these predictions have been reversed or merely haven’t materialized to the degree claimed prior to the implementation of term limits.

In regards to minority representation, Arizona actually saw a decrease in African-American and Native American representatives.<sup>26</sup> There was a slight increase in Hispanic representatives, but it is hard to say whether this was caused by term limits or by demographic changes and redistricting.<sup>27</sup> Arkansas saw a three percent increase in minority representation, but again it is hard to pinpoint term limits as the cause.<sup>28</sup> California is the only state to see a dramatic increase in minority representatives, but this is generally credited to demographic changes and redistricting, supported by the fact that minorities gained higher percentages of congressional seats than state legislative seats.<sup>29</sup> Colorado’s minority representation saw little change, with less than a three percent increase in minority representatives, which is too statisti-

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26 David R. Berman, EFFECTS OF LEGISLATIVE TERM LIMITS IN ARIZONA 2 (Nat’l Conference of State Legislatures 2005).

27 *Id.*

28 Art English & Brian Weberg, TERM LIMITS IN THE ARKANSAS GENERAL ASSEMBLY: A CITIZEN LEGISLATURE RESPONDS 18 (Nat’l Conference of State Legislatures 2005).

29 Bruce E. Cain & Thad Kousser, ADAPTING TO TERM LIMITS IN CALIFORNIA: RECENT EXPERIENCE AND NEW DIRECTIONS 16-8 (Nat’l Conference of State Legislatures 2005).

cally insignificant to support term limits as a factor.<sup>30</sup> Ohio saw a slight four percent increase in minority representation, but like other states, this is largely thought to be a result of redistricting, not term limits.<sup>31</sup>

Female representation largely followed the same path as minorities. Arizona saw fewer female representatives elected to the state legislature.<sup>32</sup> Arkansas did see a ten percent increase in the number of women elected, but could not establish causal link to term limits.<sup>33</sup> California also saw an increase, but likewise, this increase could not be definitively traced to term limits.<sup>34</sup> Colorado was already one of the national leaders for the number of women serving as state legislators prior to the implementation of term limits, and the gender makeup of the legislature remained stable after term limits took effect.<sup>35</sup> Maine and Ohio also maintained a stable level of female representation after term limits were implemented.<sup>36</sup>

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30 John A. Straayer & Jennie Drage Bowser, *COLORADO'S LEGISLATIVE TERM LIMITS*, 10 (Nat'l Conference of State Legislatures 2005).

31 Rick Farmer & Thomas H. Little, *LEGISLATIVE POWER IN THE BUCKEYE STATE: THE REVENGE OF TERM LIMITS* 3 (Nat'l Conference of State Legislatures 2005).

32 David R. Berman, *EFFECTS OF LEGISLATIVE TERM LIMITS IN ARIZONA* 2 (Nat'l Conference of State Legislatures 2005).

33 Art English & Brian Weberg, *TERM LIMITS IN THE ARKANSAS GENERAL ASSEMBLY: A CITIZEN LEGISLATURE RESPONDS* 19 (Nat'l Conference of State Legislatures 2005).

34 Bruce E. Cain & Thad Kousser, *ADAPTING TO TERM LIMITS IN CALIFORNIA: RECENT EXPERIENCES AND NEW DIRECTIONS* 16 (Nat'l Conference of State Legislatures 2005).

35 John A. Straayer & Jennie Drage Bowser, *COLORADO'S LEGISLATIVE TERM LIMITS* 9 (Nat'l Conference of State Legislatures 2005).

