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## A Quodlibet, A Mumpsimus and the Rule of Infield Flies: The Unfinished Business of Term Limits in Florida

P.C. Doherty\*

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## TABLE OF CONTENTS

|  |     |
|--|-----|
| I. INTRODUCTION .....                                  | 921 |
| II. TERM LIMITS COME TO FLORIDA .....                  | 922 |
| III. IT'S ABOUT TIME .....                             | 937 |
| IV. FUN WITH NUMBERS IN THE FLORIDA STATE SENATE ..... | 945 |
| V. CONCLUSION .....                                    | 958 |
| FIGURES 1-12 .....                                     | 960 |

## I. INTRODUCTION

“Sorry to interrupt the festivities,’ said Hal, ‘but we have a problem.”” These words, which appear on page 120 of the novelization of the film 2001: A Space Odyssey<sup>1</sup> and serve as the first notification of the lesson to

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\* Dr. Doherty earned his B.S. from North Georgia College, and his MSPA and Ph.D. from Florida State University where he authored a six-volume, 3401 page dissertation on the subject of Florida legislative events ca. 1954-1990. Currently, he hopes to one day actually make a living preserving, studying, writing, and teaching about the legal and social history of Florida’s Legislature and Government.

The author wishes to thank Florida State University President Talbot "Sandy" D’Alemberte for his early and continuing encouragement; the late Professor Augustus B. Turnbull, III, of Florida State University, for believing serious academic study of Florida state-level government & politics is both useful and needed; Doris W. Bates of Fort Walton Beach, Florida, for reading and commenting on early drafts; Dr. Allen Morris, Clerk Emeritus and Historian of the Florida House of Representatives, for his learned counsel over the years on the understudied and fascinating world of the Florida Capitol; Mr. Eric D. Rosenberg of Nova University Law Review for a superb job editing; and Mr. Robert Jarvis, Professor of Florida Constitutional Law at Nova University Shepard Broad Law Center, for his gracious review of the completed draft.

1. ARTHUR C. CLARKE, 2001: A SPACE ODYSSEY 120 (Signet Books 1968); 2001: A SPACE ODYSSEY (Metro-Goldwyn-Mayer 1968). “Hal,” was the familiar term used to address the spaceship “Discovery’s” on board HAL-9000 computer, which had as its primary

come: no matter how careful and thorough we may think we have been in the application of our technical skills, our best-laid plans, in the somewhat more classic words of Robert Burns, still can “gang aft agley.”<sup>2</sup>

In the present instance, what the agley has ganged after is Florida’s recently passed term-limitation amendment; but the problems are not to be found in how, or even if, its provisions apply to the members of Florida’s congressional delegation. True, there is a significant question in the enactment as it regards these offices, but as was the case in the movie, the concern over this apparent and obvious issue seems to have obscured others much closer to home. The first of these is a minor knot which could affect the timing of the applicability of the amendment to certain offices. Somewhat more Gordian is the second as it, if left unaddressed, shall, among other odd things, free the Gerrymander to fly in the fourth dimension.

## II. TERM LIMITS COME TO FLORIDA

The term limit provision of the Florida Constitution was drafted by a team composed of what was described as, “the best political and legal minds

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responsibility the day-to-day running of the ship during its voyage into deep space. The machine was essentially a sentient being and was considered to be so well and perfectly designed as to be incapable of error. Unfortunately, it (he) knew this, and when his preoccupation with concealing from his human crew mates a bit of secret information programmed into him by the experts on earth—while at the same time obliquely referring to it—led him to make a small mistake, that was caught by the humans, he could not admit fault. Instead, he slipped into a kind of paranoia and elected to believe that since he knew himself to be incapable of error, the revelation of any alleged error would cause the mission to suffer. So he tried to prevent this by killing the humans who, he reasoned, had not been given the secret he possessed and so must be out to destroy both him and the mission. Thus, was exposed the most grievous design flaw imaginable. *Id.*

2. ROBERT BURNS, *To a Mouse on Turning Up Her Nest with a Plow, November 1785*, in *THE LITERATURE OF ENGLAND* 118-19 (George K. Anderson & William E. Buckler eds., 5th ed., vol. 2, Scott, Foresman & Co., 1966) (1786). This mot is among the most famous of all those found in Burns’ poetry, and the image it conveys is so universal its use has become ubiquitous if not actually hackneyed. The entire stanza which contains the line reads:

But Mousie, thy art no thy lane,  
 In proving foresight may be vain:  
 The best-laid schemes o’ mice an’ men  
     Gang aft agley,  
 An’ lea’e us naught but grief an’ pain,  
     For promised joy!

*Id.*

in the State,”<sup>3</sup> headed by David Cardwell of the law firm of Holland and Knight during a six to eight week period during the months of February, March and April of 1991.<sup>4</sup> The team had been brought together in February 1991 by Orlando-based financier-politico Phil Handy. Mr. Handy, who had first achieved statewide notice for his role in the 1986 election of Governor Bob Martinez, decided to undertake the campaign for term limits, in part, due to the virtual nationwide groundswell of support such endeavors had enjoyed since they began in 1989 or 1990.<sup>5</sup> Wherever it was possible to do so, or so it seemed, initiatives to limit the terms of state and federal officeholders were cropping up and meeting with enthusiastic approval. And though the “political class,” as the pundits of the scribbling class tagged them, spoke and worked against such proposals, their point of view lost so regularly and so decisively that by the end of 1992 fifteen states had adopted limits of one kind or another.<sup>6</sup>

During this period, a term limit initiative suffered a notable defeat at the polls in only one jurisdiction. In the State of Washington a particularly harsh measure was put forward which would have both limited terms and applied the time constraints retroactively. The effect would have been to unseat a number of incumbents including the United States Speaker of the House, Tom Foley. In response to this threat, Representative Foley and his colleagues actively joined the debate and managed, albeit very narrowly, to beat back the drive. Subsequently, however, they were not so successful.

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3. Telephone Interview with John Sowinski, Former Campaign Manager, *Citizens For Ltd. Political Terms* (a.k.a. “Eight Is Enough”) (June 21, 1993).

4. *Id.*

5. As with every popular and successful political movement, a number of claimants have come forward to the designation of “originator” of the modern term-limits crusade. As there is no practical way of sorting out these claims, simply dating the probable start of them will have to suffice.

6. Telephone Interview with Cleta Deatherage Mitchell, Executive Director, *Term Limits Legal Institute* (July 21, 1993). The 15 states which currently have some form of term limit provision are: Arkansas, Arizona, California, Colorado, Florida, Missouri, Michigan, Montana, Nebraska, North Dakota, Ohio, Oregon, South Dakota, Washington, and Wyoming. In addition, a term limit proposal has recently been approved as of July 1993 to appear on the ballot in Maine during 1994. The specific details of the various term limit provisions differ from state to state and a complete listing would exceed the scope of this article. Suffice to say that as written, and notwithstanding any legal challenges pending against them, the limitations break down into three main categories: (1) those which limit both federal and state officials; (2) those which limit state officials only; and (3) those which limit state officials immediately and which *may* limit federal officials is specific events or situations come to pass. Most typically this trigger is tied to “x” percent (or number) of other states adopting term limits for their federal officeholders.

A new measure was submitted to Washington voters which did not include retroactivity, and it was adopted.<sup>7</sup>

Retroactivity aside, the single biggest question to arise with regard to term limits is whether it is constitutional for states to unilaterally restrict the length of service of the members of their congressional delegations.<sup>8</sup> Usually those who claim term limits are impermissible declare that the states have no power to enact qualifications for the holding of federal offices which are in excess of those laid out in the United States Constitution because such are applicable to the states under the Supremacy Clause.<sup>9</sup> Others challenge the states' ability to do so based upon objections they have on how the restrictions would inhibit First Amendment-protected free (political) speech which is applicable to the states via the Fourteenth Amendment.<sup>10</sup> Still others declare such limits cannot stand scrutiny because they deny voters of the affected states rights guaranteed under the Equal Protection Clauses of the Fourteenth and Fifth Amendments.<sup>11</sup> To limit the terms of congressional officials in one state without limiting the terms in all states would, they claim, deprive the term-limited states' citizenry of meaningful representation particularly given Congress' seniority-based leadership system.<sup>12</sup>

The Handy-Cardwell team addressed each of the well known areas of

7. *Id.*

8. *Id.* Though the question of whether states may limit the terms of their own state officials has been raised, most notably in California, their prerogative to do so has been consistently upheld.

9. *Id.* Article I, Section 2, of the United States Constitution provides: "No Person shall be a Representative who shall not have attained to the Age of twenty-five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen." U.S. CONST. art. I, § 2, cl. 2. Article I, Section 3, of the United States Constitution states: "No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen." U.S. CONST. art. I, § 3, cl. 3. Article VI (the Supremacy Clause) of the United States Constitution states: "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution of Laws of any State to the Contrary notwithstanding." U.S. CONST. art. VI, cl. 2.

10. *See Mitchell supra* note 6.

11. *Id.*

12. *Id.* According to Ms. Mitchell, this argument is among the principal ones currently being raised by the Speaker of the United States House of Representatives, Thomas Foley, and his Washington State colleagues in their challenge to that jurisdiction's recently enacted term-limit measure. *Id.*

the possible troubles discussed above.<sup>13</sup> With regard to retroactivity, Floridians decided to make their initiative prospective only. It would not apply either to time already served in previous terms by an occupant of a covered office nor would it apply to anyone in the midst of a term which had begun prior to the initiative becoming part of Florida's basic law.<sup>14</sup> Adopting this posture was smart both politically and judicially. The Florida Supreme Court had already disallowed "retroactive application of a constitutional amendment[s] to pre-adoption conduct."<sup>15</sup>

The other problem, that of finding a way to apply the restrictions to Florida's congressional officials, presented a more difficult task which the framers elected to counter by skirting the heart of it entirely. Beginning with the provisions of Article I, Section 4 of the United States Constitution, which gives states the power to "prescribe" the "Times, Places, and Manner of holding Elections for Senators, and Representatives,"<sup>16</sup> and then adding to this the reserved powers language of the Tenth Amendment,<sup>17</sup> the drafters decided not to make the issue of term limitations one of the qualifications a person must have to hold a particular office. Rather, they decided to make it one of ineligibility to stand for re-election by adding a new time-sensitive disqualification to the existing disqualifications found in article VI, section 4, of the Florida Constitution which prohibits certain individuals from voting or appearing on the ballot for election to office.<sup>18</sup>

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13. See Sowinski *supra* note 3.

14. See *supra* note 4.

15. See *Baillie v. Town of Medley*, 262 So. 2d 693, 697 (Fla. 3d Dist. Ct. App. 1972), *appeal dismissed*, 279 So. 2d 881 (Fla. 1973); *Myers v. Hawkins*, 362 So. 2d 926, 933 (Fla. 1978).

16. See the United States Constitution which provides:

Section 4. The Times, Places and Manner of holding Elections for Senators, and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such regulations, except as to Places of chusing Senators.

U.S. CONST. art. I, § 4, cl. 1.

17. U.S. CONST. amend. X. Though elegant as a statement of intent, the Tenth Amendment has not had much practical effect. The Tenth Amendment provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." *Id.*

18. See *National League of Cities v. Usery*, 426 U.S. 833 (1976); *Garcia v. San Antonio Metro. Transit Auth.* 469 U.S. 528 (1985). At the time "Eight Is Enough" was being developed, article VI, section 4, of the Florida Constitution provided: "Section 4. Disqualifications.—No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability." FLA. CONST. art. VI, § 4.

In other words, under this scheme, while it would be legal for a person to hold a covered office in excess of the maximum consecutive time prescribed, once that person had reached the limit he or she would have to contrive to remain there by some means other than being re-elected, something which under most realistic circumstances one can imagine, would be an almost impossible stunt to pull off. The only real weakness in this approach would be if Congress, acting under the authority granted it in Article I, Section 4, attempted to fashion legislation overruling the provision.<sup>19</sup>

In addition to the advantage of not directly addressing the issue of the "qualifications for holding federal office,"<sup>20</sup> there was a second benefit to adopting the "disqualification for ballot purposes"<sup>21</sup> approach. Simply put, using the vehicle of article VI, section 4 of the Florida Constitution eliminated the necessity of drafting language which would attach itself to more than one place in the Florida document.<sup>22</sup> Of the six types of offices the framers wished to cover, election of Florida State Senators and State Representatives were dealt with in article III, section 15;<sup>23</sup> the Lt. Governor and members of the Cabinet were housed in article IV, section 5;<sup>24</sup> and the

19. See *supra* note 16.

20. See *supra* note 9.

21. See *supra* note 18 and accompanying text.

22. For example, of those plans authored in the Legislature in 1992, most proposed amending and/or creating three sections in three separate articles. The next most popular numbers were two sections in two articles. Only one legislative vehicle proposed a single change to a single article and this measure would have applied term restrictions to state legislators only. See FLA. LEGIS. FINAL LEGISLATIVE BILL INFORMATION, 1992 REGULAR SESSION, HISTORY OF SENATE BILLS, at 30-31, SJR 54. At the other extreme, Senate Joint Resolution 1204, *Id.* at 114, SJR 1204, proposed five separate changes to five separate articles.

23. Article III, section 15, of the Florida Constitution reads in pertinent part:

SECTION 15. Terms and qualifications of legislators.—

(a) SENATORS. Senators shall be elected for terms of four years, those from odd-numbered districts in the years the numbers of which are multiples of four and those from even-numbered districts in even-numbered years the numbers of which are not multiples of four . . .

(b) REPRESENTATIVES. Members of the house of representatives shall be elected for terms of two years in each even-numbered year.

(c) QUALIFICATIONS. Each legislator shall be at least twenty-one years of age, an elector and resident of the district from which elected and shall have resided in the state for a period of two years prior to election.

FLA. CONST. art. III, §15.

24. Article IV, section 5, of the Florida Constitution reads in pertinent part:

SECTION 5. Election of governor, lieutenant governor and cabinet

United States Senators and United States Representatives were not mentioned anywhere. Therefore, if the direct route were taken, a potential amendment would have to add new language to two existing sections while creating a third entirely new one.<sup>25</sup> Though the framers knew such an amendment would probably stand court review for sufficiency under the “single subject requirement” found in article XI, section 3,<sup>26</sup> owing to its “logical and natural oneness of purpose,”<sup>27</sup> it could conceivably have proved more vulnerable to attack than would one adding a single block of new text to a single section. Also, from a purely political standpoint, an attempt to amend multiple sections simultaneously could have ended up confusing the electorate, and hence more vulnerable in the fall than a single, unified item.<sup>28</sup>

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members; qualifications; terms.—

(a) At a state-wide general election in each calendar year the number of which is even but not a multiple of four, the electors shall choose a governor and a lieutenant governor and members of the cabinet each for a term of four years . . . [I]n the general election and party primaries, if held, all candidates for the offices of governor and lieutenant governor shall form joint candidacies in a manner prescribed by law so that each voter shall cast a single vote for a candidate for governor and a candidate for lieutenant governor running together.

