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It is not good for a Pope to live twenty years. It is an anomaly and bears no good fruit; he becomes a god, has no one to contradict him, does not know facts, and does cruel things without meaning it.[1]

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1. KENNETH L. WOODWARD, MAKING SAINTS: HOW THE CATHOLIC CHURCH DETERMINES WHO BECOMES A SAINT, WHO DOESN'T AND WHY 363 (1990) (quoting from diary of Roman Catholic churchman John Henry Newman). Each fallacy of a Pope living twenty years represents a similar problem created when legislators serve beyond their time. Incumbents become "gods" in that it is next to impossible for a challenger to win an election. *See* GEORGE F. WILL, RESTORATION: CONGRESS, TERM LIMITS AND THE RECOVERY OF DELIBERATIVE DEMOCRACY 78-83 (1992) (showing substantial increase in number of consecutive years of service for United States Senators and members of House of Representatives). Second, longstanding incumbents can gain incredible powers in Congress whereby nobody can contradict their wishes. *Cf.* David Broder, *Reluctant Voice for Campaign Reform*, CHI. TRIB., Dec. 9, 1992, at C3 (quoting Speaker of the House Tom Foley as unconcerned about possibility of congressional-term limitations because voters "can't-touch-us"). Finally, congresspersons tend to lose touch with the constituents after years in Washington, D.C. *See* Linda Cohen & Matthew Spitzer, Symposium; *Positive Political Theory and Public Law: Term Limits*, 80 GEO.

I. INTRODUCTION

On November 3, 1992, even those voters who sent their congressperson back to Washington, D.C. realized that entrenched incumbency has become detrimental to the legislative system.[2] It is easy to cite examples of mismanagement created by the perpetual monopolization of elective offices by incumbents.[3] The problems range from well-publicized abuses, such as rampant "check bouncing" by congresspersons,[4] to forgotten subsidies that

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L.J. 477, 479 (1992) (stating that congresspersons become unresponsive to needs of constituents).

2. Although term-limitation initiatives were approved in fourteen states, voters in these states reelected their incumbents. Gaylord Shaw, *A Term-Limit Tidal Wave*, NEWSDAY, Nov. 5, 1992, at 26; *see* Mark P. Petracca, *Term Limits: Political Boon or Monstrosity?*, CHRISTIAN SCI. MONITOR, Nov. 27, 1992, at 19 (arguing that recent election results prove that voters may like own legislators but dislike Congress); *Term Limits: Voters in Fourteen States Approve Term-Limit Ballot Initiatives*, DAILY REP. FOR EXECUTIVES, Nov. 5, 1992, at 215 (quoting Democratic National Committee Chairman Ron Brown as saying voters are distressed with Congress, not congresspersons). The 1992 term limitations were not the first passed by voters. In 1990, Colorado imposed term limitations on congressional representatives. *See* COLO. CONST. art. XVIII, § 9a (placing 12-year limitation on Senators and House of Representatives members). Additionally, California voters chose to place term limitations on their state representatives. CAL. CONST. CODE art. IV, § 2(a) (Deering Supp. 1993) (enacted by voters as Proposition 140, "The Political Reform Act"). Further, Proposition 140 has already been upheld by the California Supreme Court. *See* Legislature of Cal. v. Eu, 816 P.2d 1309, 1328 (Cal. 1991) (applying balancing test to find term limitations constitutional); Recent Cases, 105 HARV. L. REV. 953, 953-958 (1992) (discussing the Supreme Court's analysis in *Eu*).

3. Senator Robert Byrd, the chairman of the Appropriations Committee, who was serving his sixth term in 1992, is a good example of the power of longstanding congresspersons. In the last three years Byrd has poured over $1 billion into his home state of West Virginia, which has been termed "almost heaven." *See* GEORGE F. WILL, RESTORATION: CONGRESS, TERM LIMITS AND THE RECOVERY OF DELIBERATIVE DEMOCRACY 29-32 (1992) (discussing "Almost Heaven Efforts" of Senator Robert Byrd); David Hess, *Yes, W. Va., There Is a Santa Claus*, PHILADELPHIA INQUIRER, Aug. 9, 1991, at A21 (describing benefits West Virginia has received due to effort by Senator Byrd). The efforts of Byrd include the establishment of Fish and Wildlife Service operations in West Virginia, the building of a new courthouse in Charleston, West Virginia, and the movement of 3,000 CIA jobs to West Virginia. GEORGE F. WILL, RESTORATION: CONGRESS, TERM LIMITS AND THE RECOVERY OF DELIBERATIVE DEMOCRACY 29-31 (1992).

4. Of the 435 members of the House of Representatives, only 170 were not cited for overdrafts of the now defunct congressional bank. *See* John Duricka, *The Checkbooks Are in the Mail; Backed Against a Political Wall, Lawmakers Turn over Their Records*, TIME, May 11, 1992, at 11 (avoiding more voter outrage, Congress voted to turn over records of all members). Although some of those cited only have relatively few bounced checks, others have over 100. *Compare* Keith White, *Voters Now Must Decide Check-Bouncers' Punishment*, GANNETT NEWS SERV., May 5, 1992, *available in* LEXIS, Nexis Library, CURRNT File (listing Ike Shelton as having nine bounced checks and Bill Emerson as overdrawing six times) *with Voter Disenchantment Boosts Women Candidates Nationwide; Feinstein, Boxer Win Senate Nominations in California*, HOUS. CHRON., June 3, 1992, at A10 (stating that newly elected Senator Boxer had 143 overdrafts when serving as member of House of Representatives); *see also* How-

remain intact, costing the public billions of dollars.[5] Furthermore, incumbents have an inordinate advantage in elections,[6] succeeding in the House of Representatives at a rate of 90% and at a rate of over 80% in Senate races.[7]

In protest of these trends, voters in fourteen states joined Colorado by approving ballot initiatives that limit the terms of their representatives in the United States Congress.[8] It appears that everyone is jumping on the band-

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ard Kurtz, *California Losers Staked All on Hardball Media Ads*, WASH. POST, June 7, 1992, at A22 (electing Boxer in spite of advertisements discussing 143 bounced checks). However, it appears that most of the congresspersons cited will be cleared of the charges. *See* John Machacek, *Paxon, Horton Cleared in Probe of House Bank*, GANNETT NEWS SERV., Sept. 11, 1992, at 3 (clearing Paxon who had 96 overdrafts and stating that most members and former members will clear).

5. In 1954, the angora goat was declared a vital component of the nation's security planning in an effort to ensure the wool supply for World War II uniforms. GEORGE F. WILL, RESTORATION: CONGRESS, TERM LIMITS AND THE RECOVERY OF DELIBERATIVE DEMOCRACY 19 (1992); *see also* Jonathan Rauch, *The Golden Fleece*, NAT'L L.J., May 18, 1991, at 1168-71. Yet, the $105 million per-year subsidy remains on the books in 1992. *See id.* (stating that although this amount appears large, it is only 2% of total farm subsidies per year). Although attempts have been made to remove the subsidy, strong lobbying, particularly by Texas congresspersons, has ensured its survival. *See id.* (noting that 85% of all American angora goats live in Texas). The angora goat is not alone in receiving substantial governmental subsidies. "If you can buy it at a supermarket, the chances are it is politicized product, involved in some government program (do not forget subsidized water for irrigation) benefiting, and buying the vote of America's farmers." GEORGE F. WILL, RESTORATION: CONGRESS, TERM LIMITS AND THE RECOVERY OF DELIBERATIVE DEMOCRACY 24 (1992).

6. *See generally* Erik H. Corwin, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 571-75 (1991) (discussing incumbency advantage). First, the current congressional system provides incumbents with significant advantages by allowing them to place district interests above the interests of the United States as a whole. *Id.* (citing B. CAIN ET AL., THE PERSONAL VOTE: CONSTITUENCY SERVICE AND ELECTORAL INDEPENDENCE 12-15, 214-19 (1987)). Second, incumbents can exploit the advantages of public office such as travel expense accounts and the franking privilege, to send free mail to constituents. *Id.* (citing G. JACOBSON, THE POLITICS OF CONGRESSIONAL ELECTIONS 34-36 (2d ed. 1987)). Finally, through the aid of special-interest groups and particularly political-action committees (PACs), incumbents have a superior ability over challengers to raise campaign funds. *Id.* (citing K. SCHLOZMAN & J. TEIRNEY, ORGANIZED INTEREST AND AMERICAN DEMOCRACY 231-33 (1986)).

7. Erik H. Corwin, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 569 (1991); *see* Mark Blitz, *Give Congress Horse Races, Not Distracted Lame Ducks; Term Limits: The Problem Is Too Little Competition, Not Too Much Longevity*, L.A. TIMES, Dec. 14, 1990, at B7 (noting that in 1990, 96.2% of House of Representatives was reelected). Further, Lee Iacocca has summed up the trend with this observation: "Sitting congresspersons are almost as likely to be sentenced to jail as they are to be sent home by voters. Since 1988, six congresspersons went home and five were sentenced to the slammer." Lee Iacocca, *We Can't Even Throw the Rascals Out; Congress: What Does It Mean when Incumbents Keep Getting Reelected? That We're Pleased with Their Work?*, L.A. TIMES, May 18, 1990, at B9.

8. *See* ARIZ. CONST. art. VII. § 8 (limiting Senators to 12 years in office and Representatives to 6 years in office); FLA. CONST. art. VI, § 4(b) (removing Representatives and Senators

wagon in support of term limitations, including then-President George Bush, Texas Governor Ann Richards, and consumer-rights activist Ralph Nader.[9] Everyone, that is, except for long-term congresspersons, lobbyists, and academicians, who prefer the status quo.[10] Although the United States Supreme Court has never addressed term limitations[11] and the United States

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from election ballot after 8 years of consecutive service); CAL. ELEC. CODE § 25003 (West Supp. 1992) (limiting Representatives' term to 6 years and Senators' term to 12 years); WASH. REV. CODE § 43.04 (1993) (stating that Representative is not eligible to appear on the ballot after 6 years and denying Senator access to ballot after 12 years of consecutive service); Complaint, Bobbie E. Hill, The League of Women Voters of Arkansas v. Bill Clinton, No. 92-6171 (Cir. Ct. of Pulaski County, Ark. Dec. 15, 1992); *Term Limits: Voters in Fourteen States Approve Term Limit Ballot Initiatives*, DAILY REP. FOR EXECUTIVES, Nov. 5, 1992, at D62 (describing all 14 term-limitation statutes enacted by voters); George F. Will, *Term Limits of Endearment*, WASH. POST, Nov. 28, 1992, at A14 (celebrating passage of term limitations in 14 states). Although term limitations for congresspersons were not on the ballot in Texas, news relating to ballot initiatives was reported across the state. Tara Parker Pope, *Election '92: State Term-limit Propositions Winning Favor in at Least Ten States*, HOUS. CHRON., Nov. 4, 1992, at A26. The term-limitations movement has not stopped. Efforts are already being made in the six remaining states with initiative power: Maine, Idaho, Utah, Nevada, Alaska, and Massachusetts. Mark P. Petrecca, *Term Limits: Political Boon or Monstrosity?*, CHRISTIAN SCI. MONITOR, Nov. 27, 1992, at 19.

9. Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 342-43 (1991). In the words of President George Bush, "Those old guys that control those subcommittees haven't had a new idea in the 30 years they've been there, and it's time to change it, and I mean it." *Id.* at 342 n.9 (citing *Nightline: Congressional Term Limits* (ABC television broadcast, Nov. 4, 1991)); *see also* John W. Mashek, *Bush Urges Term Limits in Reforms of Congress*, BOSTON GLOBE, Apr. 4, 1992, at 1 (showing President Bush's support of term limitations). Politicians are not the only supporters of term limitations; several celebrities, including Martina Navratilova, have come out in support of term limitations. Alison Muscatine, *For Navratilova, Different Volleys; Instead of Hitting Them in Tennis, She'll Fire Them as Activist*, WASH. POST, Dec. 26, 1992, at E4.

10. Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 343 (1991). It is easy to see why long-term congresspersons oppose term limitations and some, such as Speaker Tom Foley, campaign against term limitations. *See* David Broder, *Reluctant Voice for Campaign Reform*, CHI. TRIB., Dec. 9, 1990, at C3 (claiming that Foley allowed delay of any campaign-finance bills that would alter status quo). Second, it is equally obvious that lobbyists reap the benefits of long-term incumbency as they prefer incumbents when making campaign donations. *See* Erik H. Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 574 (1992) (explaining incumbency advantages resulting from monetary aid received from special-interest groups). Finally, political scientists believe that they were instrumental in promoting professionalism among politicians, and, thus, they perceive any attacks on the current system as personal. Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 343 (1991).

11. Roderick M. Hills, Jr., *A Defense of State Constitutional Limits on Federal Congressional Terms*, 53 U. PITT. L. REV. 97, 99 (1991). The Supreme Court addressed congressional imposition of additional qualifications on members of the House of Representatives. Powell v.

Constitution guarantees no right to candidacy, ballot access, or continuity in office,[12] opponents of term limitations doubt the constitutionality of imposing such restrictions.[13] Three lawsuits[14] have been filed to test the "they-

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McCormack, 395 U.S. 486, 495 (1969). The Court held that Congress may not impose additional qualifications on its members other than those outlined in the Constitution. *Id.* at 548. Since that time, the Supreme Court has addressed other election questions but never term limitations. *Cf.* Burdick v. Takushi, __ U.S. __, __, 112 S. Ct. 2059, 2067, 119 L. Ed. 2d 245, 258 (1992) (analyzing constitutionality of prohibiting "write-in" voting); Anderson v. Celebrezze, 460 U.S. 780, 789 (1983) (discussing constitutional limits of ballot access and right to vote).

12. Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 344 (1991). *Contra* Brendan Barnicle, Comment, *Congressional Term Limits: Unconstitutional by Initiative*, 67 U. WASH. L. REV. 415, 435 (1992) (suggesting that term limitations require constitutional amendment in order to be enforceable). "Running for office is not 'fundamental right' so as to require strict scrutiny of statute or state constitutional article placing restriction on qualifications for office." Zielasko v. Ohio, 873 F.2d 957, 959-60 (6th Cir. 1989).

13. Opponents attack generally the constitutionality of term limitations on two grounds. First, opponents classify term limitations as a qualification on membership in Congress and, thus, require a constitutional amendment. *See* Joshua Levy, Note, *Can They Throw the Bums Out? The Constitutionality of State-Imposed Congressional Term Limits*, 80 GEO. L.J. 1913, 1933-34 (1992) (stating that it is unconstitutional under qualifications clause for state to impose term limitations on congressional representatives). Second, opponents contend that term limitations place an unconstitutional burden on the voters. Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 184 (1992) (discussing term limitations' possible unconstitutional effects on First Amendment right to vote). These are not the only constitutional challenges. *See* Brendan Barnicle, Comment, *Congressional Term Limits: Unconstitutional by Initiative*, 67 U. WASH. L. REV. 415, 437 (1992) (reasoning that because constitutional amendment was required to place term limitations on Presidency same should be required for congressional term limits). Finally, opponents are so sure of term limits' unconstitutionality that they demand a court test. *See* Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 354 (1991) (showing that Tom Foley is prepared to test term limitations in court); Robert Green, *Backers of Term Limits Demand Congressional Action in 100 Days*, REUTERS LTD., Nov. 8, 1992 *available in* LEXIS, Nexis Library, CURRNT File (quoting Tom Foley as saying term limits "should be tested in the courts first").