36 Richard J. Powell & Rich Jones, *FIRST IN THE NATION: TERM LIMITS AND THE MAINE LEGISLATURE* 5 (Nat'l Conference of State Legislatures 2005); Rick

After term limits took effect, the average age of state legislators remained statistically unchanged from the prior averages in Arkansas, Colorado, and Ohio.<sup>37</sup> California saw a slight decrease, with the pre-term limit of 47 years falling to 42 after implementation.<sup>38</sup> Conversely, the average age in Maine actually increased by four years in the decade studied.<sup>39</sup>

There also does not appear to be any trend of an increase in primary challenges to incumbent legislators. While there are obviously more turnovers due to term limits, the studies uncovered some interesting facts that seem to contradict the theory that term limits increase competition and new ideas. For instance, in Arkansas, there was a significant increase in “familial incumbency”, where the spouse, child, sibling, or other relative of a term limited legislator would succeed them in the seat.<sup>40</sup> Arkansas also saw a decrease in challenges to incumbents, with the main explanation being the knowledge that the seat would be forcefully

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Farmer & Thomas H. Little, *LEGISLATIVE POWER IN THE BUCKEYE STATE: THE REVENGE OF TERM LIMITS*, 4 (Nat'l Conference of State Legislatures 2005).

37 Art English & Brian Weberg, *TERM LIMITS IN THE ARKANSAS GENERAL ASSEMBLY: A CITIZEN LEGISLATURE RESPONDS* 17 (Nat'l Conference of State Legislatures 2005); John A. Straayer & Jennie Drage Bowser, *COLORADO'S LEGISLATIVE TERM LIMITS* 8 (Nat'l Conference of State Legislatures 2005); Rick Farmer & Thomas H. Little, *LEGISLATIVE POWER IN THE BUCKEYE STATE: THE REVENGE OF TERM LIMITS* 4 (Nat'l Conference of State Legislatures 2005).

38 Bruce E. Cain & Thad Kousser, *ADAPTING TO TERM LIMITS IN CALIFORNIA: RECENT EXPERIENCES AND NEW DIRECTIONS* 16 (Nat'l Conference of State Legislatures 2005).

39 Richard J. Powell & Rich Jones, *FIRST IN THE NATION: TERM LIMITS AND THE MAINE LEGISLATURE* 6 (Nat'l Conference of State Legislatures 2005).

40 Art English & Brian Weberg, *TERM LIMITS IN THE ARKANSAS GENERAL ASSEMBLY: A CITIZEN LEGISLATURE RESPONDS* 7 (Nat'l Conference of State Legislatures 2005).

vacated in a matter of years anyway.<sup>41</sup> This also seemed to be the case in Colorado and Maine.<sup>42</sup>

Overall, there exists a distinct lack of statistical evidence to support the theory that term limits encourage or lead to greater representation by minorities or women; nor does there seem to be support for it causing younger people to run for office, or for incumbents to be challenged more often.

#### B. INDEPENDENCE FROM EXECUTIVE INFLUENCE

Claims have also been made that term limits would help decrease the influence outside forces, such as the Executive Branch, have on legislators. But despite some contradictory findings, every state studied with the exception of Ohio reported experiencing a shift in power that favored the Executive Branch of government over the Legislature. And while the Ohio study found most legislators felt the Governor had lost power, they also believed that their oversight of Executive Agencies had decreased significantly.<sup>43</sup>

In Arizona, legislators reported feeling they were being manipulated by the heads of Executive agencies, and most agreed that the post term limit Executive Branch had increased in power

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41 *Id.*

42 John A. Straayer & Jennie Drage Bowser, COLORADO'S LEGISLATIVE TERM LIMITS, 28 (Nat'l Conference of State Legislatures 2005); Richard J. Powell & Rich Jones, FIRST IN THE NATION: TERM LIMITS AND THE MAINE LEGISLATURE 7 (Nat'l Conference of State Legislatures 2005).

43 Rick Farmer & Thomas H. Little, LEGISLATIVE POWER IN THE BUCKEYE STATE: THE REVENGE OF TERM LIMITS 14 (Nat'l Conference of State Legislatures 2005).

and influence over the legislature.<sup>44</sup> This was echoed in the Arkansas study, where members felt that agency heads were using their lack of experience against them, and seemed to dismiss legislators as temporary road blocks to the Executive's legislative agenda.<sup>45</sup>

California legislators focused on the dramatic decrease in oversight of Executive agencies as the main balance shifter, remarking that term limits pushed them to try to accomplish more in less time in order to "make their mark".<sup>46</sup> Additionally, California legislators felt their lack of knowledge and experience left them with less room to negotiate with the Governor on the budget, which led to a 50 percent decrease in attempted budgetary amendments.<sup>47</sup> It is estimated that this has led to a loss of billions of dollars tied to legislative discretion since term limits were implemented.<sup>48</sup> There was also a steep decline in both the number of legislators requesting information from agencies to justify their proposed budgets, as well as in the number of audit reports to hold those agencies accountable for the way that budget was spent.<sup>49</sup>

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44 David R. Berman, EFFECTS OF LEGISLATIVE TERM LIMITS IN ARIZONA 2 (Nat'l Conference Of State Legislatures 2005).