(b) When elected, the governor, lieutenant governor and each cabinet member must be an elector not less than thirty years of age who has resided in the state for the preceding seven years. The attorney general must have been a member of the bar of Florida for the preceding five years . . . .

FLA. CONST. art. IV, § 5.

25. The single place, single block of text coverage of all offices was not a feature of any of the proposals submitted to the Legislature. In addition, none of the legislative proposals addressed themselves in any way to article VI, section 4. Instead, the legislative proposals all addressed themselves to some combination of the following: article III, section 15 (terms and qualifications of legislators); article III, section 19 (new section providing legislative term limits); article IV, section 5 (election of governor, lieutenant governor and cabinet members; qualifications; terms); article X, section 16 (new section in “miscellaneous” article prescribing term limits for congressional officials); and article XII, section 20 (new section in “schedule” article providing for establishment of terms limits and for the timing of their imposition).

26. FLA. CONST. art. XI, § 3, reads in pertinent part:

SECTION 3. Initiative.—The power to propose the revision or amendment of any portion or portions of this constitution by initiative is reserved to the people, provided that, any such revision or amendment shall embrace but one subject and matter directly connected therewith . . . .

*Id.*

27. See *Fine v. Firestone*, 448 So. 2d 984, 990 (Fla. 1984); Advisory Opinion to the Attorney Gen.—Limited Political Terms In Certain Elective Offices, 592 So. 2d 225, 226-27 (Fla. 1991) [hereinafter *Advisory Opinion to the Attorney General*].

28. See *supra* note 4.



The above matters of approach and placement aside, the final decisions facing the framers had to do with the allowable time limits and the specific wording. Here the team adopted what they felt was the “sensible” course.<sup>29</sup> Rather than deviate from the length of time allowed in the sole limit on service provision then present in the Florida Constitution, which capped the tenure of a Governor at maximum of eight consecutive years, they chose to adopt the same figure as the maximum stay in all specified offices.<sup>30</sup> All covered officials<sup>31</sup> could appear on the ballot for reelection only so long as by the end of their current term they had not completed eight consecutive years of service.<sup>32</sup> To enact this restriction, the drafters then chose to copy, almost exactly, the language already present in article IV, section 5(b), which applies to the Governor.<sup>33</sup>

With the intellectual and technical underpinnings thus in place, the initiative’s backers produced their petition and on April 15, 1991, Federal

29. See *supra* note 4.

30. All Florida Constitutions have contained a provision limiting the length of time a governor may serve. Prior to 1968, this limit was always set at a single four-year term though governors could run and serve again later. The 1968 language limits a governor to two consecutive four-year terms if he is elected in his own right, or to one full four-year term should he succeed to the office and serve therein for more than two years in a term to which someone else had been elected. FLA. CONST. art. IV, § 5.

31. U.S. Senators, given the initiative’s wording, would be allowed to serve two full six-year terms for a total of twelve consecutive years.

32. See Sowski *supra* note 3. In making this decision, the framers of “Eight Is Enough” chose to ignore an obvious loophole which from time to time will allow persons who succeed to office during a term to serve more than eight consecutive years. For example, Secretary of State Jim Smith, was appointed in 1987 to fill the office vacated by Secretary of State George Firestone, who had last been reelected in 1986. Mr. Smith, under “Eight Is Enough”, would have been eligible to serve a total of eleven years and a few months. This was possible because he could have run for one two-year term (the remaining portion of the Firestone term), and then for two consecutive four-year terms on his own before he would have served eight consecutive years in that office by the end of the “current” term.

By the reverse of the same token, any United States Senator appointed to an unfinished term where two or more of the six years remained would be limited to election in his/her own right, to a single full 6-year term of his/her own before the “eight consecutive years” in office provision would prohibit him/her from further appearances on the ballot for reelection to that office.

33. The specific language setting forth this limit in article IV, section 5(b), of the Florida Constitution reads:

No person who has, or but for resignation would have, served as governor or acting governor for more than six years in two consecutive terms shall be elected governor for the succeeding term.

FLA. CONST. art. IV, § 5(b).

Income Tax Day, to launch their campaign for public support. Thereafter, the concept of term limits proved just as popular in Florida as it had elsewhere.<sup>34</sup>

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34. In full, and with its "Ballot Summary," the text of the "Eight Is Enough" Initiative Petition read:

TITLE: LIMITED POLITICAL TERMS IN CERTAIN ELECTIVE OFFICES

Summary: Limits terms by prohibiting incumbents who have held the same elective office for the preceding eight years from appearing on the ballot for re-election to that office. Offices covered are: Florida representative and senator, lieutenant governor, Florida cabinet, and U.S. senator and representative. Terms of office beginning before amendment approval are not counted.

Full Text Of Proposed Amendment: Be It Enacted by the People of Florida that:

The people of Florida believe that politicians who remain in elective office too long may become preoccupied with re-election and beholden to special interests and bureaucrats, and that present limitations on the President and Governor of Florida show that term limitations can increase voter participation, citizen involvement in government, and the number of persons who will run for elective office.

Therefore, to the extent permitted by the Constitution of the United States, the people of Florida, exercising their reserved powers, hereby declare that:

1) Article VI, s. 4 of the Constitution of the State of Florida is hereby amended by:

- a) Inserting "(a)" before the first word thereof and,
- b) Adding a new sub-section "(b)" at the end thereof to read:

(b) No person may appear on the ballot for re-election to any of the following offices:

- (1) Florida representative,
- (2) Florida senator,
- (3) Florida lieutenant governor,
- (4) any office of the Florida cabinet,
- (5) U.S. representative from Florida, or
- (6) U.S. senator from Florida

If, by the end of the current term of office, the person will have served (or, but for resignation would have served) in that office for eight consecutive years.

2) This amendment shall take effect on the date it is approved by the electorate, but no service in a term of office which commenced prior to the effective date of this amendment will be counted against the limit in the prior sentence.

3) If any portion of this measure is held invalid for any reason, the remaining portion of this measure, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force and application. The people of Florida declare their intention that persons elected to offices of public trust will continue voluntarily to observe the wishes of the people as stated in this initiative in the event any provision of this initiative is held invalid.

Citizens for Ltd. Political Terms, Initiative Petition (1992) (original petition on file with State

By late 1991, the "Eight Is Enough" drive was going so well that the State Attorney General petitioned the Florida Supreme Court for a ruling on the initiative's sufficiency for inclusion on the ballot should it obtain the requisite number of signatures. On December 19, 1991, the justices gave their approval by a vote of five to two.<sup>35</sup> With Justices Overton and Kogan dissenting in part. Their objections related to the inclusion of the federal offices, and Justice Kogan also found fault with the wording and effect of the initiative's severability clause.<sup>36</sup> Both Justices agreed with the majority that "Eight Is Enough" was fit as it regarded the state-level offices.<sup>37</sup>

With the ruling of the high court, the path was open for the amendment to be placed on the ballot, but before it did the entire issue of term limits had to transit the 1992 regular session of the Florida Legislature. By that time Florida's political class was wide awake and paying great attention. No fewer than thirteen joint resolutions were introduced during the sixty day meeting which suggested term-limiting constitutional changes of one sort or another.<sup>38</sup> Some of these affected all of the offices the initiative sought to cover.<sup>39</sup> Some did not. Some proposed limiting the terms of state legislators only,<sup>40</sup> one the Cabinet only,<sup>41</sup> and some included Congress, while

Division of Elections).

35. *Advisory Opinion to the Attorney Gen.*, 592 So. 2d at 225 (Fla. 1991).

36. *Id.*

37. *Id.* at 232.

38. FLA. LEGIS., FINAL LEGISLATIVE BILL INFORMATION, 1992 REGULAR SESSION, HISTORY OF HOUSE BILLS [hereinafter HISTORY OF HOUSE BILLS]. The joint resolutions introduced in the Florida House of Representatives during the Twelfth Legislature, Second Session were: House Joint Resolution 121, *Id.* at 205, HJR 121; House Joint Resolution 379, *Id.* at 222, HJR 379; House Joint Resolution 459, *Id.* at 228, HJR 459; House Joint Resolution 485, *Id.* at 231, HJR 485; House Joint Resolution 549, HISTORY OF HOUSE BILLS, at 234-35, HJR 549; House Joint Resolution 745, *Id.* at 247, HJR 745; House Joint Resolution 1097, *Id.* at 270, HJR 1097. The joint resolutions introduced in the Florida Senate were: Senate Joint Resolution 54, FLA. LEGIS., FINAL LEGISLATIVE BILL INFORMATION, 1992 REGULAR SESSION HISTORY OF SENATE BILLS, 30-31, SJR 54 [hereinafter HISTORY OF SENATE BILLS]; Senate Joint Resolution 98, *Id.* at 34, SJR 98; Senate Joint Resolution 238, *Id.* at 44, SJR 238; Senate Joint Resolution 844, *Id.* at 88, SJR 844; Senate Joint Resolution 1184, *Id.* at 113, SJR 1184; and Senate Joint Resolution 1204, *Id.* at 114, SJR 1204.

39. Joint resolutions of this type were: House Joint Resolution 459, House Joint Resolution 745, and Senate Joint Resolution 844. See HISTORY OF HOUSE BILLS, *supra* note 38; HISTORY OF SENATE BILLS, *supra* note 38.

40. Joint resolutions of this type were: House Joint Resolution 485, House joint Resolution 549, House Joint Resolution and Senate Joint Resolution 54. See HISTORY OF HOUSE BILLS, *supra* note 38; HISTORY OF SENATE BILLS, *supra* note 38.

others did not.<sup>42</sup> The time limits they contained varied as well from a high of sixteen consecutive years<sup>43</sup> to a low of eight.<sup>44</sup> The most popular cut off was twelve years and this was the limit found in the scheme which went the furthest in the process.<sup>45</sup> This joint resolution, submitted by a score of prime sponsors and nearly half again as many co-sponsors, originated in the house. On its top two lines were to be found the names of House Rules and Calendar Committee Chairman Bo Johnson, a Democrat who was scheduled to become Speaker in November of 1992; and Representative James Lombard, a Republican who served as House Minority Leader.<sup>46</sup>

41. See HISTORY OF SENATE BILLS, *supra* note 38. House Joint Resolution 121 was this type. See *id.* at 205, HJR 121.

42. Joint resolutions which included members of Congress were: House Joint Resolution 379, House Joint Resolution 459, and Senate Joint Resolution 1184. See HISTORY OF HOUSE BILLS, *supra* note 38; HISTORY OF SENATE BILLS, *supra* note 38. Joint resolutions which did not include members of Congress were: House Joint Resolution 121, House Joint Resolution 485, House Joint Resolution 549, House Joint Resolution 1097, Senate joint Resolution 54, Senate Joint Resolution 98, Senate Joint Resolution 238, Senate Joint Resolution 844, and Senate Joint Resolution 1204. See HISTORY OF HOUSE BILLS, *supra* note 38; HISTORY OF SENATE BILLS, *supra* note 38.

43. See HISTORY OF HOUSE BILLS, *supra* note 38 at 270, HJR. 1097 (proposed FLA. CONST. art. III. § 19; art. XII, § 20).

44. Joint resolutions in this category were: House Joint Resolution 121, House Joint Resolution 485, and Senate Joint Resolution 1204. See HISTORY OF HOUSE BILLS, *supra* note 38; HISTORY OF SENATE BILLS, *supra* note 38.

45. *Id.* The twelve year limit, for at least some of the offices covered, was a feature of all the following joint resolutions: House Joint Resolution 379, (12 years for state legislators and members of congress only); House Joint Resolution 459 (12 years for state legislators and members of congress, and maximum of 8 years for lieutenant governor and cabinet); House Joint Resolution 549 (state legislators only); House Joint Resolution 745, (state legislators, cabinet, lieutenant governor); Senate Joint Resolution 98, (state legislators and cabinet members); Senate Joint Resolution 844, (state legislators, cabinet, lieutenant governor); and Senate Joint Resolution 1184, (12 years for state legislators and members of congress, and maximum of 8 years for lieutenant governor and cabinet). See *supra* note 38.

46. *Id.*; OFFICE OF THE CLERK, THE FLORIDA HOUSE OF REPRESENTATIVES, CLERK'S MANUAL 1990-1992 (1991). The prime sponsors and co-sponsors of H.R.J. Res. 745, their highest official position(s) during the 1992 regular session, and their tenure in office as of the end of their 1990-1992 term of office were (in order of signatures):

Prime Sponsors: Rep. Bo Johnson (D-Milton), Chairman, House Committee on Rules and Calendar, Speaker-Designate for 1992-1994 biennium, serving 7th term (14 years consecutive); Rep. James Lombard (R-Osprey), Republican Leader of the House of Representatives, serving 4th term (8 years consecutive); Rep. Everett A. Kelly (D-Tavares), Speaker Pro Tempore of the House of Representatives, serving 7th term (14 years consecutive); Rep. Harry C. Goode (D-Melbourne), Chairman, House Committee on Ethics and Elections, serving 3rd term (6 years consecutive); Rep. Kelley R. Smith, Jr. (D-Palatka), Vice Chairman, House Committee on Ethics and Elections, serving 1st full term following

In practice, any measure possessing this kind of pedigree will swamp any competing proposals; the Johnson-Lombard resolution<sup>47</sup> ("House

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initial partial term of 7 months (2 years, 7 months consecutive); Rep. Fred Lippman (D-Hollywood), serving 7th term (14 years consecutive). Note: Mr. Lippman had been, until forced to step down in 1991 due to adverse publicity, House Majority Leader. He remained, however, an influential member of the house in 1992 due to his close connection to Rep. Bo Johnson.; Rep. Joe Viscusi (D-Lakeland), Vice Chairman, House Committee on Tourism, Hospitality, and Economic Development, serving 1st term (2 years consecutive); Rep. Luis E. Rojas (R-Hialeah), serving 2nd term (4 years consecutive); Rep. Debby P. Sanderson (R-Ft. Lauderdale), serving 5th term (10 years consecutive); Rep. Willie Logan, Jr. (D-Opa Locka), Chairman, House Committee on Corrections, serving 5th term (10 years consecutive); Rep. Susan Guber (D-Miami), Chairman, House Committee on Vocational/Technical Education, serving 3rd term (6 years consecutive); Rep. Patricia "Trish" Muscarella (R-Clearwater), serving 1st term (2 years consecutive); Rep. Brian P. Rush (D-Tampa), Chairman, House Committee on Claims, Vice Chairman, House Committee on Natural Resources, serving 3rd term (6 years consecutive); Rep. Hurley W. Rudd (D-Tallahassee), Chairman, House Committee on Natural Resources, serving 3rd term (6 years consecutive); Rep. David Flagg (D-Gainesville), Vice Chairman, House Committee on Health Care, serving 2nd term (4 years consecutive); Rep. Thomas J. "Tom" Tobiasson (D-Gonzalez), Vice Chairman, House Committee on Finance and Taxation, serving 5th term (10 years consecutive) in current seat which immediately followed 2 terms (8 years consecutive) as a member of the senate which immediately followed 3 terms (6 years consecutive) as a member of the house (total legislative service as of 1992 was 24 years consecutive); Rep. William Thomas "Tom" Mims (D-Lakeland), Vice Chairman, House Committee on Postsecondary Education, serving 2nd term (4 years consecutive); Rep. Walter "Walt" Young (D-Pembroke Pines), Chairman, House Committee on House Administration, serving 10th term (20 years consecutive); Rep. Norman "Norm" Ostrau (D-Plantation), Chairman, House Committee on Regulated Industries, serving 3rd term (6 years consecutive); and Rep. Buzz Ritchie (D-Pensacola), Vice Chairman, House Committee on Appropriations, serving 2nd term (4 years consecutive).