14. *See* Susan B. Glasser, *Lawsuits in Three States Now Challenging Constitutionality of Hill Term Limitations*, ROLL CALL, Dec. 21, 1992, at A3 (describing three lawsuits that have been filed in Florida, Washington, and Arkansas). In Florida, two lobbyists brought suit challenging the Florida amendment because it denies them the right to vote for the candidate of their choice. *Id.*; Elizabeth Willson, *Term Limits Quickly Land in Court*, ST. PETERSBURG TIMES, Nov. 5, 1992, at 1B. The state has filed a motion to dismiss claiming that the lobbyists lack standing to bring suit, that the question is not ripe for a judicial decision, and that the plaintiffs failed to state a cause of action because they are not denied the right to vote for any candidate as they may write-in the incumbent's name. Defendant's Motion to Dismiss Plaintiffs' Amended Complaint, Kenneth A. Plante & H. Lee Moffitt v. Jim Smith, No. 92-40410-WS (N.D. Fla. Dec. 19, 1992). In Washington, a Seattle citizen filed suit against the state claiming that the amendment violated his wife's First, Fourth, Fourteenth and Seventeenth

can't-touch-us"[15] attitude of Speaker of the House Thomas S. Foley, who will be subject to term limitations if the courts find he is incorrect.[16] This Comment will discuss the constitutionality and the viability of state-enacted congressional-term limitations by first conducting a historical perspective of the constitutional provisions governing the establishment and operation of Congress, as well as the right to vote. That discussion will be followed by a review of all enacted term-limitation statutes. Thereafter, this Comment will show that even though state-imposed term limitations containing a "write-in" clause are constitutional, the goals of term limitations will be best achieved by alternative methods.

II. BACKGROUND

A. *Article I*

Although the concept of limiting congressional terms has become fashionable only recently, the first imposition of term limitations dates back to 1784.[17] Under the Articles of Confederation, a delegate was not allowed to

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Amendment rights by placing improperly an additional qualification on congressional membership. Susan B. Glasser, *Lawsuits in Three States Now Challenging Constitutionality of Hill Term Limitations*, ROLL CALL, Dec. 21, 1992, at A3. Finally, in Arkansas a suit was brought by the League of Women voters naming every state constitutional officer, current and recently elected member of the Arkansas General Assembly, the Arkansas congressional delegation, and the Arkansas Republican and Democratic Parties. Complaint, Bobbie E. Hill, League of Women Voters of Arkansas v. Bill Clinton, No. 92-6171 (Cir. Ct. of Pulaski County, Ark. Dec. 15, 1992). The Complaint is based on three grounds: a violation of the Qualifications Clause of the United States Constitution, a violation of the enacting provision of the state of Arkansas for constitutional amendments, and severability of the statute. *Id.* It is interesting to note that the constitutionality of enacting the Florida amendment has already been tested. Advisory Opinion to the Attorney General, 592 So. 2d 225, 228 (Fla. 1991) (holding that Florida amendment was constitutionally enacted but not speaking to constitutionality of amendment itself).

15. *See* David Broder, *A Reluctant Voice for Campaign Reform*, CHI. TRIB., Dec. 9, 1990, at C3 (quoting Speaker Thomas Foley whose attitude is typical of incumbents who feel beyond reach of voters).

16. Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 343 (1991) (quoting Foley as saying, "If the voters of the state of Washington pass this initiative, it should and must be tested constitutionally, and I will take an active part in testing it"). On November 5, 1992, the voters in the State of Washington did pass the term-limitations initiative. 1992 WASH. LEGIS. SERV. INIT. MEAS. 573 (West) (stating that representative is not eligible to appear on ballot after six years). Because Foley is a member of the House of Representatives, his name will be removed from the ballot in the year 2000 unless the limits are proved to be unconstitutional. *Id.*

17. *See* ART. OF CONFED. art. V. (1781) (stating that "no person shall be capable of being delegate for more than three years in any term of six years"); Joshua Levy, Note, *Can They Throw the Bums Out? The Constitutionality of State-Imposed Congressional Term Limits*, 80 GEO. L.J. 1913, 1915 (1992) (discussing first term limitations); *see also* GEORGE F. WILL,

serve for more than three years in any six-year period.[18] The Framers, however, chose not to include term limitations in the United States Constitution as they saw the limitations "as entering too much into detail for general propositions."[19] Instead, the Framers limited the prerequisites for Congress to age, residency, and citizenship as contained in Article I of the United States Constitution.[20]

RESTORATION: CONGRESS, TERM LIMITS AND THE RECOVERY OF DELIBERATIVE DEMOCRACY 103 (1992) (stating that term limitations were first imposed in 1784). "In 1784 the Committee on Qualifications of the Continental Congress undertook 'to make an inventory of [the] present stock of members to determine . . . whether any members were tarrying beyond their appointed terms.' " *Id.* (citing EDMUND CODY BURNETT, THE CONTINENTAL CONGRESS 605 (1964)). "The Committee declared Samuel Osgood 'incapable of being a Delegate in Congress after the first day of March, 1784, he having been a Delegate three years since the ratification of the Articles of Confederation.' " *Id.* (citing ROGER SHERMAN, PAPERS OF THE CONTINENTAL CONGRESS, No. 23, Folio 247, as cited in Richardson, CRS *Report*, at 2-3). Even after the adoption of the Constitution, courts still looked to the Articles of Confederation as authority. *See* Virginia v. West Virginia, 246 U.S. 565, 598 (1918) (looking to Articles of Confederation to determine who had power to determine boundaries); Kansas v. Colorado, 206 U.S. 46, 84 (1907) (comparing Articles of Confederation and Constitution to establish Supreme Court's jurisdiction); Louisiana v. Texas, 176 U.S. 1, 13 (1900) (finding that omission from Constitution originally in Articles of Confederation as evidence).

18. ART. OF CONFED. art. V. (1781). Prior to the Articles of Confederation, several states placed term limitations on their legislators. *See* PA. CONST. of 1772, Ch. II, § 8 (limiting state legislators to four one-year terms during seven-year period); VA. CONST. of 1776, para. 4 (imposing rotation system on members of Senate). *See generally* GEORGE F. WILL, RESTORATION: CONGRESS, TERM LIMITS AND THE RECOVERY OF DELIBERATIVE DEMOCRACY 102-04 (1992) (discussing original purposes for term limitations); Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 345-53 (1991) (tracing history of term limitations).

19. 1787 DRAFTING THE U.S. CONSTITUTION 238 (Wilbourn E. Benton ed., 1986). This comment was made in reference to a portion of the "Virginia Plan," which included a rotation scheme whereby members of the House could not serve consecutive terms. *See* Neil Gorsuch & Michael Guzman, *Will the Gentleman Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 345-46 (1991) (discussing possible adoption of rotations system for House of Representatives). Although never the subject of formal debate, the Virginia Plan was set aside, as stated earlier, for "entering too much into detail." Neil Gorsuch & Michael Guzman, *Will The Gentleman Please Yield? A Defense of the Constitutionality of State Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 346 (1991); *see also* Powell v. McCormack, 395 U.S. 486, 532-33 (1969) (discussing efforts at Constitutional Convention to determine qualifications for members of Congress).

20. *See* U.S. CONST. art. I, § 1 (vesting all legislative powers in two houses: Senate and House of Representatives); U.S. CONST. art. I, § 2, cl. 2 (stating qualifications for members of House of Representatives); U.S. CONST. art. I, § 3, cl. 3 (listing qualifications for membership in United States Senate). Many of the Framers, including James Madison and Alexander Hamilton, believed in broad and limited qualifications to ensure that "the door of this part of the federal government is open to merit of every description." THE FEDERALIST NO. 52 (James Madison) (discussing need for congressional membership to be open to all in order to mirror population).

Article I, Section 2, Clause 2 of the United States Constitution establishes the qualifications for membership in the House of Representatives.[21] At the time of their election, members must have attained the age of twenty-five years, have been a citizen of the United States for seven years, and be a resident of the state from which he or she is chosen.[22] The qualifications for Senators set out in Article I, Section 3, Clause 3 are more stringent: "No person shall be a Senator who shall not have attained 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."[23] The texts of these two clauses do not expressly state that age, citizenship, and residency are to be the exclusive qualifications for the members of Congress.[24] Further, the Constitution itself contains other regulations for mem-

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21. U.S. CONST. art. I, § 2, cl. 2. "From the beginning of the Republic, commentators have asserted that the three qualifications contained in the Clause—age, citizenship, and residency—are exclusive, and that neither Congress nor the states may require more of a candidate." Joyner v. Mofford, 706 F.2d 1523, 1528 (9th Cir. 1983) (citing 1 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION 453-63 (5th ed. 1891)); *see also United States v. Richmond*, 550 F. Supp. 605, 607 (E.D.N.Y. 1982) (stating that Constitution embodies limited qualifications for membership in Congress). Finally, as stated by a Framer of the Constitution, "The qualifications of the person who may choose or be chosen, as has been remarked up on another occasion, are defined and fixed in the [C]onstitution, and are unalterable by the legislature." THE FEDERALIST NO. 60 (Alexander Hamilton); *see also* THE FEDERALIST NO. 52 (James Madison) (discussing qualifications of members of Congress).

22. U.S. CONST. art. I, § 2, cl. 2. "[T]he qualifications prescribed in the United States Constitution are exclusive and that state constitutions and laws can neither add to nor take away from them is universally accepted and recognized." Stack v. Adams, 315 F. Supp. 1295, 1297 (N.D. Fla. 1970). Some commentators, however, disagree on the finality of the Qualifications Clause. *See generally* Roderick M. Hills, Jr., *A Defense of State Constitutional Limits on Federal Congressional Terms*, 53 U. PITT. L. REV. 97, 106 (1991) (arguing that negative phrasing of Qualifications Clause illustrates that it is intended to be minimum qualifications that may be added to by states); Joshua Levy, Note, *Can They Throw the Bums Out? The Constitutionality of State-Imposed Congressional Term Limits*, 80 GEO. L.J. 1913, 1924 (1992) (finding that Qualification Clause is finite in nature because of treatment it received during its enactment, and by Congress and courts since then).

23. U.S. CONST. art. I, § 3, cl. 3. The finality of the qualifications clause has been upheld in cases where one might think the additional qualification is logical. For example, an Alaska statute that prohibited a candidate for United States Senate from receiving "write-in" votes in the general election who lost in the primary election of the same year was held to be unconstitutional as placing an additional qualification on Senators. Benesch v. Miller, 446 P.2d 400, 403 (Alaska 1968). Further, a Minnesota statute that prohibited those convicted of conspiracy to overthrow the government was a qualification on membership to Congress in violation of the Qualifications Clause. Danielson v. Fitzsimmons, 44 N.W.2d 484, 486 (Minn. 1950). Thus, "[t]hese standards for members of Congress have been interpreted consistently and correctly by the courts as setting maximum requirements that may not be altered by either Congress or the states." Erik Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 579 (1991) (citing DeWitt, *Madison & Hamilton Settled the Matter*, WALL ST. J., July 5, 1990, at 6, col.1).

24. *See* U.S. CONST. art. I, § 2, cl. 2 (stating only those persons who shall not qualify as

bership in Congress.[25] Nevertheless, excerpts from the debates at the constitutional convention concerning congressional qualifications show that the Framers intended age, citizenship, and residency as the only necessary qualifications.[26] The finality of the Qualifications Clause is further sup-

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Representative); U.S. CONST. art. I, § 3, cl. 3 (using negative terminology to describe qualifications for Senators). However, the courts have held that "[q]ualifications set by Federal Constitution for membership in the lower house of Congress and for other offices created by the United States Constitution exclude all other qualifications, and state law can neither add to nor subtract from them." State *ex rel.* Chavez v. Evans, 446 P.2d 445, 448 (N.M. 1968). Further, the "[s]ection of the Federal Constitution pertaining to qualifications for a representative of the United states Congress does not merely prescribe minimal qualifications for that office to which state may superadd others, but actually states all the qualifications that a state may require of such a representative." Hellmann v. Collier, 141 A.2d 908, 910 (Md. App. 1958). *See generally* THOMAS M. COOLEY, THE GENERAL PRINCIPLES OF CONSTITUTIONAL LAW 285 (1898) (discussing eligibility for membership in United States Congress); JOHN R. SCHMIDHAUSER, CONSTITUTIONAL LAW IN AMERICAN POLITICS, 490-91 (1984) (discussing Supreme Court's interpretation of Qualifications Clause).

25. *See* U.S. CONST. art. I, § 3, cl. 7 (disallowing any individual impeached from Congress from holding national office); U.S. CONST. art. I, § 6, cl. 2 (prohibiting members of Congress from holding another civil office during their period of service in Congress); U.S. CONST. art. IV (interpreting that individuals elected from states that do not have republican form of government are prohibited from serving in Congress). However, some commentators believe that other constitutional provisions illustrate that term limitations require a constitutional amendment. *See* U.S. CONST. amend. XVII (calling for direct election of Senators); U.S. CONST. amend. XXII (limiting President to two terms in office). *See generally* Laura E. Little, *An Excursion into the Uncharted Waters of the Seventeenth Amendment*, 64 TEMP. L. REV. 629, 632 (1991) (discussing effect of 17th Amendment on election of Senators); Brendan Barnicle, Comment, *Congressional Term Limits: Unconstitutional by Initiative*, 67 WASH. L. REV. 415, 426 (1992) (arguing that all major changes in electoral process require constitutional amendment).

26. Joshua Levy, Note, *Can They Throw the Bums Out? The Constitutionality of State-Imposed Congressional Term Limits*, 80 GEO. L. REV. 1913, 1922 (1992). "The conclusion that the requirements in the Qualifications Clauses are exclusive finds support in the debates concerning qualifications at the constitutional convention." *Id.* The debates show that term limitations in the form of a rotation system for the House of Representatives were introduced as part of the Virginia Plan and subsequently dismissed with relatively little debate. 1 DRAFTING THE U.S. CONSTITUTION 238 (Wilbourn E. Benton ed., 1986). Further excerpts from the writings of *The Federalist* show that the Framers intended limited qualifications in order to ensure that all had an equal opportunity to serve in Congress. *Compare* THE FEDERALIST NO. 52 (James Madison) (quoting, "the door of this part of the [f]ederal [g]overnment, is open to merit of every description") *with* THE FEDERALIST NO. 10 (James Madison) (quoting, "to a small number of citizens elected by the rest" is supposed "to refine and enlarge the public views"). Finally, the courts have followed suit by consistently limiting the qualifications of Congress to those expressed in the Constitution. *See, e.g.*, Lowe v. Fowler, 240 S.E.2d 70, 71 (Ga. 1977) (holding that Qualifications Clause contains sole and exclusive qualifications for members of Congress); State v. Superior Court of Marion County, 151 N.E.2d 508, 513 (Ind. 1958) (limiting qualifications for members of Congress to those enumerated in Article I of Constitution); Shub v. Simpson, 76 A.2d 332, 341 (Md. 1950) (prohibiting state from imposing additional qualification on candidates for Congress other that those listed in Constitution);

ported by the Supreme Court's decision in *Powell v. McCormack*,[27] which held that Congress is not empowered by the Constitution to place additional qualifications on its members.[28]

Immediately following the Qualifications Clause, Article I, Section 4 discusses the regulation of congressional elections.[29] That section states that, "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof."[30]

Ekwall v. Stadelman, 30 P.2d 1037, 1040 (Or. 1934) (stating that Constitution is sole source for qualifications of congresspersons).

27. 395 U.S. 486 (1969).

28. *Id.* at 548. In *Powell*, Representative Powell brought suit against the Speaker of the House after the Speaker refused to seat him because of alleged abuses of travel expense funds and paying illegal salaries. *Id.* at 490. The Supreme Court held that the action of Congress was in effect placing an additional qualification on membership in the House of Representatives in violation of the United States Constitution. *Id.* at 543 (citing 17 ANNALS OF CONG. 872 (1807)). Since 1969, courts have consistently cited *Powell* as authority for the exclusivity of the Qualifications Clause. *See, e.g.*, Joyner v. Mofford, 706 F.2d 1523, 1528 (9th Cir. 1983) (prohibiting extra-constitutional qualifications on members of Congress); United States v. Richmond, 550 F. Supp. 605, 607 (E.D.N.Y. 1982) (stating that qualifications for congressional membership are defined and fixed by Qualifications Clause); Hall v. Austin, 495 F. Supp. 782, 785 (E.D. Mich. 1980) (quoting McCarthy v. Briscoe, 49 U.S. 1317, 1320 (1976)) (denying independent party access to ballot is in effect placing additional and unconstitutional qualifications on independent candidates for President). *See generally* RONALD D. ROTUNDA ET AL., TREATISES ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 9.1, at 497-498 (1986) (discussing basic qualifications of membership in Congress); BIBLIOGRAPHY OF ORIGINAL MEANING OF THE UNITED STATES CONSTITUTION 2-3, 6 (1988) (listing works interpreting Qualifications Clause).