45 Art English & Brian Weberg, TERM LIMITS IN THE ARKANSAS GENERAL ASSEMBLY: A CITIZEN LEGISLATURE RESPONDS 47 (Nat'l Conference of State Legislatures 2005).

46 Bruce E. Cain & Thad Kousser, ADAPTING TO TERM LIMITS IN CALIFORNIA: RECENT EXPERIENCES AND NEW DIRECTIONS 79 (Nat'l Conference of State Legislatures 2005).

47 *Id.* at 80.

48 Kousser, Thad, "TERM LIMITS, PROFESSIONALISM, AND LEGISLATIVE-EXECUTIVE CONFLICT: APPLYING A BARGAINING MODEL TO THE AMERICAN STATES," paper presented at the 2002 meetings of the American Political Science Association, Boston, Massachusetts, 2002c.

49 Bruce E. Cain & Thad Kousser, ADAPTING TO TERM LIMITS IN CALIFORNIA: RECENT EXPERIENCES AND NEW DIRECTIONS 87-9 (Nat'l Conference of State Legislatures 2005).

One anonymous legislator summed up the situation in California by postulating that “overall [term limits] ha[ve] weakened the legislature’s ability to bargain with, and oversee the Executive Branch.”<sup>50</sup> Maine legislators reported similar feelings regarding oversight ability due to both their inexperience and lack of time to accomplish legislative goals.<sup>51</sup>

Legislators in Colorado felt that the imposition of term limits gave the Governor and his staff experience and informational advantages that made it hard to reach mutually satisfactory agreements on important issues.<sup>52</sup> Collectively, 73 percent of Colorado’s legislature felt that they had lost power to the Executive since the implementation of term limits.

Instead of making good on claims that legislatures would be less easily influenced by their respective Executive Branch, it seems that term limits put legislators on unequal footing in negotiations, and even distract them from their important oversight functions by forcing them to accomplish all their legislative goals in a few short terms.

### C. INDEPENDENCE FROM LOBBYIST INFLUENCE

The influence of lobbyists on legislators is demonized as the bane of good government, and term limits are hyped as a way to end the pernicious hold of so-called special interest groups. But in practice, it seems to have only confused the relationships

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50 *Id.* at 95.

51 Richard J. Powell & Rich Jones, *FIRST IN THE NATION: TERM LIMITS AND THE MAINE LEGISLATURE* 52-3 (Nat’l Conference of State Legislatures 2005).

52 John A. Straayer & Jennie Drage Bowser, *COLORADO’S LEGISLATIVE TERM LIMITS* 108 (Nat’l Conference of State Legislatures 2005).

between legislators and lobbyists; some lobbyists feel term limits have made their job more difficult, and there is evidence that they have reacted to the change by pushing the ethical limits of behavior in order to accomplish their goals.<sup>53</sup>

In contrast to the views of the lobbyists, most legislators reported that lobbyists were more influential in a post term limit legislature. In Arkansas, lobbyists responded to term limits by beginning to cultivate their relationships with future legislators during their campaigns by targeting and supporting potentially sympathetic candidates.<sup>54</sup> Term limits also had the result of turning many former legislators that had been forced out, into lobbyists themselves.<sup>55</sup> In light of these occurrences, it is perhaps unsurprising that nearly half of Arkansas' legislators believed lobbyists had gained influence since term limits took effect.<sup>56</sup> Maine and Ohio legislators both overwhelmingly reported feeling that lobbyists had greater power and influence post term limits.<sup>57</sup>

The most surprising, and perhaps worrying, statistic comes from California's legislature, where new members reported that as much as 90 percent of the bills they introduced were drafted and given to them by lobbyists.<sup>58</sup> Likewise, more than half

53 *Id.* at 86.