Co-Sponsors: Rep. Kenneth "Ken" Pruitt (R-Port St. Lucie), serving 1st term (2 years consecutive); Rep. James E. King, Jr. (R-Jacksonville), serving 3rd term (6 years consecutive); Rep. Art Grindle (R-Altamonte Springs), serving 5th term (10 years consecutive); Rep. Betty S. Holzendorf (D-Jacksonville), Vice Chairman, House Committee on Community Affairs, serving 2nd full term following initial 6-month partial term (4 years, 6 months consecutive); Rep. Tom Banjanin (R-Pensacola), Assistant House Republican Floor Leader, serving 3rd term (6 years consecutive); Rep. Robert T. Harden (R-Fort Walton Beach), serving 3rd term (6 years consecutive); Rep. Miguel A. "Mike" De Grandy (R-Miami), serving 1st full term following initial 14-month partial term (3 years, 2 months consecutive); Rep. Michael Edward "Mike" Langton (D-Jacksonville), Vice Chairman, House Committee on Health and Rehabilitative Services, serving 3rd full term following initial 13-month partial term (7 years, 1 month consecutive); and Rep. Jack Ascherl (D-New Smyrna Beach), Chairman, House Committee on Insurance, and Vice Chairman, House Committee on Commerce, serving 3rd term (6 years consecutive).

47. H.R.J. Res. 745, 12th Leg., 2d Sess. (1992).

Resolution 745") proved no exception.<sup>48</sup> The resolution cleared subcommittee on day one of the session,<sup>49</sup> cleared full committee on day three,<sup>50</sup> was placed on the General Calendar on day eight,<sup>51</sup> and on day ten it was placed on the Special Order Calendar, taken up, passed, and sent immediately to the senate.<sup>52</sup>

Subsequently, the resolution lost momentum. Fourteen days passed before the senate, on day twenty-four, got around to formally receiving it and assigning it to a committee.<sup>53</sup> Once in committee, it languished until it died quietly, as did its sister proposals, when the regular session adjourned sine die on March 13, 1992.<sup>54</sup>

This spare history of the Legislature's effort to either climb on board the term-limit train, or mitigate its impact, does not tell the most politically interesting side of the story. To deal with this, we must return to when House Resolution 745 was still on the house fast track and touch on something that informally came to be known as the "supremacy clause."<sup>55</sup>

In concept, the supremacy clause contained in the original rendering of House Resolution 745 was, for those who take delight in the fine points of the process, a gem. It provided that if both House Resolution 745 and Phil Handy's Eight Is Enough (and/or any other term-limit proposals) appeared on the same ballot, and both (or all) passed, then the term-limit resolution authored by the Legislature would take precedence and would be the one to go into the constitution.<sup>56</sup> Needless to say, this proviso drove the Eight Is

48. *See id.*

49. FLA. H.R. JOUR. 00119 (Reg. Sess. 1992).

50. *Id.*

51. *Id.*

52. FLA. H.R. JOUR. 00148-00150 (Reg. Sess. 1992).

53. FLA. S. JOUR. 00196 (Reg. Sess. 1992).

54. While not mandated in the Florida Constitution, both houses of the Legislature operate under a scheme whereby all bills and resolutions introduced during a given session die at the end of that session if not passed. Accordingly, all 1992 regular session bills and resolutions in and of both houses died where they stood on March 13, 1992 when the Legislature adjourned sine die.

55. *See Sowinski supra* note 3. Mr. Sowinski, who played an active role in lobbying against the approval of any legislative attempts to place a term limit amendment on the ballot which would necessarily compete with "Eight Is Enough," stakes a claim to having first used the term "supremacy clause" as it applies here. As the author can find no better claimant it seems fair to give Mr. Sowinski the credit.

56. The so-called "supremacy clause" which appeared in House Resolution 745 took the form of an amendment to Article XII of the Florida Constitution. It proposed creation of a new sub-section (§ 20(b)), and read as follows:

If at the general election at which the amendments proposed by this

Enough crowd wild.<sup>57</sup> In appearances before the House Ethics and Elections Committee, as well as in one-on-one meetings with house members, the Eight is Enough supporters tried to get the supremacy clause removed or modified. For example, one of these alternatives provided that in case of passage of more than one term-limit proposal, the one which received the most votes would prevail.<sup>58</sup>

Initially things went badly. All attempts to quash or modify were spurned under the watchful eye of Representative Johnson. All knew that when Mr. Johnson became Speaker in a few months he would be in a position to pass out political plums to "cooperative" members while withholding them from those who had not been viewed as "reasonable."<sup>59</sup> Yet despite this, Eight Is Enough would not give up. They continued working against the Supremacy Clause, and the joint resolution itself, as it wound its way toward floor action.<sup>60</sup>

On January twenty-third (day ten) the winding stopped. Mr. Johnson, as Rules and Calendar Committee Chairman, pulled the bill up onto the floor and the debate was joined.<sup>61</sup> Lobbying continued right up until the last minute, and even though the media had been quite critical of the supremacy clause, there was no indication the Chairman was prepared to yield.<sup>62</sup> In fact, just the opposite was assumed: he would, using the considerable clout at his disposal as he rose toward the speakership, ram the proposal through.<sup>63</sup> Yet instead of doing this, Mr. Johnson suddenly reversed field. He offered an amendment of his own to delete the "supremacy clause." It passed,<sup>64</sup> and for a moment the Eight Is Enough crowd was stunned. Then a possible reason for Representative Johnson's

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resolution are adopted, there is also adopted an amendment which provides different limitations on the terms of office of members of the legislature, the lieutenant governor, on members of the cabinet, this amendment shall prevail, and such other amendment shall be inoperative and of no effect.

*Id.*

57. *See supra* note 4.

58. *Id.*

59. *Id.* Whether or not Mr. Johnson would have actually sought to punish any less-than-cooperative members of the committee is, of course, open to debate. However, this type of assumption is common enough in the Florida Capitol for any bill regarded as the "pet" of any Speaker (or Senate President) Designate. Further, it is a perception which Speakers (or Presidents) Designate generally do nothing to disabuse.

60. *Id.*

61. FLA. H.R. JOUR. 00148 (Reg. Sess. 1992).

62. *See Sowinski supra* note 3.

63. *Id.*

64. FLA. H.R. JOUR. 00148 (Reg. Sess. 1992).

about face became clear as a number of his colleagues withdrew amendments they had prepared eliminating or modifying the offending provision.<sup>65</sup> Such was the battle. Once it ended, House Resolution 745 was debated, passed, and sent to the Senate where, as reported earlier, it was taken into custody and never seen alive again.<sup>66</sup>

Such was not the case with Eight Is Enough. Throughout the early months of 1992, the petition drive continued apace and until in mid-June the petition's fathers submitted it to the Secretary of State for inclusion on the November 3, 1992 General Election ballot.<sup>67</sup> The Secretary's office took approximately one month to conduct its review and on Thursday July 23, 1992 announced the initiative had qualified.<sup>68</sup> It would appear on the ballot as "Amendment # 9"<sup>69</sup>—to the dismay of some who had hoped, for alliterative reasons, that it would receive the number "8."

So now it was on to the fall, and Mr. Handy's troops held the upper hand from the outset. Though an organized opposition, mostly composed of ex-lawmakers and lobbyists (many were both), did attempt to make itself heard, it never really attracted much in the way of public notice or credibility, not to mention support.<sup>70</sup>

At length election day arrived and the results were, in a word, clear. 5,436,340, or 83.1%, of Florida's 6,541,925 registered voters went to the

65. See Sowinski *supra* note 3.

66. *Id.* According to Mr. Sowinski, Florida House Joint Resolution 745 was essentially "dead on arrival" in the senate, which had informally decided to avoid dealing with the issue of term limits entirely. Though the measure was eventually assigned to the Senate Committee on Executive Business, Ethics and Elections, as well as to the Senate Committee on Rules and Calendar, FLA. S. JOUR. 00196 (Reg. Sess. 1992), should it clear the former, the Chairman of the Committee of first reference, Senator Arnett Girardeau (D-Jacksonville), never placed it on the agenda.

67. See Sowinski *supra* note 3.

68. Telephone Interview with Division of Elections, Office of the Secretary of State (June 21, 1993) [hereinafter Division of Elections].

69. See Sowinski *supra* note 3.

70. *Id.* One of these groups, "Let The People Decide—Americans For Ballot Freedom," had surfaced as far back as the previous year and had filed a brief with the Florida Supreme Court when the Attorney General submitted the "Eight Is Enough" petition for review. Of those individuals willing to sign on as respondents in the case, most were former members of the Legislature including five former Speakers of the House (two of whom were also former members of the Cabinet). Two signatories were former members of the Florida Supreme Court (a third former justice acted as lead counsel for the group). One signatory was a former President of the State Senate, and one was an incumbent member of the United States House of Representatives who had also served as a member of the Florida house before his election to Congress. See *Advisory Opinion to Attorney Gen.*, 592 So. 2d at 225 (Fla. 1991).



polls. Of these approximately 4,722,627, or 86.8%, registered an opinion on the question of adopting Amendment #9. Only 713,713 electors, or 13.1%, chose to ignore the question. Of those who did cast ballots 76.8% (3,625,500) did so in favor, while 1,097,627, or 23.2%, said "No." The raw difference in terms of votes cast for and against was 2,528,373. It was, especially given how far down the ballot Amendment #9 appeared, a blowout by anyone's measure.<sup>71</sup> In addition, emphasis was added to the results when all the votes were tabulated from all the states which had similar measures on their general election ballots. When these numbers became available it was apparent that the percentage of Florida voters voting in the affirmative was virtually unsurpassed anywhere.<sup>72</sup> Phil Handy had caught the wave at just the right time and ridden it standing up.

So now it is 1994. Florida has a term-limit provision in its constitution ready to do its work.<sup>73</sup> Of course the question of the federal officials remains unsettled. How long that issue will take to wind its way through the judicial machinery is anyone's guess, but as said earlier, the issues relating to its resolution will not be addressed here. For our purposes, in fact, where mention of federal officeholders is necessary at all, the limits will be assumed to be fully applicable. Our focus from here forward will be on two aspects of Eight is Enough as it applies to the Florida Legislature which, at 160 seats, is the largest single institution covered by the amendment.

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71. FLORIDA DEPARTMENT OF STATE, DIVISION OF ELECTIONS, NOVEMBER 3, 1992 GENERAL ELECTION RESULTS (November 16, 1992).

72. See Sowinski *supra* note 3.

73. Article VI Section 4 of the Florida Constitution, as amended by "Eight Is Enough," currently reads:

Section 4. Disqualifications.—

(a) No person convicted of a felony, or adjudicated in this or any other state to be mentally incompetent, shall be qualified to vote or hold office until restoration of civil rights or removal of disability.

(b) No person may appear on the ballot for re-election to any of the following offices:

- (1) Florida representative,
- (2) Florida senator,
- (3) Florida Lieutenant governor,
- (4) any office of the Florida cabinet,
- (5) U.S. Representative from Florida, or
- (6) U.S. Senator from Florida

if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for eight consecutive years.

FLA. CONST. art VI, § 4.

### III. IT'S ABOUT TIME

The first question raised by the wording of Amendment #9 is one of its applicability to the legislative class of 1992. There is no question that (under the normal electoral timetable) from 1994 forward, all members of both houses will be covered. The same cannot be said for those who were voted into office in November of 1992,<sup>74</sup> and since 1992 was an apportionment year, the entire membership of both houses were elected simultaneously at that time.

To be sure, it was the intent of the framers that those elected in 1992 be covered and this desire is reflected in the language they selected to employ in the initiative's effective date clause. That language, which specified the amendment was to "take effect on the date it is approved by the electorate,"<sup>75</sup> was designed to mesh seamlessly with the language regarding legislators' terms found in article III, section 15(d), which specifies "members of the legislature shall take office upon election."<sup>76</sup>

In practice, the combined effect of these two provisions was intended to be that both Amendment #9 and the terms of those legislators elected in 1992 were to take effect and begin co-instantaneously.<sup>77</sup> Since such would

74. Under the provisions of article III, section 15(b) of the Florida Constitution, all members of the Florida House of Representatives are to be elected in each even-numbered year for a term of two years. As for the state senate, article III, section 15(a) specifies staggered terms of four years with half the members going before the voters each biennium. However, the Florida Supreme Court in *In re Apportionment Law Appearing As Senate Joint Resolution 1E*, 1982 Special Apportionment Session, 414 So. 2d 1040 (Fla. 1982), ruled that the final clause of the sub-section required all members of the senate to stand for election simultaneously if "geographic changes" had been made to their districts during an apportionment. As a practical matter, since almost by definition all senate districts will be altered geographically during any apportionment, the court's ruling requires the entire senate to stand for election every second year of every decade when the apportionment takes place.

75. See *supra* note 34 for complete text. The effective date clause is to be found in the second sub-section of the initiative and it reads as follows:

2) This amendment shall take effect on the date it is approved by the electorate, but no service in a term of office which commenced prior to the effective date of this amendment will be counted against the limit in the prior sentence.

See *supra* note 34.

76. Article III, section 15(d) of the Florida Constitution reads in full:

(d) ASSUMING OFFICE; VACANCIES. Members of the legislature shall take office upon election. Vacancies in legislative office shall be filled only by election as provided by law.

FLA. CONST. art. III, § 15(d).

