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Term Limits for Members of Congress: State Activity

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Summary

In 1990, term-limit advocates began their campaign to limit congressional terms by changing state laws, amending state constitutions, and passing state ballot initiatives, rather than by amending the U.S. Constitution. Their strategy was to circumvent the more difficult and time consuming amendment process at the federal level and go directly to the voters and legislatures of each state. By mid-1995, voters or legislatures in 23 states had approved congressional term limits. In 1995, however, the U.S. Supreme Court ruled that state-imposed limits on congressional tenure violate the Constitution and that term limits can only be set through passage and ratification of an amendment to the U.S. Constitution. Since then, term-limit supporters have been pressing Congress to propose a constitutional amendment, encouraging state legislatures to pass resolutions calling on Congress to propose a constitutional amendment, and campaigning to elect more candidates who support congressional term limits. In particular, some term-limit advocates are also working to elect more candidates who pledge to limit themselves to three House terms and two Senate terms.

Background

Proponents contend that term limits would beneficially increase membership turnover and ensure a constant influx of new Members; that they would partially offset incumbents' built-in advantages and promote competitiveness in congressional elections; and that they would enhance the role of merit rather than seniority in the distribution of power. Opponents argue that term limits would infringe on citizens' rights to determine who serves and for how long, remove many of the most competent and experienced Members from office prematurely, and result in a shift of power from the legislative branch to the executive branch, lobbyists, and congressional staff.

Proponents and opponents of term limits have sought support for their respective positions since the mid-1970s when the recurring debate on congressional terms of office began to shift from length of *term* to length of *service*. Initially, term-limit advocates

sought to attain their goal by amending the U.S. Constitution. In 1990, however, they began concentrating on electoral and legislative processes at the state level (i.e., state initiatives and laws). Their objective was to bypass the cumbersome amendment process at the federal level and take the term-limits issue directly to the voters by means of ballot initiatives.

Ballot Initiatives

1990-1995: Maximum Service and Ballot Access Laws

From 1990 through mid-1995, voters in Arkansas and 20 other states passed ballot initiatives that would have amended their state constitutions or changed state laws to limit the tenure of their Members of Congress.[1] Although the measures differed in their details, most fell into one of two broad categories: (1) specifying a maximum number of terms (or years) that Members would be allowed to serve, either consecutively or within a specified period; or (2) prohibiting a candidate's name from appearing on the ballot if he or she had served beyond a specified period or had been elected more than a specified number of times. Measures of the latter type, called "ballot access proposals," were part of a strategy term-limit advocates adopted in an effort to deflect constitutional challenges.

The strategy of state-imposed limits on congressional tenure raised a number of legal and constitutional questions, one of which was whether a state had the constitutional authority to limit the tenure of its Members of Congress. On May 22, 1995, the U.S. Supreme Court, in a 5 to 4 decision, struck down Arkansas' state-imposed congressional term limits as unconstitutional.[2] This effectively overturned the proposals in the other 22 states (20 states where voters had passed initiatives and two states where the legislature had passed congressional term limits).

1996-1998: Informed Voter Laws, Voter Compliance Laws, and Voter Accountability Laws

Some political observers believed that the *Thornton* decision would end the effort of term-limit proponents to use the initiative process as part of their strategy to attain congressional term limits. They were wrong. Proponents circulated petitions to place another round of term limit initiatives on the 1996 ballot. These initiatives, known as "informed voter laws," "voter compliance laws," or "voter accountability laws" contained such provisions as the following:

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[1] The other states are AK, AZ, CA, CO, FL, ID, ME, MA, MI, MO, MT, NE, NV, ND, OH, OK, OR, SD, WA, and WY. The legislature in New Hampshire and Utah passed laws limiting the tenure of their Members of Congress. As a result, a total of 23 states had passed congressional term limits in some form.

[2] (*U.S. Term Limits, Inc. v. Thornton* [Sup. Ct. Doc. No. 93-1456]). See also CRS Report 95-646, *The Unconstitutionality of State Congressional Term Limits: An Overview of U.S. Term Limits v. Thornton (Sup. Ct. Doc. No. 93-1456)*, by Thomas M. Durbin.

- The state's congressional delegation would be instructed to support a particular constitutional amendment limiting House Members to three terms (six years) and Senators to two terms (12 years)—and no other version of term limits.

- If Congress failed to pass the measure, those who voted against it would have printed beside their names on ballots in subsequent elections some variation of the words, "disregarded, failed to comply with, or violated voter instructions on term limits."

- Non-incumbent candidates for Congress would be offered the opportunity to sign a "term-limits pledge" or the phrase, "declined to take pledge to support term limits" would be printed beside their names on ballots.