29. U.S. CONST. art. I, § 4, cl. 1. According to the Constitution, the states have the power to regulate the election of Senators and Representatives. *Id.* However, the "power to regulate time, place, and manner of elections does not justify, without more, abridgement of fundamental rights such as the right to vote or enter into political associations." Tashjian v. Republican Party of Conn., 479 U.S. 208, 217 (1986); *see* Wesberry v. Sanders, 376 U.S. 1, 6 (1964) (holding that states' right to regulate time, place, and manner of elections does not allow them to make apportionment laws denying citizens right to vote). *See generally* RONALD D. ROTUNDA ET AL., TREATISE ON CONSTITUTIONAL LAW: SUBSTANCE AND PROCEDURE § 9.3 at 502 (1986) (discussing election of Congress under Time, Place, and Manner Clause); John C. Hueston, Note, *Altering the Course of the Constitutional Convention: The Role of the Committee of Detail in Establishing the Balance of State and Federal Powers*, 100 YALE L.J. 765, 773 (1990) (emphasizing importance of states regulating election of congresspersons).

30. U.S. CONST. art. I, § 4, cl. 1. However, the Time, Place, and Manner Clause also gives Congress the power to "at any time by Law make or alter such Regulations, except to the Places of choosing Senators." *Id.* Thus, Congress has the "constitutional power . . . to regulate federal elections." Buckley v. Valeo, 424 U.S. 1, 13 (1976). However, "[allowing Congress] 'at anytime . . . time . . . t[o] alter such Regulations, except as to Place of choosing Senators,' does not include power to prescribe requisites for right to suffrage." Morgan v. Katzenbach, 247 F. Supp. 196, 200 (D.C. 1965). Proponents of term limitations do not see the power of Congress to override state actions as a potential barrier to state-imposed term limitations because of the "political consequences that would accompany such a congressional over-

Supporters of term limitations point to the Time, Place, and Manner Clause, along with the reserve powers of the Tenth Amendment, to overcome the constitutional difficulties of the Qualifications Clause.[31] The Tenth Amendment reserves to the states all power not prohibited by the Constitution.[32] Whether or not states have the power under the Tenth Amendment to impose term limitations depends on the interpretation of the Qualifications Clause.[33] Viewing the Qualifications Clause as absolute in nature will con-

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ride." Joshua Levy, Note, *Can They Throw the Bums Out? The Constitutionality of State-Imposed Congressional Term Limits*, 80 GEO. L.J. 1913, 1935 (1992). *See generally* 91 C.J.S. *United States* § 11 (1955) (discussing role of states and Congress in regulating congressional elections).

31. The Supreme Court has ruled that "the states are given . . . a wide discretion in the formulation of a system for the choice by the people of representatives in Congress." United States v. Classic, 313 U.S. 299, 311 (1941). The proponents believe term limitations fall within the states' wide discretion and are, thus, a constitutional regulation of the time, place, and manner of election. *Cf., e.g.*, Norman v. Reed, __ U.S. __, __ 112 S. Ct. 698, 706, 116 L. Ed. 2d 711, 723-24 (1992) (holding that it is permissible state regulation to prohibit candidates from adopting name of party if they are not in any way associated with that party); Swamp v. Kennedy, 950 F.2d 383, 385 (7th Cir. 1991) (finding that state ban on candidate being nominated by more than one party in same election year and for same office was constitutional state regulation); Navedo v. Acevedo, 752 F. Supp. 523, 541-42 (D. Puerto Rico 1990) (upholding Puerto Rico election laws as there were no constitutional violations). *See generally* Roderick M. Hills, Jr., *A Defense of State Constitutional Limits on Federal Congressional Terms*, 53 U. PITT. L. REV. 97, 136-37 (1991) (stating that state term limitations are precisely what is intended by Time, Place, and Manner Clause in order to ensure protection of election process); Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 181 (1991) (describing term limitations as similar to ballot-access provisions, which may be regulated by states).

32. U.S. CONST. amend. X. "The power 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.* "One of the powers reserved to states under Tenth Amendment is regulation of state elections." United States v. Tonry, 605 F.2d 144, 149 (5th Cir. 1979) (release of federal prisoner on condition that prisoner not run for political offices not violative of state's right to regulate). However, just as under the Time, Place, and Manner Clause, the action of the state may not violate the constitutional rights of the voters. Pestrak v. Ohio Elections Comm'n, 677 F. Supp. 534, 536-37 (S.D. Ohio 1988) (finding Ohio provision prohibiting false statements to be in violation of Free Speech Amendment). *See generally* George Anastaplo, *Amendments to the Constitution of the United States: A Commentary*, 23 LOY. U. CHI. L.J. 631, 724-25 (1992) (quoting 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION § 1900-01 (1833), *reprinted in* 5 FOUNDERS' CONSTITUTION 406-07 (Philip B. Kurland & Ralph Lerner eds., 1987)) (discussing balance between states' interest and right to vote).

33. If term limitations are found to be qualification, then they will be regulated by the Qualifications Clause and, thus, not reserved to the states under either the Time, Place, and Manner Clause or the Tenth Amendment. *See* Joshua Levy, Note, *Can They Throw the Bums Out? The Constitutionality of State-Imposed Congressional Term Limits*, 80 GEO. L.J. 1913, 1934-35 (1992) (stating that no powers regarding Qualifications Clause exist to even be reserved to states). However, if term limitations are found to be manner regulations, then they are constitutional as a state time, place, and manner regulation. *See* Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed*

stitute a block against state regulation of this area.[34] Alternatively, the Supreme Court's interpretation of the Time, Place and Manner Clause has allowed states to regulate ballot access[35] and resignation of candidates.[36]

Term Limitations, 20 HOFSTRA. L. REV. 341, 355 (1991) (warning House Speaker Foley to muster majority to defeat constitutional efforts of states to pass term limitations). *Compare* State *ex rel.* Davis v. Adams, 238 So. 2d 415, 417 (Fla. 1970) (holding that statute requiring sheriff to resign from office to campaign for Congress is not unconstitutional qualification); Oklahoma St. Election Bd. v. Coats, 610 P.2d 776, 781 (Okla. 1980) (finding state law that requires district attorney to resign from office before seeking another elected office constitutional) *with* State v. Crane, 197 P.2d 864, 869 (Wyo. 1948) (holding law requiring governor to resign from office in order to run for Congress unconstitutional).

34. "[T]he qualifications prescribed in the United States Constitution are exclusive and that state constitutions and laws can neither add to nor take away from them is universally accepted and recognized." Stack v. Adams, 315 F. Supp. 1295, 1297 (N.D. Fla. 1970). However, term limitations fall under the Time, Place, and Manner Clause, particularly as described by the Supreme Court in the following language:

> The subject matter is the "times, places and manner of holding elections for senators and representatives." It cannot be doubted that these comprehensive words embrace authority to provide a complete code for congressional elections, not only as to times and places, but in relation to notices, registration, supervision of voting, protection of voters, prevention of fraud and corrupt practices, counting of votes, duties of inspectors and canvassers, and making publication of election returns; in short, to enact the numerous requirements as to procedure and safeguards which experience shows are necessary in order to enforce the fundamental right involved.

Smiley v. Holm, 285 U.S. 355, 399 (1932). *See generally* Stephen Glaizer, *Each State Can Limit Reelection to Congress*, WALL ST. J., June 19, 1990, at 20A (finding factual difference between term limitations and qualifications in order to support their constitutionality); Mark P. Petrecca, *Term Limits Set Us on the Road to Democracy*, N.Y. TIMES, Nov. 20, 1992, at 30A (arguing that term limitations are constitutional move to cure Congress of its problems).

35. *See, e.g.*, Munro v. Socialist Workers Party, 479 U.S. 189, 199 (1986) (holding that Washington ballot-access rule requiring independent candidates to obtain 1% of vote in primary election in order to be placed on ballot in general election is constitutional); Storer v. Brown, 415 U.S. 724, 728 (1974) (holding that California provision prohibiting candidate ballot access as independent candidate less than one year after affiliation with another political party is constitutional state control of elections); Williams v. Tucker, 382 F. Supp. 381, 388 (M.D. Pa. 1974) (finding Pennsylvania statute requiring independent candidates to obtain 2% of vote in order to gain ballot access is constitutional manner regulation). *See generally* Francine Miller, Note, *Fairness in the Election Arena: Congressional Regulation of Federal Ballot Access*, 32 N.Y. L. SCH. L. REV. 903, 909-23 (1987) (analyzing Supreme Court's approach to ballot access); Bradley A. Smith, Note, *Judicial Protection of Ballot Access Rights: Third Parties Need Not Apply*, 28 HARV. J. ON LEGIS. 167, 187-93 (1991) (discussing recent developments in ballot-access cases).

36. *See* Joyner v. Mofford, 706 F.2d 1523, 1531 (9th Cir. 1983) (holding that Arkansas statute that requires resignation to run for public office does not violate Qualifications Clause or due process); Signorelli v. Evans, 637 F.2d 853, 863 (2d Cir. 1980) (finding New York qualification of resignation in order to run for office is constitutional because its purpose is to protect integrity of branch of state government by same principle of incompatibility that Constitution itself has endorsed for national government). *Contra* State *ex rel.* Wettengel v. Zimmerman, 24 N.W.2d 504, 508-09 (Wis. 1946) (concluding that state provision that prohibits

B. *First Amendment*

Incumbents are not the only individuals affected by term limitations.[37] The rights of candidates and the rights of voters cannot be separated neatly because the regulations affecting candidates always have at least an indirect effect on voters.[38] The voters' First Amendment rights are affected by term limitations by not allowing them the right to vote for the candidate of their choice.[39] The right to vote has been considered fundamental to our system

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circuit judge from running for United States Senate is qualification in violation of Constitution). *See generally* Brendan Barnicle, Comment, *Congressional Term Limits: Unconstitutional by Initiative*, 67 WASH. L. REV. 415, 425-27 (1992) (citing several other resign-to-run cases with conflicting holdings); Erik Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 587-88 (1991) (ignoring benefits of write-in voting by concluding that term limits constitute qualification but resign-to-run cases do not).

37. *See* Munro v. Socialist Workers Party, 479 U.S. 189, 193 (1986) (finding that although ballot access affects the candidates' rights, it also affects rights of qualified voters). The right to vote is based on the First Amendment Right to freedom of speech. U.S. CONST. amend. I. "Congress shall make no law . . . abridging the freedom of speech". *Id.* "Election regulations that prevent some candidates from running narrow the field and limit voters' choices; it is that restriction on fundamental right to vote, not burden on particular candidate, that violates the Constitution." El-Amin v. State Bd. of Elections, 717 F. Supp. 1138, 1140 (E.D. Va. 1989). However, "no one is guaranteed the right to vote for a specific individual." Zielasko v. Ohio, 873 F.2d 957, 961 (6th Cir. 1989). Thus far, voters are the first to challenge state-imposed congressional term limits. *See* Susan B. Glasser, *Lawsuits in Three States Now Challenge the Constitutionality of Hill Term Limitations*, ROLL CALL, Dec. 21, 1992, *available in* LEXIS, Nexis Library, CURRNT File (describing three lawsuits that have been filed in Florida, Washington, and Arkansas). In Florida, lobbyists posing as Republicans and Democrats challenged the amendment because it denied them the right to vote for the candidate of their choice. *Id.* In Washington, a suit was filed against the state claiming that the amendment violates the First, Fourth, Fourteenth, and Seventeenth Amendments by improperly placing an additional qualification on congressional membership. *Id.*; *see also* Elizabeth Wilson, *Term Limits Quickly Land in Court*, ST. PETERSBURG TIMES, Nov. 5, 1992, at 1B (discussing federal-court challenge to Florida's term-limitation amendment).

38. Bullock v. Carter, 405 U.S. 134, 143 (1972); *see* Anderson v. Celebrezze, 460 U.S. 780, 788 (1983) (noting that election regulation "inevitably affects—at least to some degree—the individual's right to vote and his right to associate with others for political ends"). Further, "no right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." Burdick v. Takushi, ___ U.S. ___, 112 S. Ct. 2059, 2067, 119 L. Ed. 2d 245, 258 (1992) (citing Wesberry v. Sanderson, 376 U.S. 1, 17 (1964)). "But the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system." *Id.* (citing *Anderson*, 460 U.S. at 788); Storer v. Brown, 415 U.S. 724, 730 (1974)). *Compare* Sarah A. Biety, Note, 17 CREIGHTON L. REV. 187, 191-192 (1983) (finding fundamental right to candidacy) *with* David Kurtz, Note, *Ballot Access Laws in West Virginia—A Call for Change*, 87 W. VA. L. REV. 809, 821 (1985) (finding no right to candidacy).

39. *See* Reynolds v. Sims, 377 U.S. 533, 562 (1964) (recognizing that right to vote is protected by First Amendment as right to free speech). A term limit may be seen as an act of Congress that denies the voter his free expression in that he is barred from voting for an

of democracy since the time of the constitutional debates.[40] However, state regulations of elections are frequently challenged as violating voters' First Amendment rights.[41] In determining whether state action restricts the right to vote, the Supreme Court in *Anderson v. Celebrezze*[42] entered into a three-step process. First, a court must determine the nature and extent of the injury to the voter's First Amendment rights.[43] Second, the Court

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incumbent. U.S. CONST. amend. I. However, term-limitation statutes that allow write-in voting still allow for freedom of expression in permitting incumbents to run as write-in candidates. ARIZ. CONST. art. VII, § 18; ARKANSAS TERM LIMITATION AMENDMENT PETITION (Arkansas for Governmental Reform, Inc. 1993) (on file with *St. Mary's Law Journal*); FLA. CONST. art. VI, § 4; NEB. CONST. art. XV, § 19; MONT. CONST. art. IV, § 8(1)(d); CAL. ELEC. CODE § 25003 (West 1992); WYO. STAT. § 22-5-102 (Michie 1992); 1992 WASH. LEGIS. SERV. INIT. MEAS. 573 (West). *See generally* Steven B. Snyder, *Let My People Run: The Rights of Voters and Candidates Under State Laws Barring Felons from Holding Elective Office*, IV J.L. POL. 543, 556 (1988) (discussing constitutionality of treating felons like barred incumbents and allowing the felons to run as write-in candidates only); Anthony M. Barlow, Comment, *Restricting the Election Day Exit Polling: Freedom of Expression v. The Right to Vote*, 58 U. CIN. L. REV. 1003, 1007 (1990) (emphasizing importance of right to vote).

40. Since the time of the constitutional debates, the right to vote has been seen as fundamental to our system of representative democracy. *See* Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 168-170 (1991) (discussing views expressed by James Madison and Alexander Hamilton). The importance of the right remains in modern time as stated by the Supreme Court in *Reynolds* that, "the right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government." *Reynolds*, 377 U.S. at 560; *see Burdick*, __ U.S. at __, 112 S. Ct. at 2067, 119 L. Ed. 2d at 258 (defining right to vote as right to participate in election process); *Anderson*, 460 U.S. at 789 (explaining balancing test to be applied between state's interest in regulating election process and right to vote); *see also* Kurt Wittenberg, Note, Anderson v. Celebrezze: *Ballot Access and the Due Process Clause—An Alternative to Equal Protection Analysis*, 33 DE PAUL L. REV. 411, 426-28 (1984) (estimating impact of *Anderson* balancing test).

41. *See* Clements v. Fashing, 457 U.S. 957, 971-73 (1982) (overruling challenge of Texas resign-to-run statute); Storer v. Brown, 415 U.S. 724, 728 (1974) (attacking California statute precluding independent candidates previously affiliated with major party); Joyner v. Mofford, 706 F.2d 1523, 1526 (9th Cir.) (arguing that Arizona resign-to-run statute is unconstitutional); Signorelli v. Evans, 637 F.2d 853, 858 (2d Cir. 1980) (challenging New York requirement of resignation of state judges in order to run for Congress); Erik H. Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 587-89 (discussing resign-to-run and ballot-access cases). Denial of the right to vote has also been raised in connection with acts of Congress, such as the Voting Rights Act. *See* Hernandez v. Woodard, 714 F. Supp. 963, 972-73 (N.D. Ill. 1989) (holding that Voting Rights Act does not violate right to vote even though it hinders Hispanics from becoming deputy registrar); *see also* Dayna L. Cunningham, *Who Are To Be the Electors? A Reflection on the History of Voter Registration in the United States*, 9 YALE L. & POL'Y REV. 370, 401 (1991) (mentioning amendment to the Voting Rights Act resulting from legal challenge).