54 Art English & Brian Weberg, TERM LIMITS IN THE ARKANSAS GENERAL ASSEMBLY: A CITIZEN LEGISLATURE RESPONDS 41 (Nat'l Conference of State Legislatures 2005).

55 *Id.* at 40.

56 *Id.* at 41.

57 Richard J. Powell & Rich Jones, FIRST IN THE NATION: TERM LIMITS AND THE MAINE LEGISLATURE 45 (Nat'l Conference of State Legislatures 2005); Rick Farmer & Thomas H. Little, LEGISLATIVE POWER IN THE BUCKEYE STATE: THE REVENGE OF TERM LIMITS 12 (Nat'l Conference of State Legislatures 2005).

58 Bruce E. Cain & Thad Kousser, ADAPTING TO TERM LIMITS IN CALIFORNIA:

of the Colorado legislators polled reported being likely to sponsor "special interest" legislation provided by lobbyist groups.<sup>59</sup>

Contrary to their stated goal, it would appear that term limits have led inexperienced new legislators to increasingly rely on lobbyists for information and even for the bills themselves. Generally, it appears that the influence of lobbyists in the studied states has increased since the implementation of term limits.

#### D. EXPERIENCE AND LEADERSHIP

When discussing the influence outside groups had on them, many representatives indicated that their lack of experience contributed in a significant manner to their reliance on lobbyists, with many reporting that they felt overwhelmed by the issues they were faced with fixing as freshmen legislators.<sup>60</sup> It cannot be denied that a clear result of term limits is the loss of experienced legislators and leaders.

Part of the problem is that the average level of experience in general, and in specific in leadership roles, took a nosedive after

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RECENT EXPERIENCES AND NEW DIRECTIONS 25 (Nat'l Conference of State Legislatures 2005).

59 John A. Straayer & Jennie Drage Bowser, COLORADO'S LEGISLATIVE TERM LIMITS 86 (Nat'l Conference of State Legislatures 2005).

60 David R. Berman, EFFECTS OF LEGISLATIVE TERM LIMITS IN ARIZONA 2 (Nat'l Conference of State Legislatures 2005); Art English & Brian Weberg, TERM LIMITS IN THE ARKANSAS GENERAL ASSEMBLY: A CITIZEN LEGISLATURE RESPONDS 45 (Nat'l Conference of State Legislatures 2005); Bruce E. Cain & Thad Kousser, ADAPTING TO TERM LIMITS IN CALIFORNIA: RECENT EXPERIENCES AND NEW DIRECTIONS 24-5 (Nat'l Conference of State Legislatures 2005); John A. Straayer & Jennie Drage Bowser, COLORADO'S LEGISLATIVE TERM LIMITS 57 (Nat'l Conference of State Legislatures 2005); Rick Farmer & Thomas H. Little, LEGISLATIVE POWER IN THE BUCKEYE STATE: THE REVENGE OF TERM LIMITS 10 (Nat'l Conference of State Legislatures 2005).

term limits were implemented. The average length of experience in Arizona's legislature prior to term limits was eleven years, but by 2003, that number had fallen to a mere four years.<sup>61</sup> Due to term limits in Arkansas, the most experience a leader of a house can have is two terms of service.<sup>62</sup> Arkansas legislators reported that this led to lackluster leadership.<sup>63</sup> Since term limits went into effect, Colorado experienced a 40 percent decrease in legislative experience in the House, and a 14 percent decrease in the Senate.<sup>64</sup> More shockingly, the initial term limit purge in Colorado cost the legislature more than 136 years of experience from only nine members; their leadership role replacements had a combined experience of 60 years.<sup>65</sup>

Another common theme was the belief that the forced turnover and lack of stability in leadership caused leaders to lose power and influence, mostly based on a lack of respect compared to a leader who had earned power through seniority and a proven track-record of accomplishments. For example, 87 percent of legislators in Ohio felt the leadership roles were filled based primarily on fundraising ability instead of legislative merit. Arkansas legislators similarly felt that leadership was more about being

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61 David R. Berman, EFFECTS OF LEGISLATIVE TERM LIMITS IN ARIZONA 2 (Nat'l Conference Of State Legislatures 2005).