- The state's Secretary of State would be directed to determine which candidates and legislators were to have these statements printed beside their names.

- Candidates and legislators could appeal the state's secretary of state's decision to the State Supreme Court.

Some opponents and political observers dubbed these measures "scarlet letter laws" because of the ballot notations. Initiatives of this type were on the November 5, 1996, ballot in 14 states: AK, AR, CO, ID, ME, MO, MT, NE, NV, ND, OR, SD, WA, and WY.[3] Voters approved the measures in nine states: AK, AR, CO, ID, ME, MO, NE, NV, and SD. In seven of these states (AR, CO, ID, ME, MO, NE, SD), the initiative was challenged in the courts and invalidated. In Alaska, the state Attorney General asserted that the Alaska measure was unconstitutional.

On February 12, 1997, the House debated and voted on 11 versions of a proposed constitutional amendment to limit congressional terms (i.e., H.J.Res. 2 and 10 amendments in the nature of substitutes). Seven of the 11 proposals had been passed by voters as ballot initiatives in AR, CO, ID, MO, NE, NV, and SD. Six of these seven were essentially the same, with only minor technical variations, such as punctuation. However, in order to avoid the possibility of having the ballot statement (e.g., "disregarded voter instruction on term limits") beside their names on future ballots, most Members from the nine states voted solely for the version with the precise language of their state's law. Hence, the multiple number of virtually identical measures, and the resulting splintering of votes. None of the 11 versions received the two-thirds majority needed for passage.

In 1998, voters passed "informed voter" initiatives in California (on June 2), and in Nevada (on November 3). However, informed voter laws had already been invalidated in eight of the states where they had been passed, making proponents' continued efforts to secure passage of informed voter laws unlikely.

On April 17, 2000, the U.S. Supreme Court agreed to hear a case (*Cook v. Gralike*) challenging Missouri's 1996 informed voter law. The Court will hear the case during its term that begins in fall 2000.

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[3] Only in Missouri and South Dakota, the initiative applies solely to federal legislators and candidates for Congress rather than state *and* federal lawmakers and candidates.

1998: Term Limits Pledge Laws and Term Limits Declarations

The court decisions invalidating informed voter laws in most of the states where they were passed, led some term limit proponents to work to place on the 1998 ballot another round of initiatives called "term limits pledge laws" or "the Term Limits Declaration." Under these measures:

- candidates for U.S. Congress would be permitted but not required to file a statement with the (state) Secretary of State pledging to serve no more than three terms in the House and two terms in the Senate;

- the state's Secretary of State would be authorized to notify voters of the candidate's pledge using the ballot notation "voluntarily pledges to serve no more than 3 terms" (for House Members) or "voluntarily pledges to serve no more than 2 terms" (for Senate Members);

- the state's Secretary of State would be further authorized to notify voters of candidates who took but failed to honor the pledge, by inserting "broke term limits pledge" beside the candidate's name on every primary, special, and general election ballot.

Voters passed such initiatives on the 1998 ballot in Alaska, Colorado, and Idaho. These measures may also be challenged in the courts.

1999-2000 Term Limits Declarations (Optional Ballot Notations)

Some term-limit advocates are continuing their ballot initiative strategy with a version of the term Limits Declarations that may be described as optional ballot notations. The first of these initiatives appeared on the March 7, 2000, California primary ballot. Voters rejected the measure by a vote of 40.5% in favor to 59.5% opposed.[4] If passed, it would have:

- allowed congressional candidates voluntarily to sign non-binding declarations of intention to serve no more than three House terms and two Senate terms, or to declare their choice not to so limit their terms;

- required that information be put on ballots and State-sponsored voter education materials when authorized by candidates; and

- permitted the names of candidates who had not submitted either declaration to appear on the ballot.[5]

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[4] California Secretary of State, Vote2000–California Primary Election, "State Ballot Measures," [http://Vote2000.ss.ca.gov/returns/prop/00.htm], visited March 8, 2000.

[5] California Secretary of State, Elections Division, 2000 Initiative Update, Proposition 27-767(SA97RF0034), "Elections. Term Limits Declarations for Congressional Candidates. Initiative Statute," [http://www.ss.ca.gov/elections/elections_j_102899.htm], visited January 7, (continued...)

Constitutional Convention

Some term-limit supporters worked to place initiatives on the 1996 ballot instructing state legislators to vote for a federal constitutional convention to consider a term limit amendment. This approach led to the reemergence of a number of such crucial questions as whether the convention can be limited to a single subject. If not, a "runaway convention" might propose any number of amendments or a totally new constitution.