42. 460 U.S. 780 (1983).

43. *See id.* at 795 (determining that Ohio filing deadline placed significant restriction on rights of voters); Stephen J. Schwartz, Note, 24 SANTA CLARA L. REV. 209, 211-14 (1984) (discussing first step in *Anderson* analysis). Not all filing deadlines have been held to be an

must identify a compelling state interest to justify the burdens imposed by the regulations.[44] Finally, the court "must evaluate the legitimacy and strength of each asserted state interest and determine the extent to which those interests necessitate the burdening of the plaintiff's rights."[45] The *Anderson* test has been applied to a variety of election provisions, ranging from local mayoral-candidate regulations[46] to state provisions governing presidential elections.[47] For example, in *Legislature of California v.*

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unconstitutional burden on the voter's right. *See El-Amin*, 717 F. Supp. at 1141 (finding that fixed deadline for candidates to file financial statements is not restrictive of voter's First Amendment rights). *Contra* Workers World Party v. Vigil-Giron, 693 F. Supp. 989, 995 (D.N.M. 1988) (finding New Mexico ballot-access regulations as great injury on voters' rights). *See generally* Tricia A. Blank, Note, 12 N. KY. L. REV. 137, 156 (1985) (discussing likelihood of inconsistent applications like ones above).

44. *See Anderson*, 460 U.S. at 796-806 (1983) (finding three state interests: voter education, equal treatment, and political stability); Dixon v. Maryland St. Admin. Bd. of Election Laws, 878 F.2d 776, 783-84 (4th Cir. 1989) (identifying cost and integrity of election process as state justifications for imposing fee for write-in candidates); *El-Amin*, 721 F. Supp. at 775 (delineating state's interest in requiring financial disclosure is to protect integrity of political parties). *See generally* David Kurtz, Note, *Ballot Access Laws in West Virginia—A Call for Change*, 87 W. VA. L. REV. 809, 816-17 (1985) (discussing second part of *Anderson* test); Teresa L. Grisby, Note, Anderson v. Celebrezze: *The Ascendancy of the First Amendment in Ballot Access Cases*, 15 U. TOL. L. REV. 363, 380-84 (1983) (discussing states' interest in regulating election process).

45. *See Anderson*, 460 U.S. at 796-806 (finding that "the deadline for independent candidates for the office of President of the United States cannot be justified by the State's asserted interest in protecting political stability"). The third and final part of the test allows for balancing that has tilted in favor of both the state and the voter. *Compare* Manifold v. Blunt, 863 F.2d 1368, 1371 (8th Cir. 1988) (holding that state's right to preserve integrity of elections outweighed burden on the voters that new political parties must establish their presidential electors first) *with* Pilcher v. Rains, 853 F.2d 334, 336-37 (5th Cir. 1988) (finding that state failed to assert necessity that outweighed burden of minority party ballot access on voters). *See generally* Sarah A. Biety, Note, 17 CREIGHTON L. REV. 187, 198-99 (1983) (discussing court's analysis of balance between state and voters); Lloyd E. Selbst, Note, *State Restrictions on Candidate Access to the Ballot in Presidential Elections*: Anderson v. Celebrezze, 25 B.C. L. REV. 1117, 1133-36 (1984) (discussing implications of *Anderson* test).

46. *See* Torres v. Comision Estatal de Elecciones de P.R., 700 F. Supp. 613, 621-26 (D. Puerto Rico 1988) (holding that decertification of mayoral candidate may be unconstitutional). The *Anderson* test has gained such prominence that right-to-vote cases are remanded if the facts of the record are not sufficient to apply the test. *See* Bergland v. Harris, 767 F.2d 1551, 1555 (11th Cir. 1985) (remanding for determination of Georgia ballot access under *Anderson*); *El-Amin*, 717 F. Supp. at 1141 (denying motion for summary judgment in order to test Virginia's financial disclosure deadline). *See generally* David Lubecky, Comment, *Setting Voter Qualifications for State Primary Elections: Reassertion of the Right of State Political Parties to Self-Determination*, 55 U. CIN. L. REV. 799, 807-09 (1987) (highlighting First Amendment violations that usually occur during primary process); Francine Miller, Note, *Fairness in the Election Arena: Congressional Regulation of Federal Ballot Access*, 32 N.Y.L. SCH. L. REV. 903, 918-21 (1987) (discussing *Anderson* implications on right to vote).

47. *See Pilcher*, 853 F.2d at 337 (holding that state failed to show necessity of voter-registration number on presidential-ballot petitions in order to outweigh burden on voters); *see*

Eu,[48] the Supreme Court of California applied the *Anderson* test to a voter initiative placing term limitations on state offices.[49] The court upheld the initiative's constitutionality because the state's interest in reforming the election process was greater than any injury to incumbent candidates or their supporters.[50] The *Anderson* test was also applied to a Maryland statute that required write-in candidates to pay a $150 filing fee.[51] The court in *Dixon v.*

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also Manifold, 863 F.2d at 1371 (allowing Missouri to force new political parties to certify presidential electors before established parties); Dart v. Brown, 717 F.2d 1491, 1502 (5th Cir. 1983) (holding that Louisiana may restrict party notation by candidate's name on ballot to recognized political parties), *cert. denied*, 469 U.S. 825 (1984). It is interesting to note that possible violations of the right to vote extend outside the regulations of the election process. *See generally* Anthony M. Barlow, Comment, *Restricting Election Day Exit Polling: Freedom of Expression v. The Right To Vote*, 58 U. CIN. L. REV. 1003, 1005-07 (1991) (analyzing exit polling's effect on right to vote and right to privacy); Stephen M. Leonardo, Comment, *Restricting the Broadcast of Election-Day Projections: A Justifiable Protection of the Right To Vote*, 9 U. DAYTON L. REV. 297, 303-06 (1984) (discussing broadcasting as violation of right to vote).

48. 816 P.2d 1309 (Cal. 1991).

49. *Id.* at 1324. The court characterized the effect on candidates as an additional candidacy requirement, such as integrity, age, residency, or training, which have been upheld. *Id.* (citing Zeilenga v. Nelson, 484 P.2d 578 (Cal. 1971); 25 AM. JUR. 2d *Elections* § 175; Note, *Developments in the Law: Elections*, 88 HARV. L. REV. 1111, 1217 (1975)). On the other hand, the court reasoned that the substantial advantage of incumbency already infringed on their right to vote although there will be some effect on the right to vote for incumbents. *Id.* at 1324-25. Other state regulations addressed by *Anderson*, including an age limit of seventy for judicial office, have been held not to violate the right to vote under the *Anderson* test. *See Zielasko*, 873 F.2d at 961 (finding state's regulatory interest was greater than voter's rights). Additionally, a Maryland statute requiring a $150 fee for write-in candidates is unconstitutional. *Dixon*, 878 F.2d at 786 (finding right to vote and right to association too great in light of state necessity of regulating elections). *See generally* Steven B. Synder, *Let My People Run: The Right of Voters and Candidates Under State Laws Barring Felons from Holding Elective Office*, 4 J.L. & POL. 543, 556-57 (1988) (discussing constitutionality of "write-in" voting for felons).

50. *Eu*, 816 P.2d at 1328-29. Other states applying the *Anderson* test to ballot-access regulations for independent and third-party candidates have found the right to vote outweighs the states' interest. *See Pilcher*, 853 F.2d at 336 (holding that Texas Election Code provision requiring voter-registration numbers on minority ballot-access petitions impermissible burden on voters). *Contra* Socialist Workers Party v. Hechler, 890 F.2d 1303, 1305 (4th Cir. 1989) (finding that West Virginia statute that prohibits those who sign nominating petitions from voting in primary did not violate voters' First Amendment rights). *See generally* Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 184 (1991) (discussing right to vote for candidate of choice); Anthony M. Barlow, Comment, *Restricting Election Day Exit Polling: Freedom of Expression v. Right To Vote*, 58 U. CIN. L. REV. 1003, 1006-07 (1990) (emphasizing importance of right to vote).

51. *Dixon*, 878 F.2d at 783. First, the effect of the Maryland law on the voters equalled a refusal to allow them to cast their ballots because unless the write-in candidate they selected paid $150, the vote was not counted. *Id.* at 782-83 (citing Thompson v. Wilson, 155 S.E.2d 401, 404 (Ga. 1967); Jackson v. Norris, 195 A. 576, 588 (1937)). Second, state interest exists in reducing election costs and minimizing voter confusion as to frivolous and fraudulent candi-

Maryland State Administrative Board of Election Laws[52] held that the fee was unconstitutional because the voters' right to select the candidate of their choice strongly outweighs the state's desire to reduce the cost of write-in candidates.[53]

C. *Twenty-Second Amendment*

Just as with the current term-limitations movement, the Republican Party was the instigator of the effort to place term limitations on the office of the Presidency.[54] In 1796, George Washington set the precedent of an eight-

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dates, all in an effort to uphold a fair and just election process. *See id.* at 784 (noting that Supreme Court held these to be valid interests of state). Frequently, these two factors must be weighed for the effect of political party regulations. *See* Erum v. Cayetano, 881 F.2d 688, 689, 691 (9th Cir. 1989) (challenging nonpartisan-candidate requirements for ballot access); Geary v. Renne, 880 F.2d 1062, 1064-65 (9th Cir. 1989) (applying test to provision of California Constitution prohibiting political parties from endorsing candidates for nonpartisan offices). *See generally* Debora S. James, Note, *Voter Registration: A Restriction on the Fundamental Right To Vote*, 96 YALE L.J. 1615, 1621-24 (1987) (discussing First Amendment violations when registration is effectively barred because of language barrier); Bradley A. Smith, Note, *Judicial Protection of Ballot-Access Rights: Third Parties Need Not Apply*, 28 HARV. J. ON LEGIS. 167, 193-95 (1991) (discussing First Amendment violations when third parties are effectively denied ballot access).

52. 878 F.2d 776 (4th Cir. 1989).

53. *See id.* at 784 (holding that statute is not narrowly tailored to avoid great violations of voter's First Amendment rights, while maintaining states' interest in preserving election process). A balancing test similar to the *Anderson* test has been applied in reapportionment cases. *See* Baker v. Carr, 369 U.S. 186, 232-33 (1962) (finding that apportionment is justiciable denial of equal protection that must be balanced against states' interest); Republican Party of Or. v. Keisling, 959 F.2d 144, 146 (9th Cir. 1992) (holding that reapportionment plan did not violate any First Amendment nor Fourteenth Amendment right); Ferrel v. Oklahoma, 339 F. Supp. 73, 76 (W.D. Okla. 1972) (holding that apportionment did not require majority African-American district); Erwin Chemerinsky, *Protecting the Democratic Process: Voter Standing to Challenge Abuses of Incumbency*, 49 OHIO ST. L.J. 773, 778 (1988) (stating that violating right to vote is basis for challenging apportionment); Mark Packman, *Reapportionment: The Supreme Court Searches for Standards*, 21 URB. LAW. 925, 932 (1989) (discussing apportionments implications on right to vote).

54. *See* George Anastaplo, *Amendments to the Constitution of the United States: A Commentary*, 23 LOY. U. CHI. L.J. 631, 825 (1992) (stating that 22nd Amendment reflects efforts of Republican Party to oust Franklin Roosevelt). It is interesting that the Republican Party, and particularly President Bush, are also backing congressional-term limitations because, since the passage of the Twenty-second Amendment, only Republican Presidents have been affected by the limitation. *See* Jonathan L. Entin, *Separation of Powers, the Political Branches, and the Limits of Judicial Review*, 51 OHIO ST. L.J. 175, 192 (1990) (limiting Presidents Dwight Eisenhower and Ronald Reagan to two terms under 22nd Amendment). In an unpublished opinion, William David Mayes challenged the Twenty-second Amendment on the grounds that it "violated his Fifth Amendment due process rights by infringing on his 'individual liberty' to vote for the candidate of his choice." Mayes v. People of United States, 899 F.2d 19 (9th Cir. Cal., Mar. 21, 1990) (text in Westlaw). The Twenty-second Amendment has been used also to challenge the constitutionality of term limitations on state offices. *See* City Council of Bethle-

year presidential tenure by refusing to run for a third term.[55] Although subject to perpetual debate,[56] the custom set by George Washington became an unwritten element of the Constitution until 1940 and 1944 when Franklin Roosevelt was elected to unprecedented third and fourth terms.[57] When the

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hem v. Marcincin, 515 A.2d 1320, 1325 (Pa. 1986) (proving that term limitations on elected offices are constitutional by citing 22nd amendment); State *ex rel.* Maloney v. McCartney, 223 S.E.2d 607, 620 (W. Va. 1976) (stating that 22nd Amendment gives authority for imposition of term limitations on elected offices).

55. JAMES L. SUNDQUIST, CONSTITUTIONAL REFORM AND EFFECTIVE GOVERNMENT 41 (1986) (noting that George Washington, Thomas Jefferson, and James Madison declined third terms in office, thus, setting unwritten constitutional two-term limit); *see* 77 AM. JUR. 2D *United States* § 44 (1975) (discussing Presidential term of office). The Twenty-second Amendment is held in such high esteem that many oaths require the taker not to support the repeal of the Amendment. *Cf.* Baggett v. Bullit, 377 U.S. 360, 368 (1964) (finding Washington state employee's oath unconstitutional); Ozonoff v. Berzak, 744 F.2d 224, 232 (1st Cir. 1984) (claiming World Health Organization's oath of employment as violating physicians' First Amendment rights); Washington Free Community v. State's Attorney, 310 F. Supp. 436, 448 (D. Md. 1970) (granting declaratory judgment that Ober Act in Maryland Code requiring oath was unconstitutional).

56. *See* JAMES L. SUNDQUIST, CONSTITUTIONAL REFORM AND EFFECTIVE GOVERNMENT 41 (1986) (noting that two years later, Senate attempts to place term limitations on Presidency was again spoiled by inaction in House). The first attempt to impose term limitations was an act by the Senate during James Monroe's Presidency to officially place a term limit on the Executive office. *Id.* The only time the decision was thrown into the House of Representatives occurred during the next round of term-limitation battles led by Andrew Jackson. *See id.* at 42 (explaining Andrew Jackson's desires to place six-year term limitation on Presidency). "Term limitation were next seriously discussed almost fifty years later," in the aftermath of the clash between President William Howard Taft and Theodore Roosevelt for the Republican nomination in 1912 and the subsequent third-party candidacy of Roosevelt that brought about the election of Democrat Woodrow Wilson." *See id.* at 44 (beginning debates over enactment of single term of six years for President). The congressional record reflects debate over the disadvantages of allowing the President to run for a second term, but recognizes that even term-limited Presidents will be involved in the election of his or her successor. *Id.* at 44-45. Yet, again it was the House of Representatives that lacked sufficient votes to approve a Presidential-term limit. JAMES L. SUNDQUIST, CONSTITUTIONAL REFORM AND EFFECTIVE GOVERNMENT 46 (1986) (noting defeat of term limits in House by vote of 42 to 25). Finally, the debate did not stop even after the passage of the Twenty-second Amendment. *See* John J. Gibbons, *Intentionalism, History, and Legitimacy*, 140 U. PA. L. REV. 613, 624 (1991) (criticizing 22nd Amendment).