62 Art English & Brian Weberg, TERM LIMITS IN THE ARKANSAS GENERAL ASSEMBLY: A CITIZEN LEGISLATURE RESPONDS 41 (Nat'l Conference of State Legislatures 2005).

63 *Id.* at 34.

64 The Senate was able to maintain a higher average of experience because many term limited House members went on to serve in the Senate. *Id.* at 36.

65 *Id.* at 40.

competitive with one another than established merit.<sup>66</sup> Colorado's short term limits have essentially led legislators there to feel that leaders turn into lame ducks almost as soon as they are elected.<sup>67</sup>

Term limits have undeniably forced experienced legislators out of office in favor of inexperienced new comers, and they have left a leadership vacuum that in turn affects many other qualities needed to make a legislative body effective.

#### E. CIVILITY AND BIPARTISANSHIP

One of the problems stemming from the leadership vacuum is the apparent decline in civility and bipartisan spirit since term limits became effective in the studied states: each one of them agreed that term limits had changed the tone of their legislative body.<sup>68</sup> In addition to decreases in basic civility, legislators in Arkansas, Colorado and Ohio believe that their colleagues are less likely to consider compromises than previous legislatures.<sup>69</sup>

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66 Art English & Brian Weberg, *TERM LIMITS IN THE ARKANSAS GENERAL ASSEMBLY: A CITIZEN LEGISLATURE RESPONDS* 37 (Nat'l Conference of State Legislatures 2005).

67 John A. Straayer & Jennie Drage Bowser, *COLORADO'S LEGISLATIVE TERM LIMITS* 46 (Nat'l Conference of State Legislatures 2005).

68 Art English & Brian Weberg, *TERM LIMITS IN THE ARKANSAS GENERAL ASSEMBLY: A CITIZEN LEGISLATURE RESPONDS* 28 (Nat'l Conference of State Legislatures 2005); Bruce E. Cain & Thad Kousser, *ADAPTING TO TERM LIMITS IN CALIFORNIA: RECENT EXPERIENCES AND NEW DIRECTIONS* 68 (Nat'l Conference of State Legislatures 2005); John A. Straayer & Jennie Drage Bowser, *COLORADO'S LEGISLATIVE TERM LIMITS* 19, 46-7, 57-8 (Nat'l Conference of State Legislatures 2005); Richard J. Powell & Rich Jones, *FIRST IN THE NATION: TERM LIMITS AND THE MAINE LEGISLATURE* 38 (Nat'l Conference of State Legislatures 2005); Rick Farmer & Thomas H. Little, *LEGISLATIVE POWER IN THE BUCKEYE STATE: THE REVENGE OF TERM LIMITS* 10-11 (Nat'l Conference of State Legislatures 2005).

69 Art English & Brian Weberg, *TERM LIMITS IN THE ARKANSAS GENERAL ASSEMBLY: A CITIZEN LEGISLATURE RESPONDS* 45 (Nat'l Conference of State

Anonymous quotes show the level of acrimony that has pervaded some of the bodies:

“They just blow off the speaker.”<sup>70</sup>

“They fight, cuss, [and] depose each other.”<sup>71</sup>

“Respect for the institution, [the] process, [and] each other, is down.”<sup>72</sup>

“There is a lack of statesmanship.”<sup>73</sup>

“It’s immediate and constant competition.”<sup>74</sup>

“New members do not know how to reach consensus and compromise.”<sup>75</sup>

The lack of leadership because of term limits has created a level of rancor in these houses that clearly has an impact on their ability to effectively discharge their duties. As President Lincoln once said, “A house divided against itself cannot stand.” Likewise, a legislature divided amongst themselves cannot govern.