Initiatives that instructed state legislators to vote for a national constitutional convention to consider a term-limit amendment were on the 1996 ballot in 11 states.[6] If a state legislature failed to pass the measure, dissenting legislators would have a statement printed beside their names on ballots in subsequent elections, indicating their failure to comply with voter instruction on term limits. Such initiatives were on the 1996 ballot in AK, AR, CO, ID, ME, MT, NE, NV, OR, WA, and WY. In addition, an initiative in North Dakota would have provided that the people of that state act as the state legislature for the sole purpose of applying to Congress to call a constitutional convention to consider a term limits amendment. Voters in AK, AR, CO, ID, ME, NE, and NV approved initiatives calling for a constitutional convention. The Arkansas initiative was challenged in the courts. On February 24, 1997, the U.S. Supreme Court denied a petition for *certiorari* concerning the constitutionality of this initiative, thus letting stand a ruling by the Arkansas Supreme Court, which had struck down the Arkansas initiative. Since the 1996 general election, some proponents of a national constitutional convention to consider term limits have redirected their activities toward pressing Congress to propose a term-limits amendment.

Earlier this century, increasing support for a national constitutional convention helped proponents of direct election of Senators convince Congress to propose the 17th Amendment.[7] In the early 1900s, an increasing number of state legislatures were calling for a constitutional convention to propose an amendment providing for the election of Senators by popular vote. In 1910, a Senator who had proposed such an amendment claimed that 33 state legislatures supported his proposal "in substance if not in exact phraseology."[8] By 1911, another Member said that 19 states had formally petitioned Congress to call a constitutional convention.[9] Faced with increasing support for a constitutional convention, most Members (including some who opposed direct election) chose to propose a definitive amendment rather than risk the uncertainties a national

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[5] (...continued)
1999.

[6] In most of the states, these same ballot initiatives also instructed federal and state legislators to support congressional term limits, as described earlier (see "informed voter laws"). Some political observers believe that in some states where the initiative failed, it was because a number of voters, who supported term limits did not support a constitutional convention as the vehicle for change.

[7] Prior to the ratification of the 17th Amendment in 1913, state legislatures elected U.S. Senators.

[8] Joseph L. Bristow. "Election of Senators by direct vote," remarks in the Senate, *Congressional Record,* vol. 45, June 18, 1910. p. 8454.

[9] "Election of Senators by Direct Vote," debate in the Senate. In: remarks of Mr. Heyburn, *Congressional Record,* vol. 47, May 24, 1911. p. 1539. (Mr. Heyburn opposed the election of U.S. Senators by popular vote.)

convention might pose. The Senate debated and passed an amendment providing for the direct election of Senators on June 12, 1911 (64 to 24). The House concurred in the Senate version on May 13, 1912 (238 to 39). On May 31, 1913, the Secretary of State proclaimed the 17th Amendment ratified by 36 of the 48 states.

Proposed State Legislation

The legislatures of three states—Idaho, South Dakota, and Utah—have passed proposals for either a constitutional convention or Congress to propose a constitutional amendment to limit congressional tenure. During recent state legislative sessions, various proposals have ranged from expressing support for congressional term limits, or proposing an amendment to the U.S. Constitution, to repealing term-limit ballot initiatives. For example, the state legislature in South Dakota passed legislation repealing the ballot initiative ("informed voter law") that voters passed on November 5, 1996. Proponents circulated a referendum petition and collected signatures in an effort to stay the legislature's repeal and reinstate the law. In March 1998, however, a Federal District Court ruled the initiative unconstitutional. In 1999, a proposal introduced in Arkansas called for Congress or a constitutional convention to propose a constitutional amendment limiting congressional tenure. The measure was referred to committee and subsequently withdrawn from further consideration.

Recent and Upcoming Developments[10]

As part of their strategy to limit congressional tenure, term-limit proponents are working for the election of congressional candidates who voluntarily pledge to limit their own tenure. According to one advocacy group–*U.S. Term Limits*–59 Members of the 106th Congress (45 House Members and 14 Senators) have made that pledge. Ten of the 59 will reach their tenure limit at the end of the 106th Congress. Of those, seven have indicated they will keep their pledge and not run for reelection; three have retracted their pledge. Meanwhile, *U.S. Term Limits* has announced plans to spend $20 million in the year 2000 election cycle on a campaign aimed at educating voters on the benefits of term limits. The campaign includes television and radio ads, telephone banks, direct mail and grass roots organization.

As noted above (pp. 2-3), the U.S. Supreme Court will consider Missouri's 1996 informed voter law during the Court's fall 2000 term.

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[10] See also: CRS Report RS20543, *Term Limits for Members of Congress: Issues in the 106th Congress*, by Sula P. Richardson.