57. *See* JAMES L. SUNDQUIST, CONSTITUTIONAL REFORM AND EFFECTIVE GOVERNMENT 46-47 (1986) (listing Democrats' argument that term limitation in 1940 and 1944 would have been detrimental to United States because of military crisis). Since its enactment, the Twenty-second Amendment has been utilized in litigation in a variety of ways. *Compare* Halperin v. Kissinger, 434 F. Supp. 1193, 1195 (D.C. 1977) (utilizing 22nd Amendment as defense to injunction to be placed on President Nixon) *with Maloney*, 223 S.E.2d at 611 (justifying imposition of term limitations on elected offices by citing 22nd Amendment). Finally, the Twenty-second Amendment has been cited in attempts to define a person under the Constitution. *See* Roe v. Wade, 410 U.S. 113, 157 (1973) (listing places where "person" is used in Constitution); Vine Deloria, Jr., *Minorities and the Social Contract*, 20 GA. L. REV. 917, 925-

Republican Party regained control of Congress in 1946, it undertook to amend the Constitution officially to place an eight-year term limitation on the Presidency.[58] Opponents of presidential-term limitations voiced many of the same objections as opponents of congressional-term limitations today. For example, the challengers to the Twenty-second Amendment claimed that presidential tenure denied citizens the right to vote for the candidate of choice. Congress concluded that presidential-term limitations could be enacted if they received public support by way of the amendment process.[59] On March 24, 1947, the Twenty-second Amendment was proposed to the states and ratification was completed on February 27, 1951, after being rejected in only two states.[60] Today, the Twenty-second Amendment controls the tenure of the President by limiting the candidate to two, four-year terms

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26 (1986) (discussing definition of "person" under Constitution); Margaret Diamond, Comment, *Echoes from Darkness: The Case of Angela C.*, 51 U. PITT. L. REV. 1061, 1082 (1990) (citing *Roe*, 410 U.S. at 157).

58. George Anastaplo, *Amendments to the Constitution of the United States: A Commentary*, 23 LOY. U. CHI. L.J. 631, 826 (1992). "The Republican Party, it seems, is also largely responsible for the recent agitation for term limitations for Members of Congress as well as for State legislators." *Id.* Yet, the Republican Party may have shot themselves in the foot by supporting term limitations that have since only affected Republican Presidents. *Id.* The similarity of Presidential- and congressional-term limitations has led to comparisons by the courts. *See* Plugge v. McCuen, 841 S.W.2d 139, 148 (Ark. 1992) (Dudley, J., dissenting) (citing Standing Qualifications Clauses as basis for refusing to remove term limitations from Arkansas ballot); Legislature of Cal. v. Eu, 816 P.2d 1309, 1326 (Ca. 1991) (giving authority to state to impose term limitations on state representatives in light of 22nd Amendment); State *ex rel.* Rhodes v. Brown, 296 N.E.2d 538, 540 (Ohio 1973) (utilizing 22nd Amendment to support gubernatorial-term limitations).

59. *See* George Anastaplo, *Amendments to the Constitution of the United States: A Commentary*, 23 LOY. U. CHI. L.J. 631, 825 (1992) (reflecting on efforts to pass 22nd Amendment); Brendan Barnicle, Comment, *Congressional Term Limits: Unconstitutional by Initiative*, 67 WASH. L. REV. 415, 435 (1992) (highlighting Congress's decision to amend Constitution). Many believe that because all major changes in the election process came about through constitutional amendments, an amendment is required for congressional-term limitations. *See* U.S. CONST. amend. XII (changing method of electing President and Vice President to make them basically independent); U.S. CONST. amend. XVII (instituting direct election of Senators); U.S. CONST. amend. XXVI (granting right to vote to all who obtain age of eighteen); Brendan Barnicle, Comment, *Congressional Term Limits: Unconstitutional by Initiative*, 67 WASH. L. REV. 415, 435 (1992) (concluding that constitutional amendment is required for congressional term limitations).

60. U.S. CONST. amend. XXII. Oklahoma and Massachusetts were the only two states to vote against ratifying the Twenty-second Amendment. Since its enactment, the Twenty-second Amendment has had far reaching effects. *See generally* Godfrey Hodgson et al., Symposium: *Foreign Affairs and the Constitution: The Roles of Congress, the President, and the Courts, the Virtues and Vices of Democracy in Conducting Foreign Affairs*, 43 U. MIAMI L. REV. 211, 212-13 (1988) (discussing problems created by 22nd Amendment); Stephen W. Stahis, *The Twenty-second Amendment: A Practical Remedy or Partisan Maneuver?*, 7 CONST. COMMENTARY 61, 81-88 (1990) (discussing impact and future of 22nd Amendment).

in office.[61] Finally, although some commentators cite the Twenty-second Amendment as authority for requiring an amendment for congressional-term limitations, courts have utilized the Twenty-second Amendment to uphold the constitutionality of state term limitations.[62]

III. PURPOSES OF TERM LIMITATIONS

The efforts to place term limitations on Congress and the Presidency are similar because both are attempts to eliminate abusive actions by incumbents.[63] First, term limitations are designed to restore "representation" in Congress by eliminating "careerism."[64] Politicians who suffer from "career-

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61. U.S. CONST. amend. XXII. However, he or she may serve as many as ten years if he or she takes office less than two years before the next election. *Id.* In the only challenge it has ever faced, the Twenty-second Amendment survived constitutional scrutiny. *Mayes*, 899 F.2d 19 (9th Cir. 1990) (text in Westlaw) (challenging Amendment as denial of due process and right to vote). *See generally* George Anastaplo, *Amendments to the Constitution of the United States: A Commentary*, 23 LOY. U. CHI. L.J. 631, 824-26 (1992) (giving overview of 22nd Amendment).

62. *See* Brendan Barnicle, Comment, *Congressional Term Limits: Unconstitutional by Initiative*, 67 WASH. L. REV. 415, 431 (1992) (reasoning that because constitutional amendment was required to place term limitations on Presidency, same should be required for congressional-term limits). However, decisions upholding term limitations placed on both governors and state representatives find the limitations constitutional in light of the 22nd Amendment. *See Eu*, 816 P.2d at 1326 (giving authority to state to impose term limitations on state representatives in light of 22nd Amendment); *Rhodes*, 296 N.E. 2d at 538 (utilizing 22nd Amendment to support gubernatorial term limitations). Most recently, the Arkansas Supreme Court considered the Twenty-second Amendment when determining that allowing voters to decide whether or not to place term limitations on both state and federal elected officials was constitutional. *See Plugge*, 838 S.W.2d at 348 (citing 22nd Amendment as basis for refusing to remove term limitations from Arkansas ballot).

63. *Compare* U.S. CONST. amend. XXII (limiting presidential tenure to two four-year terms) *and* JAMES L. SUNDQUIST, CONSTITUTIONAL REFORM AND EFFECTIVE GOVERNMENT 40-47 (1986) (citing abuses such as bartering of electoral votes to win Presidency as spark to attempt to limit President to one six-year term) *and* George Anastaplo, *Amendments to the Constitution of the United States: A Commentary*, 23 LOY. U. CHI. L.J. 631, 825 (1992) (stating that 22nd Amendment reflects efforts to prohibit long-term incumbency following 12-year span when no man could defeat powerful President Franklin Roosevelt) *with* OR. CONST. art. II, § 20 (stating that purpose for enactment of term limitation is to "reduce power of incumbency") *and* 1992 WASH. LEGIS. SERV. INT'L MEAS. 573 (West) (listing purpose of term limitations as "preventing the self-perpetuating monopoly of elective office by a dynastic ruling class") *and* Linda Cohen & Matthew Spitzer, Symposium: *Positive Political Theory and Public Law: Term Limits*, 80 GEO. L.J. 477, 480 (1992) (reducing power of incumbent as purpose of term limitations).

64. The Preamble to the Arkansas Term Limitations Amendment Petition states, "The people of Arkansas find and declare that elected officials who remain in office too long become preoccupied with reelection and ignore their duties as representatives of the people." ARKANSAS TERM LIMITATION AMENDMENT PETITION (Arkansas for Governmental Reform, Inc. 1993) (on file with *St. Mary's Law Journal*). "Entrenched incumbency has reduced voter participation and has led to an electoral system that is less free, less competitive, and less represen-

ism" become so preoccupied with their own reelection that they devote more effort to campaigning than legislating.[65] With today's technology, the congressional campaign season runs for approximately one year before the election is held.[66] For a member of the House of Representatives, this means that one-half of the two-year term in office is spent campaigning.[67] If a congressperson is limited to a certain number of terms then reelection will no longer be an issue, particularly during the last term of office.[68]

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tative than the system established by the Founding Fathers." *Id.*; *see* CAL. ELEC. CODE § 25003 (West Supp. 1993) (stating that federal office holders no longer make decisions with benefit of people of California in mind); Lowe v. Kansas City Bd. of Election Comm'rs, 752 F. Supp. 897, 901-02 (W.D. Mo. 1990) (during challenge of eight-year term limitations for city council members court found purpose to be removal of "entrenched incumbency"). *See generally* GEORGE F. WILL, RESTORATION: CONGRESS, TERM LIMITS AND THE RECOVERY OF DELIBERATIVE DEMOCRACY 230-31 (1992) (declaring that term limits will return goal of representation to Congress); Mark P. Petrecca, *Term Limits Set Us on the Road to Democracy*, N.Y. TIMES, Nov. 20, 1992, at 30A (stating that term limitations will change career incentives of politicians).

65. WASH. REV. CODE § 43.01(5) (1992). Further, "[t]he people of Florida believe that politicians who remain in elective office too long may become preoccupied with re-election." FLA. CONST. art. VI, § 4 (Supp. 1993); *see* WYO. STAT. § 22-5-105 (a)(ii) (Michie 1992) (stating that legislators who remain in office for extended periods of time tend to become preoccupied with own self interest rather than interest of people they represent). *See generally* Dennis Camire, *Congressional Race is Over, But Campaign for Funds Never Ends*, GANNETT NEWS SERV., Jan. 8, 1993 (stating that high cost of campaigns forces congresspersons to spend more time raising funds than legislating); J. Jennings Moss, *Congress Tackles Reform: Foley Draws Fire at First Hearing*, WASH. TIMES, Jan. 27, 1993, at A7 (arguing that term limitations will restore intent of Founding Fathers to have citizen legislators rather than career legislators).

66. *See* Ann Bancroft, *A Tough Year To Be a Candidate*, SAN FRANCISCO CHRON., Nov. 1, 1992, at 16/Z1 (describing difficulties in last 10 months of campaign season due to recession); Suzanne Charle, *How Can We Reform Campaigns? Some Ideas: Shorten the Process, Bring Back Parties, Cut Polls*, NEWSDAY, Nov. 3, 1992, at 71 (stating that first primary for 1992 campaign was held in February, 266 days before general election); Steve Holland, *Bush Goes Positive Then Negative Again*, REUTERS, Oct. 26, 1992, *available in* LEXIS, Nexis Library, CURRNT File (stating that last nine days of election season ends in a no-sleep marathon).

67. *See* U.S. CONST. art. I, § 2, cl. 1 (stating that House members are to be elected every two years); FLA. CONST. art. VI, § 4 (enacting term limitations in order to cure congresspersons' preoccupation with election); Curtis Krueger, *Young Has Big Edge on Moffitt in Fund-Raising*, ST. PETERSBURG TIMES, Oct. 31, 1992, at 1 (noting candidate began fund raising in January for November election); Gerald S. Leighton, *Term Limits and the Dirty Harry Standard*, WASH. TIMES, Nov. 29, 1992, at 2B, (stating that every 2 years, House members must stand for reelection and in some states, primaries are held 10 months before general election); Charles Walston, *'92 The People Decide a Special Section About the Election, Congress Democrats Keep Key to House, But Doors Open for GOP*, ATLANTA J. & CONST., Nov. 4, 1992, at 8B (describing rough campaign season in which incumbents must focus on elections while Congress is in session).

68. *Cf.* ARKANSAS TERM LIMITATION AMENDMENT PETITION (Arkansas for Governmental Reform, Inc. 1993) (on file with *St. Mary's Law Journal*) (stating purpose of term limitation to cure incumbent preoccupation with reelection); OR. CONST. art. II, § 20 (enact-

Second, by constantly sending newcomers to Washington, D.C, term limitations should ensure that incumbents do not lose touch with their constituents.[69] Many voters believe that once in Washington, D.C., incumbents become permanent fixtures who are unresponsive to the needs of their constituents.[70] These same "fixtures" are responsive to special-interest groups who provide campaign financing, as well as other benefits.[71] Thus, another

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ing term limitations for purpose of restoring fair election process); WYO. STAT. § 22-5-105(a)(ii) (Michie 1992) (hoping term limitations will eliminate incumbents' preoccupation with reelection); *see also* Steve Holland, *Bush Goes Positive Then Negative Again*, REUTERS, Oct. 26, 1992, *available in* LEXIS, Nexis Library, CURRNT File (stating that President is more effective in second and last term of office); Michael Kranish, *Domestic Bid Seen Topping a Second Bush Agenda*, BOSTON GLOBE, Oct. 29, 1992, at 13 (proclaiming best time for President to accomplish goals is when reelection is prohibited). *Contra* William T. Bagley, *Constitutionality of Measure Limiting Terms Is Challenged*, SAN FRANCISCO CHRON., Oct. 28, 1992, at 19A (stating that lame-duck congresspersons will lose clout).

69. *See* CAL. ELEC. CODE § 25003(2)(a) (West 1992) (stating that incumbents tend to forget to make decisions for benefit of electorate); WASH. LEGIS. SERV. INIT. MEAS. 573 (West) (enacting term limitations to ensure return of representation in Congress); Stumpf v. Lau, 839 P.2d 120, 121 n.1 (Nev. 1992) (citing proposed Nevada term limitations that are intended to restore representation to people of state). *See generally* James C. Otteson, *A Constitutional Analysis of Congressional-Term Limits: Improving Representative Legislation Under the Constitution*, 41 DEPAUL L. REV. 1, 1-3 (1991) (arguing that term limitations will return Congress to representative-form governing body intended by Framers); David Dahl, *Mack Shifts on Term Limits*, ST. PETERSBURG TIMES, Jan. 29, 1993, at 6A (stating that incumbent Senator Mack supports term limitations for their purpose of restoring natural order to political system).

70. *See* ARKANSAS TERM LIMITATION AMENDMENT PETITION (Arkansas for Governmental Reform, Inc. 1993) (on file with *St. Mary's Law Journal*) (enacting term limitations because incumbents ignore duties as congresspersons). *Cf.* FLA. CONST. art. VI, § 4 (hoping to increase voter participation by enacting term limitations). *See generally* Laurence Jolidon, *Colin Powell Ponders as Rumor Mill Churns*, USA TODAY, Feb. 11, 1993, at 9A (illustrating current efforts to reduce campaign cost in order to reduce power of special interest); Dennis Camire, *Congressional Race is Over, But Campaign for Funds Never Ends*, GANNETT NEWS SERV., Jan. 8, 1993, *available in* LEXIS, Nexis Library, CURRNT File (calling on congresspersons to stop campaigning and perform duties to which elected); *Senate Democrats Urge GOP To Help Write Campaign Reform Bill for Clinton's Approval*, POL. FIN. & LOBBY REP., Jan. 27, 1993, *available in* LEXIS, Nexis Library, CURRNT File (stating that voters believe federal government no longer belongs to people, but to special interests); *Texans Start Fighting for State and Federal Term Limits*, SOUTHWEST NEWSWIRE, Dec. 8, 1992 (stating that individuals feel opinions no longer count in Congress).

71. *See* CAL. ELEC. CODE § 25003(2)(b) (West 1992) (limiting congressional terms of office in order to break ties between congresspersons and special-interest groups); Sarah Fritz, *Where We Actually Need Reform: Campaign Spending*, ROLL CALL, Aug. 3, 1992, *available in* LEXIS, Nexis Library, CURRNT File (stating that over one-half of money spent on congressional campaigns is furnished by special-interest groups who have no relation to candidate's constituents); Curtis Krueger & Kitty Bennett, *Young Has Big Edge on Moffit in Fund Raising*, ST. PETERSBURG TIMES, Oct. 31, 1992, at 1 (showing incumbent having $341,773 advantage in fund raising as early as first of January prior to November election); Jay Rommano, *Parties Join To Cap Campaign Donations*, N.Y. TIMES, May 24, 1992, at 13NJ1 (calling

purpose of term limitations is to break the alignment between congresspersons and the special-interest groups that support their campaigns. Incumbents and special-interest groups have a symbiotic relationship whereby the incumbents depend on special-interest groups for life-sustaining reelection funds and special-interest groups require the aid of incumbents, particularly those with seniority, to ensure the passage of their desired legislation.[72] Thus, without the cost of reelection, incumbents can cut their ties to special-interest groups.[73]

Third and finally, term limitations are designed to restore competitiveness to the election process.[74] Foremost through the aid of special-interest

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for level playing field in terms of campaign funding); *Senate Democrats Urge GOP To Help Write Campaign Reform Bill for Clinton's Approval*, POL. FIN. & LOBBY REP., Jan. 27, 1993, *available in* LEXIS, Nexis Library, CURRNT File (stating that over half of Congress receives more than half of campaign contributions from special-interest groups, groups that have little or no connection with congressperson's home state); Jeffery Stinson, *Vice President Tells Caucus It's Time To Stop Bickering*, GANNETT NEWS SERV., Jan. 28, 1993, (calling on Congress to "expel special interest").