#### F. PERCEPTION OF EFFECTIVENESS BY PUBLIC

##### The public perception of the effectiveness of term limits

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Legislatures 2005); John A. Straayer & Jennie Drage Bowser, COLORADO’S LEGISLATIVE TERM LIMITS 47, 57 (Nat’l Conference of State Legislatures 2005); Richard J. Powell & Rich Jones, FIRST IN THE NATION: TERM LIMITS AND THE MAINE LEGISLATURE 21 (Nat’l Conference of State Legislatures 2005); Rick Farmer & Thomas H. Little, LEGISLATIVE POWER IN THE BUCKEYE STATE: THE REVENGE OF TERM LIMITS 10 (Nat’l Conference of State Legislatures 2005).

70 John A. Straayer & Jennie Drage Bowser, COLORADO’S LEGISLATIVE TERM LIMITS 49 (Nat’l Conference of State Legislatures 2005).

71 *Id.* at 52.

72 *Id.* at 23.

73 *Id.* at 26.

74 *Id.* at 48.

75 Richard J. Powell & Rich Jones, FIRST IN THE NATION: TERM LIMITS AND THE MAINE LEGISLATURE 21 (Nat’l Conference of State Legislatures 2005).

is difficult to measure since polling was largely not conducted on term limits in hindsight. But there are a few statistics that might help give an idea of how constituents feel about the results of term limits.

Most pertinently, Ohio residents were polled as part of the term limit study, and 85 percent of respondents thought the results of term limits had been mostly negative.<sup>76</sup> Over half of the respondents in the same poll believed that the current term limits in Ohio were too restrictive and should be expanded.<sup>77</sup>

The study of Arkansas' limits found that after term limits were enacted, constituents were less likely to know who their representative was, which made them feel less confident that they were being well represented.<sup>78</sup> The confidence of Maine voters in their legislators also decreased after term limits went into effect.<sup>79</sup>

While it is not possible to say definitively whether the people of states with legislative term limits consider their legislatures to be more or less effective than they were without term limits, the limited evidence we do have indicates that voters may not be as impressed with the reality of term limits as they were with the theory.

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76 Rick Farmer & Thomas H. Little, *LEGISLATIVE POWER IN THE BUCKEYE STATE: THE REVENGE OF TERM LIMITS* 18 (Nat'l Conference of State Legislatures 2005).

77 *Id.*

78 Art English & Brian Weberg, *TERM LIMITS IN THE ARKANSAS GENERAL ASSEMBLY: A CITIZEN LEGISLATURE RESPONDS* 10 (Nat'l Conference of State Legislatures 2005).

79 Richard J. Powell & Rich Jones, *FIRST IN THE NATION: TERM LIMITS AND THE MAINE LEGISLATURE* 14 (Nat'l Conference of State Legislatures 2005).

## G. CONCLUSIONS

It is apparent, based on the evidence, that term limits have not lived up to the promises made by their supporters. Instead of increased diversity, there is stagnation; instead of less Executive influence, power has shifted to the Executive branch; instead of making legislators independent from Lobbyists, they are more relied upon than before; and instead of new ideas and a more effective, bipartisan process, the lack of experience and leadership has led to discord and bad governance. The experiment with term limits in the states studied has at best failed to match the hype, and at worst has failed miserably on all counts.

## PART III: TERMINATING THE TERM LIMIT EXPERIMENT

While it is possible that a decade's worth of study is not enough to rule out the possibility that the issues facing states with term limits might improve with time, based on the multitude of evidence in Part II showing that state legislative term limits have had a negative effect on the effectiveness of their respective legislatures instead of the promised benefits, it is impossible to recommend that term limits be implemented in other states, and certainly not in the United States Congress.

The theory expressed by our Founding Fathers, that the people know who is best to represent them, seems to be supported by the problems that emerged when states decided to tell their citizens who they could and could not elect to represent them. After all, many of our nations' most beloved and respected leaders, such as Washington, Franklin, and Madison, served both their home

states and America with honor, integrity, and care for decades.

In conclusion, though further study and adjustment may change the effects legislative term limits have had on the effectiveness of the legislative process in the states that have adopted them, until proven otherwise, it would be bad policy to implement term limits in additional states or in the United States Congress.