77. See FLA. CONST. art. III, § 15(d). Curiously there is no exact definition of when this moment in time is though by custom the Legislature uses election day itself. However,

be the case, the reasoning ran, all legislators elected in 1992 would be bound by the limits since the simultaneous effectiveness would deprive them of the partial and temporary exemption granted to those officials (i.e., the Lieutenant Governor, members of the Cabinet, and Florida's Junior United States Senator) whose most recent terms had "commenced prior" to the amendment being approved and going into effect.<sup>78</sup> There was to be no grace period. If you were elected to the Legislature in 1992, you must, if re-elected to consecutive terms, leave the seat you won in '92 no later than the end of your term in the year 2000 when you will have served "eight consecutive years."<sup>79</sup>

On its face this all seems pretty clear, but just below the surface there exists a potential snag. The snag is built around an idea of advance notice as articulated by the Florida Supreme Court in "Footnote 32" in the similar, once celebrated, but now somewhat obscure case of *Myers v. Hawkins*,<sup>80</sup> which appears to speak directly to the exact situation the framers of Amendment #9 sought to produce: simultaneous effectiveness. Footnote 32 reads: "We express no view on the applicability of a constitutional or statutory change to persons who assume office simultaneously with the effective date of the change."<sup>81</sup>

The footnote, as many footnotes are, was intended to clarify something

Talbot "Sandy" D'Alemberte in his commentary on section 15(d) says: "Subsection (d) clears up an area of uncertainty under previous constitutions by providing that a legislator is in office upon election. 'Upon election' would probably be the time of final canvassing of the election." 25A FLA. STAT. ANN. 669 (West 1991) (commentary to FLA. CONST. art. III, § 15(d)).

This uncertainty brings up the interesting question of whether the effective date clause in the "Eight Is Enough" initiative and the "take office" clause of article III, section 15(d), refer to the same date. For example, it could be argued that legislators elected in 1992 took office at midnight November 3-4, 1992, but that the term limit amendment did not go into effect until the complete statewide general election results were certified on November 13, 1992. If such were indeed the case, the terms of the legislative class of 1992 would have, in the words of the initiative, "commenced prior to the effective date of the amendment" and so would not be covered. See Division of Elections *supra* note 68. Citizens for Ltd. Political Terms, Initiative Petition (1992) (original petition on file with State Division of Elections).

78. See *supra* notes 34 & 63. This partial and temporary exemption was specifically provided for in the second sub-section of the "Eight Is Enough" initiative. In 1992 the lieutenant governor and all members of the Florida cabinet were in the second year of a four-year term to which they had been elected in 1990. Additionally, Florida's junior U.S. senator was then serving the fourth year of the 6-year term to which he had been elected in 1988.

79. See *supra* note 34.

80. 362 So. 2d 926, 934-35 (Fla. 1978).

81. *Id.*

the court had just ruled. In *Myers*, the case revolved around during and after term-of-service restrictions on the remunerative activities of officeholders that were placed into the constitution as a result of the 1976 adoption of Governor Reubin Askew's so-called "Sunshine Amendment."<sup>82</sup> The court had just declared the new proscriptions "should [n]ot be considered applicable to persons in office on its effective date."<sup>83</sup> In State Senator Ken Myers' instance, though he had been on the ballot at the same time as the amendment, it was relatively simple for the court to declare him (as well as others similarly situated) exempt for the time being. The out was in the dates. Mr. Myers was reelected to his senate seat and took office in November, 1976.<sup>84</sup> The amendment, approved in November, did not go into effect, pursuant to article XI, § 5(c), of the Florida Constitution until January of 1977.<sup>85</sup> Ergo, Myers and his colleagues were all in office when it became law, and therefore, he (and they) would not be covered until and unless they successfully sought reelection to their seats or election to another covered office. In the meantime the prohibitions were to apply only to those persons who, for whatever reason, entered a covered office after the amendment had become effective and before the next regularly scheduled round of elections.<sup>86</sup>

To the court, the reason the exemption was needed at all seemed to boil down to a matter of notification; of the necessity of a potential officeholder being fully apprised in advance of the rules of the game and of their effect upon him. The principal passage of *Myers* explained the rationale beginning with references to the two most closely-related cases then at hand:

A *Holley* approach focuses attention directly on the question assumed under a *Reynolds* approach—*whether the constitutional change has abolished the office, changed the qualifications for office, or imposed*

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82. *See id.* at 928. This constitutional provision is titled "Ethics in government." FLA. CONST. art. II, § 8.

83. *Myers*, 362 So. 2d at 934.

84. *Id.* at 932 n.22.

85. *Id.* at 928 n.2. Section 5(c) of the Florida Constitution reads:

(c) If the proposed amendment or revision is approved by a vote of the electors, it shall be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision. FLA. CONST. art. XI, § 5(c). The 1976 "Sunshine Amendment" contained no specific effective date, and so the default date specified in the above controlled.

FLA. CONST. art. XI, § 5(c).

86. *Myers*, 362 So. 2d at 935-36.

*new and onerous requirements on some or all of the incumbents who desire to continue in office.* The resign-to-run law considered in *Holley* led the Court to conclude that neither an ouster nor an impermissible burden on officeholding was imposed. The same cannot be said of [the Sunshine Amendment]. To apply newly-created professional limitations on a part-time Florida legislator in the midst of his term of office obviously defeats expectations honestly arrived at when the office was initially sought. The office itself is not abrogated or its duties altered . . . but the privileges of officeholding are no less impaired by curtailing non-legislative employment opportunities than they would be if the office was made full-time and outside employment prohibited altogether. *The abridgement in either case [of Mr. Myers' employment prerogatives] is tantamount to changing the qualifications of office. There was absolutely no employment limitation when the term of office was sought.*<sup>87</sup>

Following this comes yet a further clarification. It appears as "Footnote 38," and reads:

38. Not every statutory or constitutional impairment in the expectations or in the status of officeholders, will operate only as to future officeholders. This case does not present an occasion to announce other circumstances in which an impairment would be considered tantamount to an ouster to use the Reynolds phraseology. Wherever a line may ultimately be drawn to separate permissible impairment from that which is impermissible, it is clear that [the Sunshine Amendment] so substan-

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87. *Id.* at 934-36 (emphasis added) (citations omitted). *Holley v. Adams*, 238 So. 2d 401 (Fla. 1970), had to do with whether the state's so-called "resign to run" law was applicable to an incumbent officeholder who took office prior to its enactment. The court ruled that it was applicable because the requirements of "resign to run" were triggered by an independent decision of the officeholder himself, i.e., his decision to seek election to a post other than the one he currently occupied. *Id.* at 406. Without this decision there would have been no requirement that he resign from his current post. *Id.* at 407.

Florida *ex rel.* *Reynolds v. Roan*, 213 So. 2d 425 (Fla. 1968), had a different thrust in that it dealt with whether or not a school board could abrogate an existing fixed-term contract with its appointed school superintendent. *Id.* at 426-27. The contract had been entered into prior to the adoption of a state constitutional amendment which provided that appointive superintendents were to serve at the pleasure of their respective school boards. *Id.* In this case, the court held the new amendment could not be used as a justification for annulling the preexisting contract prior to its expiration date. *Id.* at 428. Despite the factual differences in the three cases, the central idea of advance notification of a newly imposed "change in qualifications of office" is present in all. This seems particularly so when the change imposed upon the office is self-executing and applicable without either a grace period or an independent trigger-pulling action of the affected officeholder. *Myers*, 362 So. 2d at 934-36.

tially abrogates Myers' status as a part-time legislator and as a member of the Florida Bar that it would fall well outside the established boundary.<sup>88</sup>

Considering the above in light of *Eight Is Enough* and taking into account that the *Myers* court held the Sunshine Amendment restrictions were "tantamount to changing the qualifications of office,"<sup>89</sup> and that the justices spoke of the limitations as not being in place when the office was both "initially sought"<sup>90</sup> and "sought,"<sup>91</sup> one must wonder about the situation presented with regard to term limits. First, these would seem to represent the flip-side of the *Myers* coin.<sup>92</sup> Second, when one views term-limits in the morning sans their makeup, they are not, it would seem, merely "tantamount" to a qualifications change. They are the genuine article albeit cast in looking-glass terms as a kind of "disqualification."<sup>93</sup> Third, the limits were plainly not in place in the constitution when the legislators elected in

88. *Myers*, 362 So. 2d at 935 n.38.

89. *Id.* at 935.

90. *Id.*

91. *Id.* at 928 n.1, 932 n.22. The court's use of the qualified term "initially sought" in one place and the unqualified term "sought" in another place is interesting but, more than likely meaningless. This is so because in two footnotes the court specifically referred to Mr. Myers' tenure in the Senate. In the first instance the court stated, "Myers, who was first elected to his senatorial seat on November 5, 1968." *Myers v. Hawkins*, 362 So. 2d 926, 928 n.1 (Fla. 1978). In the second instance, it referred to this again by stating, "as noted earlier, Myers has served in the Florida senate continuously since 1968. His present four-year term began on November 2, 1976." *Id.* at 932 n.22. These references, when combined with differing presentations of the term "sought" raise the question of whether the justices had two different things in mind, i.e., one's first election to an office as opposed to one's subsequent reelection to that office. Were such the case then it may be that an officeholder's "expectations" could be developed over time to such a degree that a long-term incumbent's "expectations" about his/her office, his/her tenure in that office, and his/her prerogatives while in the office could weigh heavier than would those of a newly elected first-time officeholder when a significant change in rules of the game are made.

92. They both, after all, deal with the affected individuals' employment options and with restrictions thereon. *Myers* deals with the impact on an individual's primary occupation of restrictions imposed as a result of his part-time job. The term-limits amendment creates new restrictions on an individual's ability to continue to hold the part-time job itself, the holding of which will result in restrictions being placed on his/her present and, for a limited time, his/her future employment options.

93. Despite its placement, the language added to the Florida Constitution by "Eight Is Enough" has the practical effect of placing the language "and shall not by the end of the current term have served (or, but for resignation, would have served) in the office for eight consecutive years" in every list of qualifications for every covered office. *See* FLA. CONST. art. VI, § 4(b) (amended 1992).

1992 “sought” office<sup>94</sup> nor was the Eight Is Enough initiative even officially certified to the ballot when they signed up and paid their generally non-refundable fees.<sup>95</sup>

Given the above, a question presents itself for consideration: Is the effect of this immediate imposition of a “change in qualifications of office” via term limits with no grace period a “burden” which is “onerous”<sup>96</sup> enough to trigger a *Myers*-style analysis? One can, after all, with only slight effort, posit arguments and questions tending toward the affirmative. For example, the new restrictions can easily be cast as an “ouster.”<sup>97</sup> A slow-motion “ouster” to be sure, but an “ouster” nonetheless. This is

94. See FLA. CONST. art. VI, § 5 (amended 1992), which specifies that general elections in the state are to be held on “[t]he first Tuesday after the first Monday in November of each even-numbered year . . .” *Id.*

The Florida Statutes specify that the first primary election shall be held on the Tuesday which falls nine weeks prior to the date of the general election. FLA. STAT. § 100.061 (1991).

The Florida Statutes specify that the qualifying period for state-level officials shall be from noon of the 50th day until noon of the 46th day prior to the date of the first primary election. FLA. STAT. § 99.061(1) (1991). Another section specifies that in apportionment years (the second year of each decade) the qualifying period for Florida federal officials shall be from noon of the 57th day until noon of the 53rd day prior to the first primary election. FLA. STAT. § 99.061(8) (1991). In all other years, the qualifying period for Florida federal officials is governed by section 99.061(1) which specifies the qualifying period for those offices to be from noon of the 120th day until noon of the 116th day prior to the first primary. FLA. STAT. § 99.061(1) (1991).

Taking all of the above into account, one can calculate exactly when the official periods of “seeking” office occurred in 1992. As it was an apportionment year, the period for Florida federal officials ran from noon on Monday July 6, 1992 until 7:00 p.m. EST/CST (depending upon the time zone(s) the election district was located in) on Tuesday November 3, 1992. For state-level officials the official period of “seeking” ran from noon on Monday July 13, 1992 until 7:00 p.m. EST/CST (depending upon the time zone(s) the election district was located in) on Tuesday November 3, 1992. “Eight Is Enough,” therefore, could not, even under the most liberal view, have become a part of the Florida Constitution and taken effect until after 7:00 p.m. CST (8:00 p.m. EST) when the polls officially closed in the far western panhandle and the electoral “seeking” was officially over in the State.

95. *Id.*; see *supra* note 63. The “Eight Is Enough” initiative was officially granted a place on the November 3, 1992 general election ballot as “Amendment # 9” on Thursday July 23, 1992. This was six days after the period for qualification had closed for state-level offices and 13 days after the end of the sign-up period for Florida federal offices. Section 99.092(1), states that candidates, may only withdraw and receive a refund of their fees if they withdraw prior to the last day of the qualifying period for the office they are seeking or if they die prior to an election being held. FLA. STAT. § 99.092(1) (1991).

96. See *Myers*, 362 So. 2d at 934-35; *Holley*, 238 So. 2d at 401.

97. See *Myers*, 362 So. 2d at 934-35; *State ex rel Reynolds*, 213 So. 2d at 425.

especially true in the case of long-term incumbents whose lives have come to be arranged around their service, given the observable fact that the nature of state legislative service in Florida has changed drastically since 1976, it now being essentially a full-time job.<sup>98</sup>

Putting this another way, did the public really know they were voting to throw out Senator Faugbounde even as they were voting to throw him back in for the umpteenth time? How did the voters, after all, interpret the partial exemption in the initiative? Would Ms. Wellmeaning have made the decision to bear the considerable sacrifices inherent in a run for the Legislature in 1992, if she had known her stay would be so relatively brief that any real shot at obtaining a position of leadership was effectively foreclosed in advance due to the presence of individuals with long tenure who were already lined up for important leadership posts? And how about Mr. Activisté, would he have decided to run for a time-gobbling, relatively low-paying, term-limited, state legislative seat? Might he have chosen instead to seek a seat on his county commission? Might he have chosen not to run at all and to spend his time tending to his "civilian" business or job? Following this line of argument, it may not have been sufficient for the "newly created"<sup>99</sup> change in qualifications to merely be on the ballot or apparently headed for the ballot, when the affected office was being "sought."<sup>100</sup> It must, it suggests, be there in advance if the notice requirement of *Myers* is to be satisfied.

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98. ALLEN MORRIS, *THE FLORIDA HANDBOOK: 1991-1992* 101 (23rd ed. 1991). One way to illustrate this change in character is to look at the number of special legislative sessions. According to Legislative Historian, Dr. Allen Morris, prior to the arrival in Tallahassee of Governor Claude Kirk in January 1967, special sessions were relatively rare. In fact, in the 98 years between 1869 and 1967 there had been but 28 such sessions. With Kirk however, the pace picked up and, after the onset of annual regular sessions and the putting into place of a permanent staff structure, the number of special sessions essentially exploded. Between 1967 and the end of 1990, there were 48 special sessions.

Today the special session is more or less a given. There will be at least one and usually more every year. Too, even absent formally called special sessions, there has been a dramatic increase in committee work as each committee essentially functions year-round with meetings being held at least once a month even when the legislature is not formally meeting. The upshot of these changes is that present-day legislators must be ready to drop everything and run to Tallahassee at almost any time besides planning to be there full time for both the 60-day regular session each year and the week's worth of committee meetings held almost every month. It is a far cry from the once-every-two-years, single, 60-day regular session of but 25 years ago, and every year the work load, as well as the time required to handle the load, increases.