72. 1992 WASH. LEGIS. SERV. INIT. MEAS. 573 (West). "Entrenched incumbents have become too closely aligned with special-interest groups who provide contributions and support their reelection campaigns, give entrenched incumbents special favors, and lobby office holders for special-interest legislation to the detriment of the people of this state, and may create corruption or the appearance of corruption of the legislative system." *Id.*; *see* FLA. CONST. art. IV, § 4 (stating that congresspersons have become beholden to special interests); WYO. STAT. § 22-5-105 (Michie 1992) (enacting term limitations for purpose of reducing special interest control over congresspersons). *See generally Senate Democrats Urge GOP To Help Write Campaign Reform Bill for Clinton's Approval*, POL. FIN. & LOBBY REP., Jan. 27, 1993, *available in* LEXIS, Nexis Library, CURRNT File (stating that over $160 million is given to congresspersons through PACS to finance congresspersons' campaigns); Howard Troxler, *Its Your Quarter, But One Well Spent*, ST. PETERSBURG TIMES, Jan. 29, 1993, at 1B (discussing advantages received by incumbents through help of special-interest groups).

73. *See* 1992 WASH. LEGIS. SERV. INIT. MEAS. 573 (West) (stating purpose of term limitation to break ties between incumbents and special interest); Laurence Jolidon, *Colin Powell Ponders as Rumor Mill Churns*, USA TODAY, Feb. 11, 1993, at 9A (explaining effort to reduce campaign cost and influence of special interests); *Promise of a New Congress*, ATLANTA J. & CONST., Jan. 6, 1993, at 8A (stating that candidates are financially dependent on special-interest groups); Charles Wilbanks, *Pomeroy Got Big Infusions from PACS in Last Days of Campaign*, STATES NEWS SERV., Jan. 15, 1993, *available in* LEXIS, Nexis Library, CURRNT File (illustrating that in one campaign special-interest contributions were approximately four times as much as individual contributions); *Take "For Sale" Sign Off Candidates*, ATLANTA J. & CONST., Dec. 16, 1992, at 18A (showing that five Georgia incumbents spent on average four times as much as their opponents with help of PACS and special interests); Sharyn Wizda, *1990 Campaign Spending Book Examines Last Round of House Elections*, STATES NEWS SERV., Oct. 20, 1992, *available in* LEXIS, Nexis Library, CURRNT File (calculating cost of average reelection campaign for members of House of Representatives to be $390,000, while Majority Leader Gephardt spent $557,746 in overhead alone).

74. *See* OR. CONST. art. II, § 20 (stating that term limitations are enacted for purpose of returning fairness to electoral process); ARKANSAS TERM LIMITATION AMENDMENT PETITION (Arkansas for Governmental Reform, Inc. 1993) (on file with *St. Mary's Law Journal*)

groups, incumbents have superior fund-raising abilities, allowing them to outspend challengers by an average of 318% in the 1992 election.[75] Incumbents gain additional advantages by exploiting the perquisites of office, such as free travel and the franking privilege.[76] Further, the congressional system, including weak party leadership, allows powerful incumbents to place district interests above the interests of the United States as a whole.[77]

(believing that low voter participation is due to inordinate advantages held by incumbents and, thus, term limitations will restore competition and along with it participation); *Lowe*, 752 F. Supp. at 901-02 (finding that purpose of eight-year city council term limitation was to restore competition to election process). *See generally* Erik H. Corwin, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 574 (1992) (discussing incumbency advantages with aid of money from special-interest groups and perquisites of office such as travel expenses and franking privilege); Charles Wilbanks, *Pomeroy Got Big Infusions from PACS in Last Days of Campaign*, STATES NEWS SERV., Jan. 15, 1993, *available in* LEXIS, Nexis Library, CURRNT File (showing superior fund-raising ability of incumbents through donations by special interests, giving four to one spending advantage).

75. *See* OR. CONST. art. II, § 20 (discussing term limitations and reduced power of incumbents); Ann Bancroft, *A Tough Year To Be a Candidate*, SAN FRANCISCO CHRON., Nov. 1, 1992, at 16Z (arguing that even though there is less money to be raised, incumbents still have advantage in procuring limited funds); Lindsey Gruson, *Incumbents Outpace Rivals in Raising Campaign Funds*, N.Y. TIMES, Apr. 16, 1992, at 4B (showing one incumbent as having 30 times as much cash as his leading opponent); Curtis Krueger, *Young Has Big Edge on Moffit in Fund Raising*, ST. PETERSBURG TIMES, Oct. 31, 1992, at 1 (showing Florida incumbent with five times more campaign funds than his challenger); Gerald S. Leighton, *Term Limits and the Dirty Harry Standard*, WASH. TIMES, Nov. 29, 1992, at 2B (discussing incumbents' fund-raising advantages while in office); Jay Romanno, *Parties Join To Cap Campaign Donations*, N.Y. TIMES, May 24, 1992, at 1NJ (showing discrepancy in fund-raising abilities as there are efforts to level playing field); *Take "For Sale" Sign Off Candidates*, ATLANTA J. & CONST., Dec. 16, 1992, at 18A (stating that Georgia incumbents averaged $875,000 in fund raising, while challengers could only muster $190,000); Charles Walston, *'92 The People Decide a Special Section About the Election, Congress Democrats Keep Key to House, But Doors Open for GOP*, ATLANTA J. & CONST., Nov. 4, 1992, at 8B (illustrating that newcomers cannot match fund-raising abilities of incumbents who can raise more than $1.5 million just through Oct. 15).

76. *See* Rupert Cornwell, *Whiff of Three Scandals Drifts Out of Congress*, THE INDEPENDENT, May 16, 1992, at 12 (discussing recent House post office scandal); Ernie Freda & Mike Christensen, *Washington in Brief "Kiss-in" Protest Nunn's Removal of Gays*, ATLANTA J. & CONST., Dec. 8, 1992, at 6B (eliminating franking privilege could save Congress $50 million per year); Dennis Camire, *Lott Leads State Delegation in Use of Free Mail*, GANNETT NEWS SERV., June 26, 1992 (showing increase in use of franking privilege during election year); Jeffery Stinson, *Vice President Tells Caucus It's Time To Stop Bickering*, GANNETT NEWS SERV., Jan. 28, 1993, *available in* LEXIS, Nexis Library, CURRNT File (telling Congress to eliminate perks and overall system in effort to restore people's faith in Congress); Nancy Tarver, *Stamps of Disapproval; A Federal Probe into Alleged Campaign-Fund Abuses Focuses on One of Congress's Most Influential Budget Decision Makers and One of Clinton's Most Powerful Allies*, TIME, Dec. 21, 1992, at 46 (illustrating abuses of franking privilege that incumbents have, not only to mail items free but to cash illegally campaign checks through House post office).

77. *See* Erik H. Corwin, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 574 (1992) (criticizing role of parties and showing problems of lack

IV. TERM-LIMITATION STATUTES

A. *Introduction*

All currently enacted term-limitation statutes may be divided into two categories based on the inclusion of a clause to allow for "write-in" candidates. The inclusion of a write-in clause is an important distinction because it does not prohibit the incumbent from running for office; rather, it requires him to run as a write-in candidate.[78] Further, with a write-in provision, the voter is not prohibited from voting for an incumbent even though his name is not on the ballot.[79] Therefore, states that include write-in provisions are more likely to withstand a constitutional attack of their term limitations.[80]

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of party leadership); William E. Clayton, *Congress Needs To Change Its Ways*, HOUS. CHRON., June 2, 1992, 3A (calling incumbents "prima donnas" undercutting capability of strong party leadership); Charles Wilbanks, *Pomeroy Got Big Infusions from PACS in Last Days of Campaign*, STATES NEWS SERV., Jan. 15, 1993, *available in* LEXIS, Nexis Library, CURRNT File (discussing motives of elected officials); George F. Will, *Abusive Incumbents Slowly But Surely Bring Term Limits to Congress*, HOUS. CHRON., Jan. 2, 1992, at 23A (showing that incumbents are careerist not party supporters).

78. *See* CAL. ELEC. CODE § 25003(b) (West 1992) (noting that nothing contained in term-limitation statute shall prevent "write-in" candidacy); *see also* MONT. CONST. art. IV, § 8(1)(d) (authorizing "election by virtue of write-in votes"); WASH. REV. CODE § 43.06 (1992) (allowing otherwise qualified candidates to conduct "write-in" campaign). Some state statutes do not contain specific "write-in" clause but deny the incumbent access to the ballot, thus, indirectly allowing "write-in" campaigns. ARIZ. CONST. art. VII, § 18; FLA. CONST. art. IV, § 4; NEB. CONST. art. XV, § 19; WYO. STAT. § 22-5-102 (Michie 1992). *See generally* Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 345 (1991) (supporting term-limitation statutes that contain "write-in" clause). *Contra* Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 194-95 (1991) (finding that "write-in" clause is not sufficient to make term limits constitutional).

79. *See* CAL. ELEC. CODE § 25003(b) (West 1992) (prohibiting statute from denying right to vote to any qualified voter); 1992 WASH LEGIS. SERV. INIT. MEAS. 573 (West) (allowing voter to cast ballot for any qualified candidate regardless of elimination of name from ballot). In states that do not have specific "write-in clauses," the effect will be the same as long as the state allows "write-in" voting. *See* FLA. CONST. art. IV, § 4 (limiting ballot access is not permanent bar to incumbents); FLA. STAT. ANN. § 99.061(3)(b) (West 1982) (providing space on ballot for "write-in" candidates). It is interesting to note that the three states with lawsuits challenging term limitations all allow "write-in" campaigns. *See* Susan B. Glasser, *Lawsuits in Three States Now Challenging Constitutionality of Hill Term Limitations*, ROLL CALL, Dec. 21, 1992, *available in* LEXIS, Nexis Library, CURRNT File (discussing lawsuits in Florida, Washington, and Arkansas); Elizabeth Willson, *Term Limits Quickly Land in Court*, ST. PETERSBURG TIMES, Nov. 5, 1992, at 1B (describing Florida lawsuit).

80. Term-limitation statutes that contain write-in clauses have a better chance of surviving constitutional scrutiny because they are not a total ban on election of incumbents and they allow the voter the right to cast their ballot for an incumbent who has reached his term limitation. *See* CAL. ELEC. CODE § 25003 (West 1993) (stating that nothing will prohibit a write-in candidacy or deny write-in vote); Burdick v. Takushi, __ U.S. __, __, 112 S. Ct. 2059, 2067, 119 L. Ed. 2d 245, 258 (1992) (defining right to vote as right to participate in election process

B. *States Without "Write-In" Provisions*

On November 6, 1990, Colorado became the first state to place term limitations on its congressional representatives.[81] Effective January 1, 1991, "no United States Senator from Colorado shall serve more that two consecutive terms in the United States Senate, and no United States Representative from Colorado shall serve more than six consecutive terms in the United States House of Representatives."[82] The amendment provides for a "rotation" system whereby congresspersons must rotate out of office for four years after every twelve consecutive years of service.[83] It is interesting to note that the amendment calls for nationwide support of congressional-term limitations.[84]

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and, thus, showing that write-in voting allows participation in election process); Storer v. Brown, 415 U.S. 724, 728 (1974) (illustrating difference between ban on candidacy that is unconstitutional qualification and proper state regulation of election process). *See generally* Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 344 (1991) (supporting the constitutionality of term limitations); James C. Otteson, *A Constitutional Analysis of Congressional Term Limits: Improving Representative Legislation Under the Constitution*, 41 DEPAUL L. REV. 1, 2-3 (1991) (arguing in support of constitutionality of term limitations).

81. COLO. CONST. art. XVIII, § 9a(3). Additionally, in 1990 several states chose to place term limitations on their state representatives. CAL. CONST. art. IV, § 2(a) (stating that no state Senator may serve more than two terms and no Assembly member may serve more than three terms); OKLA. CONST. art. V, § 17A (limiting members of Oklahoma Legislature to 12 years of service). *See generally* Joshua Levy, Note, *Can They Throw the Bums Out? The Constitutionality of State-Imposed Congressional Term Limits*, 80 GEO. L.J. 1913, 1913-14 (1992) (discussing Colorado Initiative and its constitutionality); Brendan Barnicle, Comment, *Congressional Term Limits: Unconstitutional by Initiative*, 67 WASH. L. REV. 415, 415 (1992) (stating that Colorado was first to pass congressional-term limits but many states will soon follow suit).

82. COLO. CONST. art. XVIII, § 9a(1).

83. *Id.* In the next national election, several states used Colorado as an example and enacted a rotation system for incumbent ballot access. ARIZ. CONST. art. VII, § 18 (amended 1992); FLA. CONST. art. VI, § 4 (amended 1992); MICH. CONST. of 1963, art. II, § 10; MONT. CONST. art. IV, § 8(1)(d); NEB. CONST. art. XV, § 19; OHIO CONST. art. V, § 8; CAL. ELEC. CODE § 25003 (West 1992); WASH. REV. CODE § 43.01 (1992); WYO. STAT. § 22-5-102 (Michie 1992). *See generally* James A. Gardner, *The Uses and Abuses of Incumbency:* People v. Ohrenstein *and the Limits of Inherent Legislative Power*, 60 FORDHAM L. REVIEW 217, 230 (1991) (discussing whether term limits will solve problems of incumbency); *Term Limits Limit Choice*, N.Y. TIMES, Oct. 13, 1992, at 22A (discussing effects of Colorado Initiative).

84. COLO. CONST. art. XVIII, § 9a(2). Other term-limitation amendments also call for support of the term-limitation movement. *See* FLA. CONST. art. VI, § 4 (declaring that people of Florida desire for public officials to follow term-limitation mandate); MICH CONST. OF 1963, art. II, § 10 (calling on entire public to use best efforts to uphold term-limitations amendment); MO. CONST. art. II, § 45(a) (asking for voluntary observation of term limitations). Further, the movement is also calling for congressional action in support of term limitations. *See generally* George F. Will, *Term Limits of Endearment*, WASH. POST, Nov. 28, 1992, at 14A (calling for Congress to act in first 100 days); Robert Green, *Backers of Term Limits Demand Congressional Action in One Hundred Days*, REUTERS, Nov. 8, 1992, *available in* LEXIS, Nexis Library, CURRNT File (discussing possible bills to be introduced in first 100 days).

In the recent national election, fourteen states followed Colorado's lead and imposed term limitations on their congresspersons.[85] The language of the various initiatives and amendments differed from state to state.[86] The term limitations range from six years[87] to eight years for members of the House of Representative, while Senators are uniformly limited to twelve-year terms.[88] Some states have chosen to apply a "rotation" schedule simi-

85. ARIZ. CONST. art. VII, § 18; ARKANSAS TERM LIMITATION AMENDMENT PETITION (Arkansas for Governmental Reform, Inc. 1993) (on file with *St. Mary's Law Journal*); FLA. CONST. art. VI, § 4; MICH. CONST. of 1963, art. II, § 10; MONT. CONST. art. IV, § 8(1)(d); MO. CONST. art. II, § 45(a); NEB. CONST. art. XV, § 19; OHIO CONST. art. V, § 8; OR. CONST. art. II, § 20; CAL. ELEC. CODE § 25003 (West 1992); N.D. CENT. CODE § 16.1-01-13 (1992); S.D. CODIFIED LAWS ANN. § 15.1-02-12 (1992); WASH. REV. CODE § 43.01 (1992); WYO. STAT. § 22-5-102 (Michie 1992). *See generally* Fred Bruning, *Election '92 National Violative Initiatives from Gay Rights to Term Limits*, NEWSDAY, Nov. 4, 1992 at 37 (listing 14 states that passed term limitations); *Term Limits: Voters in Fourteen States Approve Term-Limit Ballot Initiatives*, DAILY REP. FOR EXECUTIVES, Nov. 5, 1992, 215 (describing statutes passed in all 14 states).