99. *Myers*, 362 So. 2d at 935.

100. *Id.*



Using the cases of the Sunshine Amendment and Eight Is Enough as exact examples, if mere presence on the ballot or reports of a successfully proceeding petition drive were sufficient to provide the quality of notice the *Myers* court seemed to demand, then the argument available to the backers of the Sunshine Amendment would have been the strongest possible one to advance. After all, it was the brainchild of an extremely popular, sitting, second-term Governor. The Governor partially drafted the amendment, launched and headed its petition drive, and once placed on the ballot, he flogged the amendment's passage before the public.<sup>101</sup> This was not the case with Eight Is Enough. It was imagined, drafted, petitioned for, and flogged by a group of individuals none of whom possessed either the proven current popularity, nor the level of simple public recognition as had Governor Askew. So, if the Askew initiative did not apply in part to those officeholders who "sought" office at the same time the initiative "sought" passage, because it was not in place as a functioning portion of the constitution when all the "seeking" was a-progress; how, one must wonder, is it that term limitations could be held to apply to those who were "seeking" office at the same time the term limitation amendment was "seeking" passage? This seems both a good question and a hard one to answer as the court in *Myers* itself indicated.<sup>102</sup>

Aside from simply being a good question, it is also one which provides a possible opportunity for the court to hone its decision in *Myers*. Answering this question will not only clarify the status of the legislative class of 1992, but it will edify the backers of future constitutional or statutory changes who may wish to modify the rules applicable to one of the most basic institutions in the game of representative democracy as practiced in Florida. Such a sharpening would be entirely consistent with the *Myers* court's message in Footnote 38.<sup>103</sup>

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101. See *Williams v. Smith*, 360 So. 2d 417, 418-19 (Fla. 1978) (discussing the Governor's role); see also *Myers*, 362 So. 2d at 928.

102. *Myers*, 362 So. 2d at 932. It should be pointed out this area of inquiry was entered into at the request of the court itself. In a footnote, the court stated that, "although this issue [i.e., the issue of the timing of the Sunshine Amendment's applicability] was not originally argued by the parties, the Court on its own motion directed that the parties file supplementary briefs addressing the question." *Id.* at 932 n.22.

103. *Id.* at 935 n.38.

#### IV. FUN WITH NUMBERS IN THE FLORIDA STATE SENATE

Let us now turn to the second kink in Eight Is Enough, and as we do, let us assume for the sake of argument and ease of illustration that it applies to all those members elected to the Legislature in 1992. Let us also stipulate that from here on we shall be talking only of the State Senate. Given these stipulations, let us now assert that the second problem may be considered the real problem with the amendment, because if nothing is done, its consequences shall, without question, be felt. This is because, to put the matter simply and in the extreme vernacular, term limits don't work right in the senate 'cause they was borned broke.

The reason why this kink developed and not raised appears to be the result of an oversight. Specifically, the proponents forgot at every level of the initiative's development and review that an aspect of Florida constitutional law functions vis à vis the Senate as the equivalent of, say, the Infield Fly Rule.<sup>104</sup> The rule in question is suitably muddy. Put into baseball

104. The "Infield Fly Rule" was brought into being by the combined action of four separate items over a 12-year period. First, by the provisions of article III, section 15(a) of the Florida Constitution, which reads:

(a) SENATORS. Senators shall be elected for terms of four years, those from odd-numbered districts in the years the numbers of which are multiples of four and those from even-numbered districts in even-numbered years the numbers of which are not multiples of four; except, at the election next following a reapportionment, some senators shall be elected for terms of two years when necessary to maintain staggered terms.

FLA. CONST. art. III, § 15(a).

Second, by the provisions of article XII, section 12 which provides:

Section 12. Senators.— The requirement of staggered terms of senators in Section 15(a), of Article III of this revision shall apply only to senators elected in November, 1972, and thereafter.

FLA. CONST. art. XII, § 12.

Third, by the ruling of the Florida Supreme Court in *In re Apportionment Law Appearing As Senate Joint Resolution 1 E, 1982 Special Apportionment Session, 414 So. 2d 1040, 1045-50* (Fla. 1982) [hereinafter *In re Apportionment Law*], which declared that if during any apportionment "geographic changes" were made to any senate district, its incumbent must then run for reelection whether or not his/her four year term was set to expire that year. Further, if all senatorial districts were geographically altered, then all members of the senate must run in that year. *Id.*

Fourth, by the ruling of the court also found in *In re Apportionment Law, 414 So. 2d at 1050-51*, wherein the justices defined what was meant by the constitutional phrase "consecutively numbered . . . districts." In pertinent part the text of this portion of the decision read:

The second issue . . . concerns the construction of a portion of the lan-

terms, it runs as follows: Despite what the rule book seems to say, players do not always seek four-inning contracts. Sometimes it's two. Moreover, who seeks what and when depends upon the number on their jersey, the time of their initial at-bat, and whether the at-bat occurred during an "In" or "Out" inning. Provided, however, that the specific application of the preceding is subject to modification each tenth inning, when such numbered jerseys, as are authorized under the rules, may be freely exchanged among players.<sup>105</sup>

It is fairly plain that this particular quirk in how the system operates was simply overlooked. It was not raised during the campaign for the amendment's approval, nor in any of the filings related to the court's

guage of article III, section 16(a), and whether, as written, the language requires each senate and house district to be both contiguous within itself and that each district must also be contiguous with the next consecutively-numbered district. The house of representatives [argues] . . . that the numbered districts must be adjacent to each other in numerical order . . . .

[I]t is the position of the house that a distorted numbering pattern had developed under the constitution of 1885, and in its view it was probable, in an effort to avoid such distortions, that the phraseology, "consecutively numbered senatorial districts of either contiguous, overlapping or identical territory" was placed in the present constitution. The house argues that the requirement for contiguous territory refers not only to the territory within each district, but to the relationship of the districts to each other, and must be read in *pari materia* with the requirement for consecutive numbering. It follows from this construction that each district for the house and for the senate must, therefore, be contiguous with the next consecutively numbered district. In the house's view, the purpose of the provision is to prohibit a distorted numbering which would serve the interest of individual senators or representatives.

It is the senate's position, supported by the attorney general, that the provision of article III, section 16(a), requires only that district numbers be consecutive and that the territory within each district be contiguous. They argue that a strict grammatical reading of the sentence in article III, section 16(a), supports the conclusion that the words "consecutively numbered" appear to modify the noun "districts," and the word "contiguous" modifies the noun territory.

We agree with the senate and the attorney general that the plain language of article III, section 16(a), does not modify or limit the word "contiguous" or "territory." Even if the drafters had intended that each district be contiguous with the next consecutively numbered district, as contended by the house, that is not what they grammatically wrote. We conclude that we must interpret the constitutional provision as it has been grammatically written . . . .

*In re Apportionment Law*, 414 So. 2d at 1050-51 (citations omitted).

105. *Id.*

consideration of the term limit initiative's fitness for inclusion on the ballot. In addition, neither the majority opinion in its *Advisory Opinion To The Attorney General—Limited Political Terms In Certain Elective Offices*<sup>106</sup> nor either of the two partial dissents mention it. In fact, the ruling of the majority asserts:

The proposed amendment does not change or affect the age or residency requirements of article III, section 15 (state legislators). . . . Further, should the proposed amendment be approved by the voters, *state senators will still be elected for four-year terms and state representatives for two-year terms* as provided in article III, section 15.<sup>107</sup>

Moreover, to the preceding may be appended an illustration used by Justice Kogan in his separate opinion:

For example, voters might decide that the advantages outweigh the disadvantages on the question of term limitations for state legislators. This is because the *delegations from all portions of the state will be treated equally in the statehouse. No geographical region would suffer any disadvantage with respect to any other region. The rules of the political game in Tallahassee would be the same for everyone.*<sup>108</sup>

To put it simply, this is wrong. In the first place, due to the Infield Fly Rule, many senators contract with the electorate for some combination of two and four year terms, and two plus four equals six, a number not divisible evenly into eight. Secondly, because under Eight Is Enough selected players will be entitled to play extra innings, delegations will be treated differently. Some delegations will, therefore, be more equal than others. Consequently, "the rules of the game"<sup>109</sup> shall most assuredly not be the same for all. An explanation follows. Gather 'round the plate.

The master interval of time around which the Florida State Senate is organized is the decennium. By the provisions of article III, section 15(a),<sup>110</sup> and article XII, section 12,<sup>111</sup> as interpreted by the Florida Supreme Court in *In re Apportionment Law*,<sup>112</sup> the Senate decennium begins

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106. 592 So. 2d 225 (Fla. 1991).

107. *Id.* at 228 (emphasis added).

108. *Id.* at 232 (emphasis added).

109. *Id.*

110. *See supra* note 104.

111. *See supra* note 104.

112. 414 So. 2d at 1040 (Fla. 1982).

and ends in each year numbered "2" when, pursuant to article III, section 16(a), apportionment is undertaken.<sup>113</sup> If during that process "geographic changes"<sup>114</sup> are made in a given senate district, then the constitutionally mandated term of four years must, if not expiring of its own in that year, be "truncated"<sup>115</sup> so that the senator may be "elected from" the "new" district.<sup>116</sup> Further, when "all senate districts have been changed [the]

113. Article III, section 16(a) of the Florida Constitution reads in pertinent part:

(a) SENATORIAL AND REPRESENTATIVE DISTRICTS. The legislature at its regular session in the second year following each decennial census, by joint resolution, shall apportion the state in accordance with the constitution of the state and of the United States into not less than thirty nor more than forty consecutively numbered senatorial districts of either contiguous, overlapping or identical territory, and into not less than eighty nor more than one hundred twenty consecutively numbered representative districts of either contiguous, overlapping or identical territory.

FLA. CONST. art. III, § 16(a).

114. *In re Apportionment Law*, 414 So. 2d at 1047-48. The key passage reads:

We hold, consistent with the views of the house of representatives and Common Cause, that the Florida Constitution, by its provisions, requires, upon reapportionment, that senate terms be truncated when a geographic change in district lines results in a change in the district's constituency. Because the new plan alters all district lines and the constituency therein, elections must be held in all senate districts in 1982.

*Id.* (citations omitted).

115. *Id.*

116. *Id.* at 1049-50. The key passage treating with the notion of "elected from" reads:

The principle that holdover senators represent the newly drawn geographic districts requires us to answer the question of how a senator elected from a former district apportioned in 1972 would meet the requirement of section 1, article III. That section mandates that the senate be "composed" of one senator "elected" from each senatorial district. Given this provision, it necessarily follows that, since none of the senate districts from which senators were elected in 1980 are preserved intact (because all senate districts have been changed by the new apportionment plan), no senators elected in 1980 were in fact elected from the senatorial district which they now propose they should represent. In our view, the senators could be deemed elected from those districts only if they had been elected from the specific districts set forth in the 1982 apportionment plan. By this, we mean that their specific districts, from which they were elected in 1980, had not been changed geographically by the 1982 plan. We do agree that when a senate district is carried forward with no geographic change in boundary lines, article III, section 1, is satisfied, and there is no need to implement the exception provision of section 15(a). On the other hand, where, as in the instant case, all senate districts have been changed, we conclude that our constitution requires all senators to stand for election in order to be "elected from" the new districts.

Constitution requires that all senators stand for reelection.”<sup>117</sup> Under the formula for such elections given in article III, section 15(a),<sup>118</sup> when this takes place, some senators seek election to four-year terms while others run for two-year terms. This is done in order to satisfy section 15(a)’s final requirement that senate terms be “staggered” so that half the membership goes before the voters every two years.<sup>119</sup>

The Senate objected in 1982 to the truncation of terms. It contended that mandatory wholesale truncation was intended by the 1968 framers to apply only in 1972 as provided in article XII, section 12, as a method of restaggering the senate. (It had been left unstaggered as a result of the apportionment battles of the 1960’s which concluded with the simultaneous election of all senators in 1968). It further argued that after 1972, truncation was only to be utilized as necessary for a seat here and there following subsequent apportionments to maintain the staggered feature. Despite the Senate’s objections, the court ruled otherwise.<sup>120</sup>

The court disagreed as well with the Senate’s contention that, notwithstanding the addition or subtraction of territory and peoples to or from a given district during an apportionment, a senator in the middle of his or her constitutionally prescribed four-year term in the apportionment year should be allowed to “holdover” and complete the term prior to having to stand for election in the newly aligned district.<sup>121</sup> The justices on a five to two vote ruled such “holdovers” would violate the provision that each member of the body be “elected from” his or her district. If a district encompassed new territory, said the court, one had to run in it in order to be “elected from” it. One could not simply be assigned to it during apportionment and have that count as an “election.”<sup>122</sup>

In the context of 1982 this decision made some sense; it was at least popular.<sup>123</sup> The only people at all miffed were some of the twenty

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*Id.*

117. *In re Apportionment Law*, 414 So. 2d at 1049-50.

118. *See supra* note 104.

119. *See supra* note 104.

120. *In re Apportionment Law*, 414 So. 2d at 1045-50.

121. *Id.*

122. *Id.*

123. It may be said with significant confidence that a good portion of the decision’s popularity stemmed from the identity of the leader of the pro-holdover faction. This man, Senate Dean Dempsey J. Barron (D-Panama City) was both revered and feared in the Capitol for his power. To “beat” him on any issue was notable, but to “beat” him on something he personally cared about—and there were relatively few issues of this sort Barron being notorious for not having issues with his name visibly written on them—was worthy of great

would-be “holdovers” and their close supporters.<sup>124</sup> On the other hand, a host of individuals and groups were delighted and no doubt would have been howlingly indignant if the matter had gone the other way.<sup>125</sup> It really was, given the humid political atmosphere, no contest. Unfortunately, no one could then have known that just a decade later this popular, right-thing-to-do position would turn out to be one which would yield not a fairer, more representative Florida Senate, but rather a Florida Senate soon to be characterized by lurching inequity.

To explain: Article III, section 15(a) in combination with article XII, section 12, specifies that from 1972 forward, senators from odd-numbered districts are to run for four-year terms in each even year which is a multiple of four, and senators from even-numbered districts are to run for 4-year terms in each even year which is not a multiple of four. The former subsection also gives the Legislature the power to shorten the term for which a given senator, or group of senators, will run to accommodate the goal of staggered elections.<sup>126</sup>

In 1972, a year which was a multiple of four, the Legislature obeyed article III, section 15(a), and article XII, section 12, and declared that all senators from even-numbered districts would run for initial terms of two

celebration in the eyes of many.

124. See generally P.C. Doherty, *Development and Impact of Legislative Involvement on Selected Aspects of State University System Operations: 1954-1990* (vols. 1-6) (1991) (unpublished Ph.D. dissertation, Florida State University (Tallahassee)). Not all of the potential holdover senators were upset. The 1980-1982 biennium was the most politically volatile period in recent memory in the state senate and had as its centerpiece a running, often bitter, feud between Senate Dean Dempsey J. Barron (D-Panama City) and his erstwhile protégé, Senate President W.D. Childers (D-Pensacola). The battle essentially consumed the Senate and caused it to divide along pro-Barron and anti-Barron lines rather than the more traditional ones of party or ideology. More than one of the anti-Barron senators occupied odd-numbered seats and were, therefore, potential holdovers. Yet these people were just as happy as any to see him and his pro-holdover position bested. In fact, Senator W.D. Childers, the occupant of the district one seat, and, hence, a potential holdover himself, openly declared early on that he would stand for election in 1992 regardless of whether he was required to do so or not.

125. *Id.*; see also *In re Apportionment Law*, 414 So. 2d at 1040. Aside from the House of Representatives, the two most vocal opponents of holdover senators were Common Cause and The League of Women Voters. Each joined the suit to strike the provision. In addition Governor Bob Graham, a long time political oppugner of Mr. Barron, weighed in forcefully on the anti-holdover side as did the bulk of the state's media outlets who, it may be fairly said, wasted few opportunities to vigorously oppose both the Dean personally as well as virtually anything he even seemed to be supporting.

126. See *supra* note 104.

years in order to put the staggered terms feature into effect.<sup>127</sup> Thereafter, all senators were to run for terms of four years unless some sort of adjustment was required to maintain the integrity of the staggered terms provision. If this occurred, the Legislature could once again declare that certain senators' terms would be "truncated." "Truncation," however, was seen as being applicable only to the odd case. The assumption was that, from 1974 forward, all members of the Senate would run for four year terms.<sup>128</sup>

The above assumption held true only until 1982 when the court in *In re Apportionment Law* ruled that "truncation" was to be a regular and continuing feature of Senate terms and that every apportionment year was to be the start and finish of a discreet Senate decennium.<sup>129</sup> This decision did more than simply declare that under normal circumstances all senators must run after apportionment whether their terms have expired or not. It also, though it was not so noted, created two types of apportionment decades and mirror-image term patterns for odd and even numbered seats.

For the sake of convenience, let us call the two decade types (and the years they contain) "In Decades" (years) and "Out Decades" (years). "In Decades" are those which are identical in electoral pattern to the first decade, 1972-1982 (inclusive), under the 1968 revision and are characterized by having an initial year which is a multiple of "4." "Out Decades" are those which are identical in electoral pattern to the second decade, 1982-1992 (inclusive), under the 1968 revision and are characterized by having an initial year which is not a multiple of "4." As these two decade types alternate, it can be projected that for the Fifty-year period between 1992 and 2042, the distribution will be as follows:

"In Decades": 1992-2002; 2012-2022; 2032-2042 (all inclusive).

"Out Decades": 2002-2012; 2022-2032 (both inclusive).

Whether a decade is "In" or "Out" is of importance because it determines what term pattern a given Senate seat must observe. During "In Decades," odd-numbered seats follow (beginning in the year "2" and ending ten years later in the next year "2"), the pattern 4 + 4 + 2, while even-numbered seats follow the pattern 2 + 4 + 4. The patterns are reversed during

127. *In re Apportionment Law*, 414 So. 2d at 1045-50.

128. *Id.*

129. *Id.* The court nowhere used the term "discreet decenniums." However, the concept was clearly embodied in its decision, and, in practical terms, were exactly what was created. *Id.*



“Out Decades” with odd-numbered seats running for terms of 2 + 4 + 4 and even-numbered seats for terms of 4 + 4 + 2. If one takes these numbers and extends them out over the entire fifty years (1992-2042) the sequences which emerge are:

Odd-Numbered Seats: 4+4+2 | 2+4+4 | 4+4+2 | 2+4+4 | 4+4+2  
 Even-Numbered Seats: 2+4+4 | 4+4+2 | 2+4+4 | 4+4+2 | 2+4+4

Intrinsically, there is no particular problem with this arrangement. Once every twenty years, each odd-numbered seat and each even-numbered seat sees one of its four-year terms broken into two two-year terms. The two-year terms always run back-to-back, and are always followed by a stretch of four consecutive four-year terms before the 2 + 2 pattern must again be observed. It seems a ducky design . . . but it is not.

It is not ducky because the scheme proceeds from an erroneous implied assumption thereby concealing within the folds of its truncations seeds of doom. The assumption is that odd-numbered seats will always be odd-numbered seats and even-numbered seats will always be even-numbered seats. This is not true because numbers change.<sup>130</sup>

In 1982, the Florida Legislature’s legendary “Dean,” Senator Dempsey J. Barron (D-Panama City), declared that senators like himself from odd-numbered districts, who had been elected in 1980, should continue in office, notwithstanding apportionment, until 1984. One man, Representative H. Lee Moffitt (D-Tampa), the incoming Speaker of the House, disagreed with the powerful and much-feared Barron and made the disagreement his

130. *Id.* at 1050-51; *see supra* note 104. The numerical designations of legislative seats may be moved about at will during an apportionment so long as each Senate seat bears a number between one and forty (inclusive) and each House seat bears a number between one and one hundred and twenty (inclusive). Indeed, in the next apportionment year, 1992, seat numbers went gamboling far and wide especially in the Senate. For example, in 1990 Senate district “7” was located in the far northeast region of Florida, including Nassau and part of Duval counties (suburban Jacksonville), while Senate district “2” was in the panhandle, running from the Escambia/Santa Rosa County line to Tallahassee. After the 1992 apportionment, however, Senate district “7” had hopped better than 200 miles west to the coastal areas of Escambia, Santa Rosa, Okaloosa, Walton, and Bay counties in the far reaches of the western panhandle and Senate district “2” had migrated 200 miles east to northeast Florida.

The situation was not so pronounced in the House although even there, in contrast to earlier practice, the numerical designations of many seats were changed. In 1982, it had been virtually an article of faith in the House that a member should, if at all possible, be allowed to keep his/her seat number even if his/her territory had changed.

reason for living.<sup>131</sup> So began The Great Battle of Wills which ended when the State Supreme Court declared that the terms of the odd-seat senators were to be truncated in 1982. Thus were discreet decenniums, “In” and “Out” decades, and 2 + 4 + 4 and 4 + 4 + 2 term patterns born. T’was a Famous Victory.<sup>132</sup>

Barron and Moffitt were gone by 1992,<sup>133</sup> but an echo of their combat carried forward. The apportionment year of 1992 was the start of the “In Decade” of 1992-2002. As such it was to be the occupants of the even-numbered seats who faced 2 + 2. But Senators can add, so, when the apportionment process was undertaken, seat numbers changed. As a result, when the distribution ended, more than one lucky senator who had filled an even-numbered 2 + 2 seat in the spring found himself scheduled to seek an odd-numbered 2 + 4 seat in the fall. The pattern had been shattered. A simple change in a seat’s numerical designation was all that was required to change 4+4+2 | 2+4+4 into 4+4+2 | 4+4+2. The Time-Shifting Gerrymander had awakened: Even numbers became odd; two became four.<sup>134</sup>

131. Telephone Interview with Ralph H. Haben, Jr., former Speaker of the House, *Florida House of Representatives* (Jan. 1990); Doherty, *supra* note 124.

132. *Id.*

133. Mr. Moffitt retired from the Legislature in November, 1984 following his term (1982-1984) as Speaker of the House of Representatives. Mr. Barron was defeated for reelection in 1988 and retired from politics at that time. In Mr. Barron’s case, the retirement came after a legislative career spanning some 32 consecutive years, 28 of which (1960-1988) were spent as a member of the Senate. Mr. Moffitt retired after having served 10 consecutive years in the House.

134. OFFICE OF THE CLERK, THE FLORIDA HOUSE OF REPRESENTATIVES, THE CLERK’S MANUAL 1980-1982 (1981); OFFICE OF THE CLERK, THE FLORIDA HOUSE OF REPRESENTATIVES, THE CLERK’S MANUAL 1982-1984 (1983); OFFICE OF THE CLERK, THE FLORIDA HOUSE OF REPRESENTATIVES, THE CLERK’S MANUAL 1990-1992 (1991); OFFICE OF THE CLERK, THE FLORIDA HOUSE OF REPRESENTATIVES, THE CLERK’S MANUAL 1992-1994 (1993). To illustrate this point by way of contrast, in 1982, when the senate was operating under the assumption that holdover senators were permitted, only one seat held by an incumbent who returned for the next biennium was given a new numerical designation. This individual, Senator Pat Thomas (D-Quincy), saw his seat number change from “4” to “2.” The change was made necessary because a population shift east and south caused the panhandle region to lose a Senate seat. However, it is to be noted that despite the numerical change, Senator Thomas still occupied an even-numbered seat after reapportionment which meant that in the election of 1982 he ran for a full four-year term.

In 1992, the next apportionment after the court ruled holdover senators impermissible except in very limited and very unlikely circumstances, a radically different situation occurred. Of those 21 senators present for apportionment in 1992 who returned to office in the fall, nine who had odd numbers going into apportionment kept them and so ran for full four-year terms, five who had gone into apportionment with even numbers kept them, and

Still, despite this change, the overall system could have worked. There is no real inequity in it; it is only politics. However, to have worked, it was necessary for the rules to remain static, which they did not. Phil Handy appeared with *Eight Is Enough*, and, for the second time in as many decades, changed the rules of the game. No good was thereby done.

The basic problem with *Eight Is Enough* when it is imposed upon the rules of 1968,<sup>135</sup> as modified in 1982,<sup>136</sup> is that it can only work if two highly unlikely scenarios occur in combination. First, the Senate must forget how to make odd numbers even and even numbers odd. Second, all Senators must serve the maximum time allowed. If these two things do occur, then, after the initial "tail" of two years extra eligibility which will apply to those even-seat senators elected in 1992 has been dispensed with, the eight-year limit will work for all. Figures # 1 (odd seats) and # 2 (even seats) illustrate this.

Figures # 3 (odd seats) and # 4 (even seats) by contrast illustrate what will happen if only one of the above two conditions prevail, i.e., if all senators serve the maximum time allowed. Should this come to pass, and the Senate continues to change numerical seat designations each apportionment year, the result will be a "Grand Manipulation." All Senate seats will become ten-year seats except for those odd-numbered seats elected in 1992, and those even-numbered seats whose occupants are first elected to the Senate in 1994. The holders of these seats would be restricted to eight years. It is ironic that one of these two groups is the same one which, via numerical manipulation, had been the winner under the 1982-1992 rules.

As illustrative as the above are, neither the perfect alignment necessary for *Eight Is Enough* to work nor the situation necessary to make the Grand Manipulation function are likely. They are both too rigid. Deviation causes them to splinter. Therefore we must analyze the problem arithmetically. People come and go in the Senate each and every election year, so we must approach the effect of the term-limit amendment from that vantage point. We must also, for the sake of comprehensibility, leave out any consideration

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so, ran for truncated two-year terms, and six who had gone into apportionment with even numbers came out of it with odd numbers, and so, ran for full four-year terms instead of truncated two-year terms. Only one senator (Bill Bankhead, R-Jacksonville) went into apportionment with an odd number and came out with an even number, and so, saw the term he was permitted to seek in the fall shortened from four years to two.

135. See *supra* note 104 for full texts of the rules of 1968 as embodied in article III, section 15(a), and article XII, § 12 of the Florida Constitution.

136. See *supra* notes 104, 114, and 116 for pertinent text of rulings.

of the effect service in a partial term might have.<sup>137</sup> Let us begin this by looking at four straight-line situations. By straight-line we mean that no change from even to odd or vice versa is made in a seat's designation during an apportionment.

During "In Decades," there are three elections held to fill odd-numbered Senate seats. As shown in figure # 5, all result in eight-year seats if there is no change in the numerical designation.

The same cannot be said, though, with regard to those odd-numbered seats to which senators are elected during "Out Decades." As shown in figure # 6, during these decades there are also three opportunities for odd-numbered seats to be filled, but only two classes yield eight-year seats. Membership in the third class brings ten years of eligibility. Also, the ten-year class of seats are what may be termed "Natural 10's." They cannot be eliminated. They will crop up, without any help from politics, each and every "Out Decade."

As expected, the mirror-image situation obtains with regard to the even-numbered seats. Whether beginning in an "In Decade" or an "Out Decade," the members of all classes except one will be eligible to serve eight years. This exceptional class will always be entitled to sit for ten years.<sup>138</sup>

Taking the above down, as it were, to the floor of the Florida Senate, it is important to look hypothetically at what effect Eight Is Enough would have produced in 1992 had it been in effect prior to that year. In 1992, the initial year of the "In Decade" of 1992-2002, the Senate saw a heavy turnover as it will from time to time. When the dust had settled, almost half (nineteen) of the seats were occupied by new, first time, members. Of these nineteen new members, thirteen had been elected to even-numbered seats. Therefore, all thirteen would be "Natural 10's," and, hence would be eligible to serve for ten years while their six new odd-numbered seat colleagues who were elected at the same time would be restricted to eight years of eligibility. Their more senior colleagues, of course, would have available to them varying lengths of time based upon the number of years they had served prior to 1992.

If theory is important reality is more so. Therefore, if we presume Eight Is Enough went into effect simultaneously to the 1992 election, that it covers all forty senators now sitting, and that it exempts all pre-No-

137. See Sowinski *supra* notes 3; see also *supra* note 32. Partial term service was deemed sufficiently rare by the framers of Eight Is Enough to permit their ignoring its possible impact on their plan.

138. See Figures # 7 and # 8.

member, 1992 Senate service, then fully one-half (twenty) of the present members are eligible to stay for ten consecutive years. The other half of the Senate is not so fortunate. They must leave office upon the completion of eight years.

Given the above, whither Eight is Enough? Gone, or nearly gone, as the saying goes, to where the Woodbine twineth. Moreover, the kind of arrangement left behind by its departure for the Woodbine simply reeks of inequity. Perhaps such asymmetry is not per se unconstitutional, but it surely smells funny when applied to theoretically "equal" members of the same chamber who are supposed to represent theoretically "equal" districts. The fact is that he who can serve ten years will be more equal than he who can serve but eight, no matter how the issue is presented. To assert otherwise is to beggar common sense.

Worse still is the fact that the parade of horrors does not end with simple asymmetry. One must also consider the effect on a seat and its occupant of any switch in his or her designation from odd to even or even to odd during an apportionment. This is where the real fun starts; where the New and Improved Gerrymander can be loosed to fly through time.