86. Only North Dakota and South Dakota, like Colorado, placed twelve-year term limitations on both the Senate and the House. *Compare* COLO. CONST. art. XVII, § 9a (limiting persons to two consecutive terms in Senate and six consecutive terms in House) *with* N.D. CENT. CODE § 16.1-01-13 (1) (1992) (prohibiting person to serve more than 12 years in either House, Senate, or combination of both). North Dakota enacted two provisions, the second in case the first was found unconstitutional. *See id.* § 16.1-01-13(1) (1992) (limiting to 12 years in either House or Senate or combination of both); *id.* § 16.1-01-13(2) (1992) (prohibiting ballot access for period of two years after person has served as Representative, Senator, or combination of both for 12 consecutive years). Additionally, this movement has spread to cities and towns, many of which have chosen to limit local offices. *See* Linda Cohen & Matthew Spitzer, Symposium: *Positive Political Theory and Public Law: Term Limits*, 80 GEO. L.J. 477, 477 (1992) (discussing spread of term-limitation movement); Timothy Egan, *The 1991 Election: Term Limits; State of Washington Rejects a Plan To Curb Incumbents*, N.Y. TIMES, Nov. 7, 1991, at B16 (stating that Houston, Texas; Cincinnati, Ohio; and Worcester, Massachusetts selected to impose term limitations on local offices). Finally, it is interesting to note that term limitations were recently passed for city officials in the author's hometown of Lake Jackson, Texas. *See Numerous Area Cities Holding Election on Saturday*, HOUS. CHRON., Apr. 26, 1992, at 6C (limiting mayor and city council members to 3 consecutive terms but allowing reelection after 30 months).

87. Arizona, Arkansas, California, Michigan, Montana, Oregon, Washington, and Wyoming choose to limit their House of Representative members to six consecutive years in office and Senators to twelve consecutive years in office. ARIZ. CONST. art. VII, § 18; ARKANSAS TERM LIMITATION AMENDMENT PETITION (Arkansas for Governmental Reform, Inc. 1993) (on file with *St. Mary's Law Journal*); MICH. CONST. OF 1963 art. II, § 10; MONT. CONST. art. IV, § 8(1)(d); OR. CONST. art. II, § 20; CAL. ELEC. CODE § 25003 (West 1992); 1992 WASH. LEGIS. SERV. INIT. MEAS. 573 (West); WYO. STAT. § 22-5-102 (Michie 1992). *See generally* Mark P. Petrecca, *Term Limits: Political Boon or Monstrosity?*, CHRISTIAN SCI. MONITOR, Nov. 27, 1992, at 19 (discussing passage of term-limitation statutes in 1992 election); Michael Rezendes, *Limits Attracting Interest of Voters Across the Nation*, BOSTON GLOBE, Jan. 5, 1993, at 20 (outlining efforts in Massachusetts to pass similar plan).

88. Missouri, Nebraska, and Ohio all have eight-year term limitations on members of the House of Representatives and twelve-year term limitations on Senators. MO. CONST. art. II,

lar to that of Colorado,[89] while others have chosen to limit the number of terms a congressperson can serve within his or her lifetime.[90] The most important distinction, however, is drawn between the initiatives that contain a "write-in" clause and those that do not allow for "write-in" candidates.[91]

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§ 45(a); NEB. CONST. art. XV, § 19; OHIO CONST. art. V, § 8. *See generally* Sandra Atchison, *Incumbents, Gay Rights, Spending, and Black Bears*, BUS. WEEK, Nov. 16, 1992, at 38 (stating that although term limits passed in 14 states incumbents were overwhelmingly reelected); Gaylord Shaw, *A Term-Limit Tidal Wave*, NEWSDAY, Nov. 5, 1992, at 26 (discussing terms of 14 term-limitation statutes passed in November 1992 election).

89. *See* ARIZ. CONST. art. VII, § 18 (denying ballot access after three consecutive terms in House of Representatives and two consecutive terms in Senate); ARKANSAS TERM LIMITATION AMENDMENT PETITION (Arkansas for Governmental Reform, Inc. 1993) (on file with *St. Mary's Law Journal*) (disallowing certification as candidate and ballot access after three or more terms in House of Representatives and two or more terms in Senate); FLA. CONST. art. VI, § 4 (limiting ballot access to those who have served eight consecutive years, but allowing access after minimum two-year break); MICH. CONST. OF 1963 art. II, § 10 (1993) (prohibiting election of person to House of Representatives more than 3 times during 12 year period and to Senate more than 2 times during 24-year period); MONT. CONST. art. IV, § 8(1)(d) (prohibiting ballot access to Representatives after election for 6 out of any 12-year period and to Senators 12 out of any 24-year period); NEB. CONST. art. XV, § 19 (prohibiting ballot access for Representatives in their fifth consecutive term and Senators in their third consecutive term); OHIO CONST. art. V, § 8 (prohibiting person to serve as Representative more that four terms or Senator more that two terms, without being separated by four-year period); CAL. ELEC. CODE § 25003 (West 1992) (prohibiting ballot access after election to House 6 out of 11 years and to Senate 12 out of 17 years); 1992 WASH. LEGIS. SERV. INIT. MEAS. 573 § 3-5 (West) (limiting ballot access to those who served 6 out of last 12 years in House of Representatives and 12 out of last 18 years in Senate); WYO. STAT. § 22-5-102 (1993) (prohibiting ballot access to those House members who have served 6 or more years in 12-year period and to Senators who have served 12 or more years in 24-year period). *See generally* Brendan Barnicle, Comment, *Congressional Term Limits: Unconstitutional by Initiative*, 67 WASH. L. REV. 415, 416-17 (1992) (discussing history of term limitations); *Term Limits Limit Choice*, N.Y. TIMES, Oct. 13, 1992, at 22A (stating possible effects of term limitations).

90. *See* MO. CONST. art. II, § 45(a) (limiting people to two terms in Senate and four terms in House of Representatives); OR. CONST. art. II, § 20 (prohibiting candidacy for more that 6 years in House of Representatives of more than 12 years in Senate during one's lifetime); N.D. CENT. CODE, § 16.1-01-13 (1992) (stating that no person shall serve as Representative, Senator, or both for North Dakota for period of more than 12 years). *See generally* George F. Will, *Term Limits of Endearment*, WASH. POST, Nov. 28, 1992, at 14A (praising passage of term limitations); *Term Limits: Voters in Fourteen States Approve Term Limits Ballot Initiatives*, DAILY REP. FOR EXECUTIVES, Nov. 5, 1992, at 215 (discussing difference between state initiatives).

91. *Compare* ARIZ. CONST. art. VII, § 18 (denying ballot access, not prohibiting candidacy); ARKANSAS LIMITATION AMENDMENT PETITION (ARKANSAS FOR GOVERNMENTAL REFORM, INC. 1993) (on file with *St. Mary's Law Journal*) (prohibiting ballot access to incumbents); FLA. CONST. art. VI, § 4 (denying ballot access but allowing "write-in" voting through another provision of election code); MONT. CONST. art. IV, § 8(3) (including specific provision to allow for "write-in" candidates beyond term limitation); NEB. CONST. art. XV, § 19 (prohibiting ballot access and saying nothing to prohibit "write-in" candidacy); CAL. ELEC. CODE § 25003(b) (West 1992) (allowing "write-in" candidacy through specific clause); 1992

C. *States with "Write-In" Provisions*

Arizona, Arkansas, California, Florida, Nebraska, Montana, Washington, and Wyoming all adopted provisions that remove incumbents from the ballot after a set number of years, but allow a congressperson the option of running as a write-in candidate.[92] The "write-in" clause provides that nothing in the amendment shall "be construed as preventing or prohibiting any person from standing or campaigning for any elective office by means of a 'write-in' campaign."[93] Further, the amendment assures the protection of the public's right to vote by proclaiming that the term-limitation statute shall not prevent or prohibit any qualified voter from reelecting an incumbent by the means of a write-in vote.[94] Finally, some state statutes do not

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WASH. LEGIS. SERV. INIT. MEAS. 573 (West) (granting incumbents who reach their term of limitation right to run as "write-in" candidate); WYO. STAT. § 22-5-102 (Michie 1992) (denying ballot access to incumbents who reach their term limit) *with* MICH. CONST. OF 1963 art. II, § 10 (requiring break period before incumbents can run for election); MO. CONST. art. III, § 45(a) (limiting number of term of service to finite number); OHIO CONST. art. V, § 8 (limiting number of successive terms in given period); OR. CONST. art. II, § 20 (denying lifetime right to candidacy after certain number of years of service); N.D. CENT. CODE § 16.1-01-13(1) (prohibiting continued service after 12 years). *See generally* Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 352 (1991) (discussing importance of allowing "write-in" candidacy). *Contra* Martin E. Latz, *The Constitutionality of State-Passed Congressional-Term Limits*, 25 AKRON L. REV. 155, 202 (1991) (ignoring benefits of allowing "write-in" candidacy in constitutional analysis).

92. ARIZ. CONST. art. VII, § 18; ARKANSAS TERM LIMITATION AMENDMENT PETITION (Arkansas for Governmental Reform Inc. 1993) (on file with *St. Mary's Law Journal*); FLA. CONST. art. VI, § 4; MONT. CONST. art. IV, § 8(1)(d); NEB. CONST. art. XV, § 19; CAL. ELEC. CODE § 25003 (West 1992); 1992 WASH. LEGIS. SERV. INIT. MEAS. 573 (West); WYO. STAT. § 22-5-102 (Michie 1992). *See generally* Bradley A. Smith, Note, *Judicial Protection of Ballot-Access Right: Third Parties Need Not Apply*, 28 HARV. J. ON LEGIS. 167, 195 (1991) (discussing effectiveness of "write-in voting"). *But see* Martin E. Latz, *The Constitutionality of State-Passed Congressional-Term Limits*, 25 AKRON L. REV. 155, 202 (1991) (stating that "write-in" voting is ineffective).

93. 1992 WASH. LEGIS. SERV. INIT. MEAS. 573, § 6 (West); *see also* MONT. CONST. art. IV, § 8(3) (specifying power to run "write-in" campaign); CAL. ELEC. CODE § 25003 (West 1992) (granting specific power to run as "write-in" candidate). In order to make certain that write-in voting is effective, there must be safeguards to ensure that the votes will be counted. *See generally* Edward Tynes Hand, Comment, *Durational Residence Requirements for Candidates*, 40 U. CHI. L. REV. 357, 369 (1973) (discussing challenges by candidates for right to appear on ballot); Bradley A. Smith, Note, *Judicial Protection of Ballot-Access Rights: Third Parties Need Not Apply*, 28 HARV. J. ON LEGIS. 167, 193-95 (analyzing write-in voting as effective means of candidacy).

94. 1992 WASH. LEGIS. SERV. INIT. MEAS. 573, § 6 (West); *see also* CAL. ELEC. CODE § 25003 (West 1992) (specifically stating that nothing should prohibit casting of "write-in" vote). However, the Montana statute does not specifically state that nothing will prohibit the right to cast a "write-in" vote for an incumbent. *See* MONT. CONST. art. IV, § 8(3) (limiting clause to power to run "write-in" campaign). *See generally* Note, *Access to the General Elec-*

contain write-in clauses, but allow write-in candidacy by specifically limiting ballot access, instead of terms of office. The wording of these statutes states that a candidate may not appear on the ballot after a certain number of years, and another provision of the state election code allows for write-in voting.[95]

V. CONSTITUTIONAL CHALLENGES

Even after the 1992 election, the term-limitation movement continues to gain momentum.[96] Yet, the constitutionality of state-imposed limits on Congress is an unsettled area of the law.[97] Although more than one-third of those elected to Congress may have their careers cut short by term limitations, only members of Congress from Arkansas are bringing a constitu-

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tion Ballot for Political Parties and Independent Candidates, 88 HARV. L. REV. 1121, 1134-35 (1975) (discussing cases testing write-in voting as effective means of voting); Note, *Limitations on Access to the General Election Ballot*, 37 COLUM. L. REV. 86, 98 (1937) (illustrating possibility of write-in vote being declared void).

95. ARIZ. CONST. art. VII, § 18; ARKANSAS TERM LIMITATION AMENDMENT PETITION (Arkansas for Governmental Reform, Inc. 1993) (on file with *St. Mary's Law Journal*); FLA. CONST. art. VI, § 4; NEB. CONST. art. XV, § 19; WYO. STAT. § 22-5-102 (Michie 1992). *See generally* Cleta Deatherage Mitchell, *Limiting Congressional Terms: A Return to Fundamental Democracy*, 7 J.L. & POL. 733, 744 (1991) (arguing that term limitations ensure right to vote effectively). *Contra* Hon. Willie L. Brown, Jr., *Legislative-Term Limits: Altering the Balance of Power*, 28 J.L. & POL. 747, 750 (1991) (stating that term limitations will not accomplish goals set forth and deny effective voting).

96. *See* ARIZ. CONST. art. VII, § 18 (stating that candidates name shall not appear on ballot if served two consecutive terms in Senate or three consecutive terms in House of Representatives); ARKANSAS TERM LIMITATION AMENDMENT PETITION (Arkansas for Governmental Reform, Inc. 1993) (on file with *St. Mary's Law Journal*) (denying ballot access after eight consecutive years in Senate and six consecutive years in House); FLA. CONST. art. VI, § 4 (declaring that no candidate who has served for eight consecutive years may appear on ballot); NEB. CONST. art. XV, § 19 (refusing to list candidate on ballot after two consecutive terms in Senate and four consecutive terms in House); WYO. STAT. § 22-5-102 (Michie 1992) (restricting ballot access for Senators to 12 out of every 24 years and 6 out of every 12 years for Representatives). *See generally Terms Limits: Voters in Fourteen States Approve Term-Limit Ballot Initiatives*, DAILY REP. FOR EXECUTIVES, Nov. 5, 1992, 215 (discussing various provisions of term-limitations statutes in all 14 states); Elizabeth Wilson, *Terms Limits Quickly Land in Court*, ST. PETERSBURG TIMES, Nov. 5, 1992, at 1B (describing Florida provision to limit ballot access).

97. *See* Powell v. McCormack, 395 U.S. 486, 548 (1969) (addressing only limit of congressional power to add qualifications, not state regulations of time, place, and manner); Zielasko v. Ohio, 873 F.2d 957, 959 (6th Cir. 1989) (denying fundamental right to candidacy, but refusing to strictly define right); Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 344 (1991) (stating that Constitution guarantees no right to candidacy, ballot access, or continuity in office); Roderick M. Hills, Jr., *A Defense of State Constitutional Limits on Federal Congressional Terms*, 53 U. PITT. L. REV. 97, 100 (1991) (stating that Supreme Court has never addressed term limitations).

tional challenge.[98] The first test of constitutionality for term limitations comes from the voters who claim they are being denied the right to vote.[99] In response to these challenges, the states contend that enacting term limitations is within their constitutional power to regulate the time, place, and manner of elections.[100]

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98. *See* Susan B. Glasser, *Mitchell Outlines the Senate Objections to States Restricting Terms of Members*, ROLL CALL, Feb. 8, 1993, *available in* LEXIS, Nexis Library, CURRNT File (authorizing Arkansas Senators to pursue action to have term limits declared unconstitutional under defense that term limitations are unconstitutional qualifications); Susan B. Glasser, *Lawsuits in Three States Now Challenging Constitutionality of Hill Term Limitations*, ROLL CALL, Dec. 21, 1992, at 8 (describing three lawsuits that have been filed by voters as violating their right to vote); Elizabeth Wilson, *Term Limits Quickly Land in Court*, ST. PETERSBURG TIMES, Nov. 5, 1992, at 1B (discussing challenge by two Florida voters, representing both Republican and Democrat). Before the election in November of 1992, the ballot initiatives were challenged as to their constitutionality in both Florida and Arkansas, however, the courts refused to address the issue of constitutionality. *See* Plugge v. McCuen, 838 S.W.2d 348, 349 (Ark. 1992) (limiting holding to whether wording of term limit initiative was false or misleading); Advisory Opinion to the Att'y Gen., 592 So. 2d 225, 227 (Fla. 1991) (limiting decision to whether proper procedures were followed under the Florida Constitution to allow for voter amendments). Finally, challenges of both city council and state congressional-term limitations have been unsuccessful. Lowe v. Kansas City Bd. of Election Comm'rs, 752 F. Supp. 879, 901-02 (W.D. Mo. 1990) (supporting eight-year term limitation on city council members); Legislature of Cal. v. Eu, 816 P.2d 1309, 1320 (Cal. 1991) (upholding state congressional term limitations).