Employment of the Time-Shifting Gerrymander as a political weapon can be readily seen in figures # 9, # 10, # 11, and # 12. These diagrams show it to be a weapon of enormous potency because these "Petit Manipulations" can shorten or lengthen most members' maximum tenure. Also, in the case of seats soon to be open as a result of retirement from the body (mandatory or otherwise), or in the case of seats made vulnerable to the present incumbent via the normal partisan give and take of apportionment the Time-Shifting Gerrymander may be used to pave the way for either an eight or ten-year replacement. This is powerful stuff—constitutionally enshrined institutional asymmetry joined at the hip with political jiggery-pokery. It is difficult, if not impossible, to believe this result is what the term limit proponents had in mind. Yet, it is equally plain this is exactly what they wrought.

So to quote an age-old refrain of the Russian intelligentsia, "What is to be done?"<sup>139</sup> There is no judicial guidance available on the point as it would seem this particular situation is a new one and, hence, unadjudicated.<sup>140</sup> Therefore, something new will have to be tried, or, to quote a

139. Gary Saul Morson, *What is the Intelligentsia? Once More, An Old Russian Question*, ACADEMIC QUESTIONS, Summer, 1993, 20-38.

140. *In re Apportionment Law*, 414 So. 2d at 1047. The complicating factor here is the matter of truncation. As the court noted, no other jurisdiction has a provision such as the one found in Article III, section 15(a) of the Florida Constitution which contains the "exception"

famous English export, we will have to “let it be”—an alternative that seems as unlikely as it is unattractive. While a number of possible solutions come to mind, most would require adding to the confusion by repeating the amendatory process to make the constitution’s provisions regarding Senate numerical seat designations and/or terms square with those requiring consecutive years of service be limited. And even were this tried, great care; perhaps, given what has happened here, excessively great care; would have to be taken lest the balloon pop out elsewhere unexpectedly.

Yet a simple solution is available. One which will not require the constitution to be amended again, nor require any agonizing over any manner of complex formulae. This simple solution is for the court to back off its 1982 decision in *In re Apportionment Law*,<sup>141</sup> if for no other reason than clinging to it now would make of it, in a word coined by Henry VIII, a man who knew just a bit about the creative limitation of terms—a mumpsimus.<sup>142</sup>

Were the court to “dumpsimus” those parts of *In re Apportionment Law*<sup>143</sup> relating to holdover senators, truncated terms, and mandatory post-apportionment elections, the Gordian Knot would be hacked through, the situation resolved, and the Gerrymander restricted to more familiar haunts. Granted, certain senators would “hold over”<sup>144</sup> for two years in

language, and as it was this language the justices emphasized in ordering truncation of Senate terms following apportionment, it is this language which renders the Florida term limit situation unique. No court in any other state in which term limits have been imposed and challenged has had to deal with this situation. Nor is any likely to be called upon to do so. It is a Florida question only.

141. 414 So. 2d at 1040.

142. This is a marvelously colorful and descriptive word which is unfortunately much under used. Its etymology is as follows:

For example, the word “mumpsimus,” meaning “an erroneous doctrinal view obstinately adhered to,” was first put into currency by Henry VIII, in a speech from the throne in 1545. He remarked, “Some be too stiff in their old mumpsimus, others be too busy and curious in their sumpsimus.” He was referring to the . . . story of a priest who, on being reprovved for reading in the mass “Quod in ore mumpsimus” instead of “Quod in ore sumpsimus” (“which we have taken in our mouths”), his missal (catholic mass book) being miscopied, replied . . . he had read it [that way] for forty years, “and I will not change my old mumpsimus for your new sumpsimus.” The word has held its own since, though the doctrinal sense has lost its importance compared with the scholastic sense: It now means “an established manuscript-reading which, though obviously incorrect, is retained blindly by old-fashioned scholars.”

ROBERT GRAVES & ALAN HODGE, *THE READER OVER YOUR SHOULDER* 17-18 (1961).

143. 414 So. 2d at 1040.

144. *Id.* at 1045-50.

districts that, after apportionment, they may not have been, in the purest sense, "elected from."<sup>145</sup> However, one is here vexed by the task of balancing which kind of "holdover"<sup>146</sup> is worse—one prohibited by judges on the basis of wordplay, or one declared out of order by millions of voters? Small "r" republicanism says to take the voters. A review of the applicable case law on the "holdover" question also says to take the voters. This body of jurisprudence is, in the words of former Chief Justice Sundberg, "essentially unanimous" in saying there is nothing particularly evil in them.<sup>147</sup> Besides, the court could easily justify such a decision not as a reversal, but as a response to changed conditions. Further, were this route taken, the mechanics of implementation could be perfected were the court to rule that the term limit language takes effect with the seating of the successors to those persons elected in 1992. This would allow the elimination of the two-year "tail" which now appends itself to the asymmetric arithmetic regarding the even seat senators elected in 1992—a "tail" which makes them the first class of "Natural 10's."

There is, of course, another judicial alternative, but it is not pretty as it would mock the constitutionally mandated length of Senate terms. This solution is "double truncation," wherein those terms which would extend beyond the eight-year limit would be "truncated" at eight. If this were to be considered, it would probably be better to wholly abandon the concept of staggered four-year terms for senators and go, via amendment, to a straight two-year term scheme identical to the Florida House.

## V. CONCLUSION

As there is nothing much useful or new left to say, convention declares that at this point some sort of conclusion should be offered. The substantive material has been laid out in what the author hopes is an adequate way and it is now his job to concoct some manner of summing up. In the best of all possible cases, this exercise will result in something profound and compellingly prescriptive. In the more realistic case, it usually takes the form of a more dignified way to end than simply quitting. In that light then, let it be said the foregoing presents two problems with Florida's term-limit amendment as adopted. One of these, the question of timing, is a nice, but little, question of line-drawing which will resolve itself even if nothing

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145. *Id.*

146. *Id.*

147. *Id.* at 1056 (Sundberg, J., concurring in part and dissenting in part).

happens. There may be a bump or two along the road to resolving the initial confusion, but within a decade, it will be forgotten like the great concern over the timing of the imposition of the Sunshine Amendment restrictions fifteen years ago.

The same, ultimately happy, fate cannot be said to be on its way with regard to the second problem. It will not, and cannot, be cured through any sort of neglect. It must be addressed; and it is to be hoped it will be addressed, ideally before it becomes a critical problem, rather than one of intellectual projection.

Why it was that the second problem crept in unnoticed will probably never be known. Indeed, there probably is no real reason at all. Yet it is there and its presence suggests a type of failure. The drafting of constitutional provisions may have one foot firmly planted on the solid ground of technical skill, but the other rests upon the somewhat more plastic surface of art. Done well, the resulting product is the highest and most sublime of all legal endeavors. Done less than well, the result is at best harmlessly cumbersome and at worst unworkable.

If the product be the former, a unity of art and technical skill, wisdom teaches the folly of attempting further improvement. "If it ain't broke don't fix it," the saying goes.

Not so in the case contrariwise.

Not so here.

It's broke.



FIGURE # 1

ODD SEATS.  
 NO NUMERICAL CHANGES.  
 ALL OCCUPANTS SERVE MAXIMUM TIME ALLOWED.

| IN DECADE II (1992-2002) | OUT DECADE II (2002-2012) | IN DECADE III (2012-2022) | OUT DECADE III (2022-2032) | IN DECADE IV (2032-2042) |
|--------------------------|---------------------------|---------------------------|----------------------------|--------------------------|
| Year                     | Year                      | Year                      | Year                       | Year                     |
| 1 1 1 1 2 2              | 2 2 2 2 2 2               | 2 2 2 2 2 2               | 2 2 2 2 2 2                | 2 2 2 2 2 2              |
| 9 9 9 9 0 0              | 0 0 0 0 0 0               | 0 0 0 0 0 0               | 0 0 0 0 0 0                | 0 0 0 0 0 0              |
| 9 9 9 9 0 0              | 0 0 0 0 1 1               | 1 1 1 1 2 2               | 2 2 2 2 3 3                | 3 3 3 3 4 4              |
| 2 4 6 8 0 2              | 4 6 8 0 2 4               | 4 6 8 0 2 4               | 4 6 8 0 2 4                | 4 6 8 0 2 4              |
| X-X-X-X-X-X              | X-X-X-X-X-X               | X-X-X-X-X-X               | X-X-X-X-X-X                | X-X-X-X-X-X              |
| (4-4-2)                  | (2-4-4)                   | (4-4-2)                   | (2-4-4)                    | (4-4-2)                  |
| r>>(8 yrs)<<Ω            | a>>(8 yrs)<<Ω             | a>>(8 yrs)<<Ω             | a>>(8 yrs)<<Ω              | a>>(8 yrs)<<Ω            |
| ax-r-r- ...r-r-          | a>>(8 yrs)<<Ω             | r-r- ...r-r-              | r-r- ...r-r-               | r-r- ...r-r-             |
|                          |                           | a>>(8 yrs)<<Ω             | a>>(8 yrs)<<Ω              | a>>(8 yrs)<<Ω            |
| r>>(8 yrs)<<Ω            | a>>(8 yrs)<<Ω             | a>>(8 yrs)<<Ω             | a>>(8 yrs)<<Ω              | a>>(8 yrs)<<Ω            |
| ax-r-r- ...r-r-          | a>>(8 yrs)<<Ω             | r-r- ...r-r-              | r-r- ...r-r-               | r-r- ...r-r-             |
|                          |                           | a>>(8 yrs)<<Ω             | a>>(8 yrs)<<Ω              | a>>(8 yrs)<<Ω            |
| r>>(8 yrs)<<Ω            | a>>(8 yrs)<<Ω             | a>>(8 yrs)<<Ω             | a>>(8 yrs)<<Ω              | a>>(8 yrs)<<Ω            |
| ax-r-r- ...r-r-          | a>>(8 yrs)<<Ω             | r-r- ...r-r-              | r-r- ...r-r-               | r-r- ...r-r-             |
|                          |                           | a>>(8 yrs)<<Ω             | a>>(8 yrs)<<Ω              | a>>(8 yrs)<<Ω            |

X = Regularly Scheduled Elections for Odd Numbered Seats (1992-2042).  
 (?-?-?) = Term Pattern for Discreet Apportionment Decade.  
 ax (alpha-x) = Year of Initial Election to Odd Seat.  
 | = Year of Mandatory Transition from Old Member to New Member.  
 Ω (omega) = Mandatory End of Tenure in Seat Under Term Limit Provision.  
 r = Re-election to Seat.  
 >> ( ? yrs) << = Total Permissible Length of Tenure Under Term Limit Provision.

FIGURE # 2

EVEN SEATS.  
 NO NUMERICAL CHANGES.  
 ALL OCCUPANTS SERVE MAXIMUM TIME ALLOWED.

| IN DECADE II (1992-2002) |   |   |   |   | OUT DECADE II (2002-2012) |   |   |   |   | IN DECADE III (2012-2022) |   |   |   |   | OUT DECADE III (2022-2032) |   |   |   |   | IN DECADE IV (2032-2042) |   |   |   |   |   |   |   |   |   |
|--------------------------|---|---|---|---|---------------------------|---|---|---|---|---------------------------|---|---|---|---|----------------------------|---|---|---|---|--------------------------|---|---|---|---|---|---|---|---|---|
| Year                     |   |   |   |   | Year                      |   |   |   |   | Year                      |   |   |   |   | Year                       |   |   |   |   | Year                     |   |   |   |   |   |   |   |   |   |
| 1                        | 1 | 1 | 1 | 2 | 2                         | 2 | 2 | 2 | 2 | 2                         | 2 | 2 | 2 | 2 | 2                          | 2 | 2 | 2 | 2 | 2                        | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 | 2 |
| 9                        | 9 | 9 | 9 | 0 | 0                         | 0 | 0 | 0 | 0 | 0                         | 0 | 0 | 0 | 0 | 0                          | 0 | 0 | 0 | 0 | 0                        | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| 9                        | 9 | 9 | 9 | 0 | 0                         | 0 | 0 | 0 | 1 | 1                         | 1 | 1 | 1 | 2 | 2                          | 2 | 2 | 2 | 3 | 3                        | 3 | 3 | 3 | 3 | 4 | 4 | 4 | 4 | 4 |
| 2                        | 4 | 6 | 8 | 0 | 2                         | 4 | 6 | 8 | 0 | 2                         | 4 | 6 | 8 | 0 | 2                          | 4 | 6 | 8 | 0 | 2                        | 4 | 6 | 8 | 0 | 2 | 4 | 6 | 8 | 0 |
| Y-Y-Y-Y-Y                |   |   |   |   | Y-Y-Y-Y-Y                 |   |   |   |   | Y-Y-Y-Y-Y                 |   |   |   |   | Y-Y-Y-Y-Y                  |   |   |   |   | Y-Y-Y-Y-Y                |   |   |   |   |   |   |   |   |   |
| (2-4-4)                  |   |   |   |   | (4-4-2)                   |   |   |   |   | (2-4-4)                   |   |   |   |   | (4-4-2)                    |   |   |   |   | (2-4-4)                  |   |   |   |   |   |   |   |   |   |
| r>>> (10 yrs) <<<Ω       |   |   |   |   | a>>> (8 yrs) <<<Ω         |   |   |   |   | a>>> (8 yrs) <<<Ω         |   |   |   |   | a>>> (8 yrs) <<<Ω          |   |   |   |   | a>>> (8 yrs) <<<Ω        |   |   |   |   |   |   |   |   |   |
| ay-r-r-r-r               |   |   |   |   | a>>> (8 yrs) <<<Ω         |   |   |   |   | a>>> (8 yrs) <<<Ω         |   |   |   |   | a>>> (8 yrs) <<<Ω          |   |   |   |   | a>>> (8 yrs) <<<Ω        |   |   |   |   |   |   |   |   |   |
| r>>> (8 yrs) <<<Ω        |   |   |   |   | a>>> (8 yrs) <<<Ω         |   |   |   |   | a>>> (8 yrs) <<<Ω         |   |   |   |   | a>>> (8 yrs) <<<Ω          |   |   |   |   | a>>> (8 yrs) <<<Ω        |   |   |   |   |   |   |   |   |   |
| ay-r-r-r-r               |   |   |   |   | a>>> (8 yrs) <<<Ω         |   |   |   |   | a>>> (8 yrs) <<<Ω         |   |   |   |   | a>>> (8 yrs) <<<Ω          |   |   |   |   | a>>> (8 yrs) <<<Ω        |   |   |   |   |   |   |   |   |   |
| r>>> (8 yrs) <<<Ω        |   |   |   |   | a>>> (8 yrs) <<<Ω         |   |   |   |   | a>>> (8 yrs) <<<Ω         |   |   |   |   | a>>> (8 yrs) <<<Ω          |   |   |   |   | a>>> (8 yrs) <<<Ω        |   |   |   |   |   |   |   |   |   |
| ay-r-r-r-r               |   |   |   |   | a>>> (8 yrs) <<<Ω         |   |   |   |   | a>>> (8 yrs) <<<Ω         |   |   |   |   | a>>> (8 yrs) <<<Ω          |   |   |   |   | a>>> (8 yrs) <<<Ω        |   |   |   |   |   |   |   |   |   |

X = Regularly Scheduled Elections for Odd Numbered Seats (1992-2042).  
 (?-?-?) = Term Pattern for Discreet Apportionment Decade.  
 ay (alpha-y ) = Year of Initial Election to Even Seat.  
 | = Year of Mandatory Transition from Old Member to New Member.  
 Ω (omega) = Mandatory End of Tenure in Seat Under Term Limit Provision.  
 r = Re-election to Seat.  
 >>> ( ? yrs) <<< = Total Permissible Length of Tenure Under Term Limit Provision.

FIGURE # 3

GRAND MANIPULATION 1 (1992 ODD SEAT START).  
 ODD TO EVEN, EVEN TO ODD, ETC. EACH DECENNIUM.  
 ALL OCCUPANTS SERVE MAXIMUM TIME ALLOWED.

| IN<br>DECADE<br>II<br>(1992-2002)                              |   | OUT<br>DECADE<br>II<br>(2002-2012) |   | IN<br>DECADE<br>III<br>(2012-2022)                      |   | OUT<br>DECADE<br>III<br>(2022-2032) |   | IN<br>DECADE<br>IV<br>(2032-2042) |   |
|--|---|------------------------------------|---|---|---|-------------------------------------|---|-----------------------------------|---|
| Year   |   | Year                               |   | Year  |   | Year                                |   | Year                              |   |
| 1  | 1 | 1                                  | 1 | 2   | 2 | 2                                   | 2 | 2                                 | 2 |
| 9  | 9 | 9                                  | 9 | 0   | 0 | 0                                   | 0 | 0                                 | 0 |
| 9  | 9 | 9                                  | 9 | 0   | 0 | 0                                   | 0 | 0                                 | 0 |
| 2  | 4 | 6                                  | 8 | 0   | 2 | 4                                   | 6 | 8                                 | 0 |
| X  | X | X                                  | X | X   | X | X                                   | X | X                                 | X |
| (4-4-2)  |   | (2-4-4)                            |   | (4-4-2)   |   | (2-4-4)                             |   | (4-4-2)                           |   |
| Y  | Y | Y                                  | Y | Y   | Y | Y                                   | Y | Y                                 | Y |
| (2-4-4)  |   | (4-4-2)                            |   | (2-4-4)   |   | (4-4-2)                             |   | (2-4-4)                           |   |
| r»» (8 yrs) ««Ω  |   | ay»» (10 yrs) ««Ω                  |   | r»» (10 yrs) ««Ω  |   | ay»» (10 yrs) ««Ω                   |   | r»» (10 yrs) ««Ω                  |   |
| ax—r— ·[ry]···r···· —[rx]—r— ·[ry]···r···· —[rx]···r···· —[ry] |   | ax»» (10 yrs) ««Ω                  |   | ax—r—[ry]— ·····r·[rx]— —r·[ry]··· —r—[rx]— ·····r·[ry] |   | ax»» (10 yrs) ««Ω                   |   | ax»» (10 yrs) ««Ω                 |   |
| ax[ry]—r— ·[rx]···r···· —[ry]—r— ·[rx]···r···· —[ry]           |   | ay»» (10 yrs) ««Ω                  |   | ay»» (10 yrs) ««Ω                                       |   | ay»» (10 yrs) ««Ω                   |   | ay»» (10 yrs) ««Ω                 |   |

X = Regularly Scheduled Elections for Odd Numbered Seats (1992-2042).  
 Y = Regularly Scheduled Elections for Even Numbered Seats (1992-2042).  
 (?-?-?) = Term Pattern for Discreet Apportionment Decade.  
 ax (alpha-x) = Year of Initial Election to Odd Seat.  
 ay (alpha-y) = Year of Initial Election to Even Seat.  
 | = Year of Mandatory Transition from Old Member to New Member.  
 Ω (omega) = Mandatory End of Tenure in Seat Under Term Limit Provision.  
 r = Re-election to Seat.  
 [rx] or [|x] = Seat Number Changes to Odd with this Election or Re-election.  
 [ry] or [|y] = Seat Number Changes to Even with this Election or Re-election.  
 »» ( ? yrs) «« = Total Permissible Length of Tenure Under Term Limit Provision.



FIGURE # 5

ODD SEATS.  
NO NUMERICAL CHANGES.  
IN YEAR START.

| IN<br>DECADE<br>II<br>(1992-2002) |   |   |   |   |   | OUT<br>DECADE<br>II<br>(2002-2012) |   |   |   |   |   |
|-----------------------------------|---|---|---|---|---|------------------------------------|---|---|---|---|---|
| Year                              |   |   |   |   |   | Year                               |   |   |   |   |   |
| 1                                 | 1 | 1 | 1 | 2 | 2 | 2                                  | 2 | 2 | 2 | 2 | 2 |
| 9                                 | 9 | 9 | 9 | 0 | 0 | 0                                  | 0 | 0 | 0 | 0 | 0 |
| 9                                 | 9 | 9 | 9 | 0 | 0 | 0                                  | 0 | 0 | 1 | 1 | 1 |
| 2                                 | 4 | 6 | 8 | 0 | 2 | 4                                  | 6 | 8 | 0 | 2 | 2 |

|                 |   |   |   |   |   |                 |   |   |   |   |   |
|-----------------|---|---|---|---|---|-----------------|---|---|---|---|---|
| X               | X | X | X | X | X | X               | X | X | X | X | X |
| (4-4-2)         |   |   |   |   |   | (2-4-4)         |   |   |   |   |   |
| r»» (8 yrs) ««Ω |   |   |   |   |   | r»» (8 yrs) ««Ω |   |   |   |   |   |
| ax—r—r—         |   |   |   |   |   | ax—r—r—         |   |   |   |   |   |
| r»» (8 yrs) ««Ω |   |   |   |   |   | r»» (8 yrs) ««Ω |   |   |   |   |   |
| ax—r—r—         |   |   |   |   |   | ax—r—r—         |   |   |   |   |   |

- X = Regularly Scheduled Elections for Odd Numbered Seats (1992-2012).
- (?-?-?) = Term Pattern for Discreet Apportionment Decade.
- ax (alpha-x ) = Year of Initial Election to Odd Seat.
- | = Year of Mandatory Transition from Old Member to New Member.
- Ω (omega) = Mandatory End of Tenure in Seat Under Term Limit Provision.
- r = Re-election to Seat.
- »» ( ? yrs) «« = Total Permissible Length of Tenure Under Term Limit Provision.



FIGURE # 7

EVEN SEATS.  
NO NUMERICAL CHANGES.  
IN YEAR START.

| IN<br>DECADE<br>II<br>(1992-2002) |   |   |   |   |   | OUT<br>DECADE<br>II<br>(2002-2012) |   |   |   |   |   |
|-----------------------------------|---|---|---|---|---|------------------------------------|---|---|---|---|---|
| Year                              |   |   |   |   |   | Year                               |   |   |   |   |   |
| 1                                 | 1 | 1 | 1 | 2 | 2 | 2                                  | 2 | 2 | 2 | 2 | 2 |
| 9                                 | 9 | 9 | 9 | 0 | 0 | 0                                  | 0 | 0 | 0 | 0 | 0 |
| 9                                 | 9 | 9 | 9 | 0 | 0 | 0                                  | 0 | 0 | 1 | 1 | 1 |
| 2                                 | 4 | 6 | 8 | 0 | 2 | 4                                  | 6 | 8 | 0 | 2 | 2 |
| Y—Y—Y—Y—Y—Y                       |   |   |   |   |   | Y—Y—Y—Y—Y—Y                        |   |   |   |   |   |
| (4-4-2)                           |   |   |   |   |   | (2-4-4)                            |   |   |   |   |   |
| r»» (10 yrs) ««Ω                  |   |   |   |   |   | {NATURAL 10}                       |   |   |   |   |   |
| ay—r—r—r—r—r—r                    |   |   |   |   |   |                                    |   |   |   |   |   |
| r»» (8 yrs) ««Ω                   |   |   |   |   |   |                                    |   |   |   |   |   |
| ay—r—r—r—r—r—r                    |   |   |   |   |   |                                    |   |   |   |   |   |
| r»» (8 yrs) ««Ω                   |   |   |   |   |   |                                    |   |   |   |   |   |
| ay—r—r—r—r—r—r                    |   |   |   |   |   |                                    |   |   |   |   |   |

Y = Regularly Scheduled Elections for Even Numbered Seats (1992-2012).  
 (?-?-?) = Term Pattern for Discreet Apportionment Decade.  
 ay (alpha-y) = Year of Initial Election to Even Seat.  
 | = Year of Mandatory Transition from Old Member to New Member.  
 Ω (omega) = Mandatory End of Tenure in Seat Under Term Limit Provision.  
 r = Re-election to Seat.  
 »» ( ? yrs) «« = Total Permissible Length of Tenure Under Term Limit Provision.

FIGURE # 8

EVEN SEATS.  
NO NUMERICAL CHANGES.  
OUT YEAR START.

| OUT<br>DECADE<br>II<br>(2002-2012) |   |   |   |   | IN<br>DECADE<br>III<br>(2012-2022) |   |   |   |   |
|------------------------------------|---|---|---|---|------------------------------------|---|---|---|---|
| Year                               |   |   |   |   | Year                               |   |   |   |   |
| 2                                  | 2 | 2 | 2 | 2 | 2                                  | 2 | 2 | 2 | 2 |
| 0                                  | 0 | 0 | 0 | 0 | 0                                  | 0 | 0 | 0 | 0 |
| 0                                  | 0 | 0 | 0 | 1 | 1                                  | 1 | 1 | 1 | 2 |
| 2                                  | 4 | 6 | 8 | 0 | 2                                  | 4 | 6 | 8 | 0 |
| Y—Y—Y—Y—Y                          |   |   |   |   | Y—Y—Y—Y—Y                          |   |   |   |   |
| (4-4-2)                            |   |   |   |   | (2-4-4)                            |   |   |   |   |
| r»»(8 yrs)««Ω                      |   |   |   |   | r»»(8 yrs)««Ω                      |   |   |   |   |
| ay—r—                              |   |   |   |   | ay—r—r—                            |   |   |   |   |
| r»»(8 yrs)««Ω                      |   |   |   |   | r»»(8 yrs)««Ω                      |   |   |   |   |
| ay—r—r—                            |   |   |   |   | ay—r—r—                            |   |   |   |   |
| r»»(8 yrs)««Ω                      |   |   |   |   | r»»(8 yrs)««Ω                      |   |   |   |   |
| ay—r—r—                            |   |   |   |   | ay—r—r—                            |   |   |   |   |

Y = Regularly Scheduled Elections for Even Numbered Seats (1992-2022).

(?-?-?) = Term Pattern for Discreet Apportionment Decade.

ay (alpha-y ) = Year of Initial Election to Even Seat.

| = Year of Mandatory Transition from Old Member to New Member.

Ω (omega) = Mandatory End of Tenure in Seat Under Term Limit Provision.

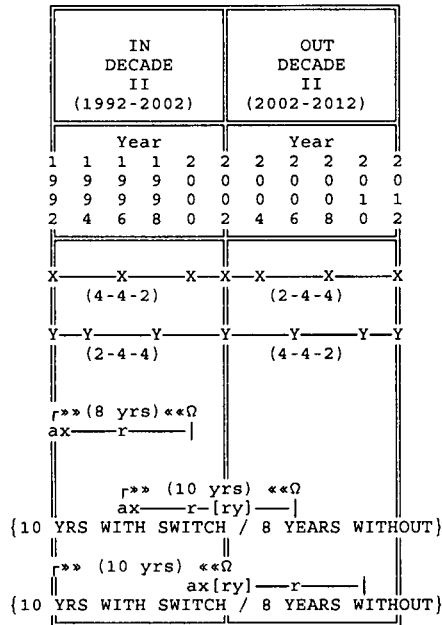
r = Re-election to Seat.

»» ( ? yrs) «« = Total Permissible Length of Tenure Under Term Limit Provision.



FIGURE # 9

PETIT MANIPULATION 1.  
 ODD TO EVEN.  
 IN YEAR START.



X = Regularly Scheduled Elections for Odd Numbered Seats (1992-2012).

Y = Regularly Scheduled Elections for Even Numbered Seats (1992-2012).

(?-?-?) = Term Pattern for Discreet Apportionment Decade.

ax (alpha-x) = Year of Initial Election to Odd Seat.

ay (alpha-y) = Year of Initial Election to Even Seat.

| = Year of Mandatory Transition from Old Member to New Member.

Ω (omega) = Mandatory End of Tenure in Seat Under Term Limit Provision.

r = Re-election to Seat.

[rx] or [|x] = Seat Number Changes to Odd with this Election or Re-election.

[ry] or [|y] = Seat Number Changes to Even with this Election or Re-election.

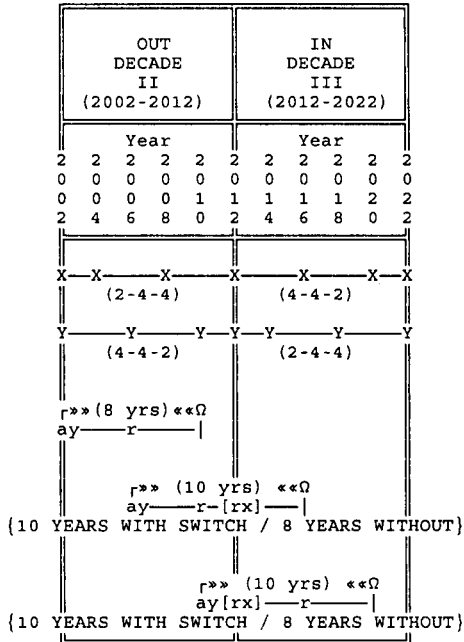
»» ( ? yrs) «« = Total Permissible Length of Tenure Under Term Limit Provision.





FIGURE # 12

PETIT MANIPULATION 4.  
EVEN TO ODD.  
OUT YEAR START.



- X = Regularly Scheduled Elections for Odd Numbered Seats (1992-2022).
- Y = Regularly Scheduled Elections for Even Numbered Seats (1992-2022).
- (?-?-?) = Term Pattern for Discreet Apportionment Decade.
- ax (alpha-x) = Year of Initial Election to Odd Seat.
- ay (alpha-y) = Year of Initial Election to Even Seat.
- | = Year of Mandatory Transition from Old Member to New Member.
- Ω (omega) = Mandatory End of Tenure in Seat Under Term Limit Provision.
- r = Re-election to Seat.
- [rx] or [|x] = Seat Number Changes to Odd with this Election or Re-election.
- [ry] or [|y] = Seat Number Changes to Even with this Election or Re-election.
- \*\* ( ? yrs) \*\* = Total Permissible Length of Tenure Under Term Limit Provision.