99. *See* Reynolds v. Sims, 377 U.S. 533, 555 (1964) (emphasizing right to vote for one's candidate of choice as "essence of democratic society"). However, the right to vote does not inherently include the right to have an unlimited or "unobstructed" number of candidate choices on the ballot, as is indicated by the numerous state statutes limiting ballot access that have been upheld as constitutional. *See* Burdick v. Takushi, __ U.S. __, __, 112 S. Ct. 2059, 2067, 119 L. Ed. 2d 245, 258 (1992) (upholding Hawaii's statute denying right to cast ballot for write-in candidates); Munro v. Socialist Workers Party, 479 U.S. 189, 199 (1986) (holding that requiring independent candidates to obtain 1% of vote in primary election in order to be placed on ballot in general election does not deny voters' right to vote for independent candidate); Storer v. Brown, 415 U.S. 724, 728 (1974) (ruling that prohibiting candidate ballot access as independent candidate when candidate had been affiliated with another political party in the past year does not violate voters' constitutional right to vote). *See generally* Francine Miller, Note, *Fairness in the Election Arena: Congressional Regulation of Federal Ballot Access*, 32 N.Y.L. SCH. L. REV. 903, 909-23 (1987) (discussing Supreme Court's approach to protecting right to vote in ballot-access cases); Bradley A. Smith, Note, *Judicial Protection of Ballot-Access Rights: Third Parties Need Not Apply*, 28 HARV. J. ON LEGIS. 167, 187-93 (1991) (analyzing treatment of right to vote in recent ballot-access cases).

100. *See* Norman v. Reed, __ U.S. __, __ 112 S. Ct. 698, 706, 116 L. Ed. 2d 711, 725-26 (1992) (allowing state to prohibit candidates from adopting name of party if they are not in any way associated with party); United States v. Classic, 313 U.S. 299, 311 (1941) (finding states have wide range of power under Time, Place, and Manner Clause in efforts to uphold political process); Smiley v. Holm, 285 U.S. 355, 367 (1932) (describing wide range of possible regulations that fall within power of states under Time, Place, and Manner Clause); Swamp v. Kennedy, 950 F.2d 383, 385 (7th Cir. 1991) (banning candidate from second nomination for same office in same election year was constitutional state regulation). Finally, although it is beyond

A. *Challenges by Incumbents*

Under Article I of the United States Constitution, a term limitation may be classified as either a "qualification"[101] or as a "manner regulation."[102] The appropriate classification is the key to supporting the constitutionality of term limitations.[103] Incumbents who challenge a term limitation prefer to

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the scope of this Comment, it is interesting to note that several commentators have voiced policy arguments to support the constitutionality of term limitations. *See* James C. Otteson, *A Constitutional Analysis of Congressional-Term Limits: Improving Representative Legislation Under the Constitution*, 41 DEPAUL L. REV. 1, 2-3 (1991) (arguing that legitimacy and effectiveness of Congress is required by Constitution and term limitations help achieve this goal). *Contra* Stephen R. Greenberger, *Democracy and Congressional Tenure*, 41 DEPAUL L. REV. 37, 37 (1991) (finding Otteson's argument completely unfounded).

101. *See* U.S. CONST. art. I, § 2, cl. 2 (declaring qualifications necessary for election to House of Representatives); U.S. CONST. art. I, § 3, cl. 3 (listing requirements for service as United States Senator); Powell v. McCormack, 395 U.S. 486, 550 (1969) (finding that Congress's refusal to seat member of House of Representatives who was duly elected and who met all qualifications prescribed in Article I of Constitution placed unconstitutional qualification on membership in Congress). Therefore, a qualification is any regulation barring an otherwise qualified candidate from being seated as a member of Congress. *See generally* John C. Hueston, Note, *Altering the Course of the Constitutional Convention: The Role of the Committee of Detail in Establishing the Balance of State and Federal Powers*, 100 YALE L.J. 765, 773 (1990) (discussing necessity of allowing states to regulate election of congresspersons); Joshua Levy, Note, *Can They Throw the Bums Out? The Constitutionality of State-Imposed Congressional-Term Limits*, 80 GEO. L.J. 1913, 1915 (1992) (describing section of note tracing interpretation of Qualification Clause).

102. U.S. CONST. art. I, § 4, cl. 1. "The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof. . . ." *Id.* The state's power to regulate the election of Congress is very broad, limited only by possible infringement on voters' rights. *See* Tashjian v. Republican Party of Conn., 479 U.S. 208, 221-22 (1986) (illustrating that states have legitimate interest in regulating ballots to prevent voter confusion); Munro v. Socialist Workers Party, 479 U.S. 189, 195 (1986) (holding that states have power to require candidate to show substantial support before granting ballot access). *See generally* Martin G. Byrne, Comment, *Political Parties Win the Battle, Will They Win the War?*, 32 HOW. L.J. 83, 83-85 (1989) (discussing holding of court in *Tashjian*); Erik H. Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 587-89 (1991) (discussing resignation-to-run-for-office and ballot-access regulations as constitutional manner regulations by states).

103. If a term limitation is found to be a qualification it will be barred by the Constitution; but if a term limitation is manner regulation then it will be an appropriate action by the state under the Time, Place, and Manner Clause to regulate congressional elections. *Compare* Exxon v. Tienmann, 279 F. Supp. 603, 614 (D. Neb. 1968) (holding that because residency requirement of Constitution does not require a congressperson to live in district from which he or she is elected, and state rule so requiring is additional qualification in violation of Constitution) *with* Oklahoma St. Election Bd. v. Coats, 610 P.2d 776, 780 (Okla. 1980) (requiring district attorney to resign from office before seeking another elected office is appropriate state manner regulation). *See generally* Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 355 (1991) (explaining necessity for classifying term limitation as manner regulation rather than qualification); Deborah Martin, *Legal Issues; Proposition 140, Term*

label it a "qualification" because, as such, a term limitation would not survive constitutional scrutiny.[104] However, the states believe a term limitation should be classified as a "manner regulation," thereby falling within the states' authority to regulate the manner of an election.[105] The Supreme Court has yet to draw expressly a distinction between qualifications and manner regulations.[106] Notwithstanding, an analysis of both qualification

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Limits and the Constitution, HERITAGE FOUND. REP., Nov. 18, 1991, at 47 (concluding that constitutionality of term limitations is case of first impression and there is no sure way to determine how courts will decide issue; but best bet is state regulation under Time, Place, and Manner Clause).

104. *See* Stack v. Adams, 315 F. Supp. 1295, 1297 (N.D. Fla. 1970) (stating that Qualifications Clause is finite and, thus, if term limitation is qualification, it would be addition to Qualification Clause by state in violation of United States Constitution); Lowe v. Fowler, 240 S.E.2d 70, 71 (Ga. 1977) (stating that qualifications contained in Constitution for members of Congress are finite and may not be added to by states); State v. Superior Ct. of Marion County, 151 N.E.2d 508, 513 (Ind. 1958) (holding that Article I of United States Constitution contains extent of allowable qualifications for congresspersons); Ekwall v. Stadelman, 30 P.2d 1037, 1040 (Or. 1934) (analyzing Qualification Clause and concluding that it contains sole applicable regulations for membership in Congress). However, there is disagreement on the finality of the Qualifications Clause. *See generally* Roderick M. Hills, Jr., *A Defense of State Constitutional Limits on Federal Congressional Terms*, 53 U. PITT. L. REV. 97, 114 (1992) (finding negative phrasing of Qualifications Clause as argument that these qualifications are merely minimum to which states can place additional qualifications). *Contra* Joshua Levy, Note, *Can They Throw the Bums Out? The Constitutionality of State-Imposed Congressional Term Limits*, 80 GEO. L.J. 1913, 1939-40 (1992) (concluding that Qualification Clause prohibits any additional requisites to be added without constitutional amendment).

105. *Cf.* VanSickle v. Shanahan, 511 P.2d 223, 242-43 (Kan. 1973) (stating that purpose of Time, Place, and Manner Clause is to allow each state to ensure integrity of election process and, because term limitations have purpose to return integrity to election process, they are valid state manner regulation). For example, states are allowed to regulate ballot access when the purpose of the regulation is a legitimate state interest. *See, e.g.*, *Munro*, 479 U.S. at 199 (holding that requiring independent candidates to obtain 1% of vote in primary election in order to be placed on ballot in general election is constitutional state regulation of ballot access); Storer v. Brown, 415 U.S. 724, 728 (1974) (affirming that prohibiting candidate ballot access as member of second political party within one year is constitutional state control of elections); Williams v. Tucker, 382 F. Supp. 381, 388 (M.D. Pa. 1974) (upholding statutory denial of ballot access to independent candidates unless they obtain petition signatures from 2% of primary voters as constitutional manner regulation). *See generally* Roderick M. Hills, Jr., *A Defense of State Constitutional Limits on Federal Congressional Terms*, 53 U. PITT. L. REV. 97, 134-35 (1991) (arguing that enactment of term limitations by state should be allowed because there is no longer fear of states abusing power, and it is proper state power for protection of federalism); *Term Limits for Congress*, L.A. TIMES, June 25, 1992, at 6B (stating that strong case exists for constitutionality of term limitations under Time, Place, and Manner Clause); *Term Limits: Voters Have a Chance To Send a Message*; DALLAS MORNING NEWS, Nov. 2, 1992, at A18 (discussing constitutionality of Time, Place, and Manner argument).

106. *See* Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 354-55 (1991) (stating that not only has no distinction been drawn between two terms but Supreme Court has also made no attempt to define either term). However, an examination of the two

and manner-regulation cases reveals that qualifications and manner regulations have a differing purpose and a differing degree of finality. These two distinctions, between qualifications and manner regulations, illustrate that term limitations are best defined as manner regulations.[107] Instinctively, a qualification's purpose is to prohibit those who do not meet certain criteria from holding an elected office.[108] On the other hand, the purpose of a man-

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lead cases in the area of Qualification Clause and Time, Place, and Manner regulations reveals at least two distinctions between the terms. *See Texans Start Fighting for State and Federal Term Limits*, SOUTHWEST NEWSWIRE, Dec. 8, 1992, *available in* LEXIS, Nexis Library, CURRNT File (arguing that term limits are valid exercise of state's power under Time, Place, and Manner Clause). *Compare Storer*, 415 U.S. at 730 (finding that state ballot-access provision that prohibited candidate from affiliating with two political parties within same year constitutional manner regulation) *with* Powell v. McCormack, 395 U.S. 486, 546-47 (1969) (holding that exclusion of Powell was unconstitutional qualification).

107. *Compare Powell*, 395 U.S. at 546-47 (prohibiting seating Powell had purpose of permanently banning him from Congress in severe manner); *and* Jim Kolbe, *Term Limits Are Unconstitutional*, WALL ST. J., Feb. 13, 1992, at A19 (arguing that term limits change substance of office holding and are, thus, unconstitutional) *with Storer*, 415 U.S. at 730 (contending that allowing affiliation with only one party had purpose of promoting fair election process and was not permanently restrictive) *and* Stephen Glaizer, *Each State Can Limit Reelection to Congress*, WALL ST. J., June 19, 1990, at 20A (stating that term limitation is better classified as manner regulation and, thus, supporting constitutionality of term limitations). Neil Gorsuch and Michael Guzman delineated four other distinctions between qualifications and manner regulations. Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 356-57 (1991). First, qualifications are a direct regulation of congressional membership, but manner regulations indirectly prohibit membership by requiring a candidate to resign from his or her present position in order to run for office. *Id.* at 360. Second, the Supreme Court found qualifications become controlling after the candidate has been elected and Congress refuses to seat him or her, while manner regulations, such as ballot access, occur before the election. *Id.* at 361. Third, manner regulations are more general; qualifications apply to specific persons. *Id.* at 362. Finally, Gorsuch and Guzman cite judicial considerations and the effects of manner regulations and qualifications as distinctions. Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 362-68 (1991); *see also* GEORGE F. WILL, RESTORATION: CONGRESS, TERM LIMITS AND THE RECOVERY OF DELIBERATIVE DEMOCRACY, 230-31 (1992) (concluding that term limitations are constitutional action by state).

108. *See Stack*, 315 F. Supp. at 1296-97 (holding state requirement that those running for federal office may not currently be serving as state officer unconstitutional qualification because it prohibits all state officers from running for federal office). The district court's conclusion rested on the fact that the state officer was permanently denied the right to run for office because a write-in campaign was not permitted. *Id.* Thus, because write-in voting is permitted with some term limitation statutes, term limits should be classified as a manner regulation. *See generally* Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 180 (1991) (discussing the court's analysis in *Stack*); Bruce Frankel, *Term Limits To Be Among Clinton's First Challenges*, USA TODAY, Nov. 5, 1992, at 13A (stating that term limitations are constitutional because Qualifications Clause states floor qualifications rather than ceiling qualifications).

ner regulation is more practical.[109] The Constitution grants states the power to regulate elections in order to ensure a fair and honest democratic process.[110] Thus, the purpose of a manner regulation is maintaining an efficient and equitable opportunity for the election of congresspersons.[111]

Looking at the goals that proponents of term limitations hope to achieve clearly illustrates a purpose similar to that of manner regulations.[112] For

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109. Time, Place, and Manner Clause regulations are more practical because the regulations are limited to the process of electing congresspersons. *See* Roudebush v. Hartke, 405 U.S. 15, 25 (1972) (approving state manner regulation for counting results and ordering ballot recount); Dummit v. O'Connell, 181 S.W.2d 691, 696-97 (Ky. 1944) (upholding state time-and-place regulation regarding absentee voting). *See generally* Roderick M. Hills, Jr., *A Defense of State Constitutional Limits on Federal Congressional Terms*, 53 U. PITT. L. REV. 97, 135-36 (1991) (arguing that under Time, Place, and Manner Clause state term limitations are constitutional actions to ensure protection of election process); Steven Kester, *Constitutional Restrictions on Political Parties*, 60 VA. L. REV. 735, 737 (1974) (discussing state time, place, and manner regulations affecting political parties).

110. *See* U.S. CONST. art. I, § 4, cl. 1 (granting states the power to regulate time, place, and manner of congressional elections); *Storer*, 415 U.S. at 728 (upholding state regulation that prohibits political association with two or more parties within one year in order to ensure the integrity of political process); *Coats*, 610 P.2d at 780 (stating that requiring district attorney to resign from office before seeking another elected office is appropriate state regulation to maintain separation of powers). *See generally* John C. Hueston, Note, *Altering the Course of the Constitutional Convention: The Role of the Committee of Detail in Establishing the Balance of State and Federal Powers*, 100 YALE L.J. 765, 773 (1990) (stating that Constitution reserves power to regulate elections to state in order to adequately ensure fair and just political process); 91 C.J.S. *United States* § 11 (1955) (outlining power of states in regulation of election process).

111. *See* Norman v. Reed, __ U.S. __, __ 112 S. Ct. 698, 707, 116 L. Ed. 2d 711, 726 (1992) (holding that permissible state regulations include political party association in order to maintain integrity of election process); United States v. Classic, 313 U.S. 299, 311 (1941) (including provisions ensuring correct count of ballots cast during primary); Swamp v. Kennedy, 950 F.2d 383, 385 (7th Cir. 1991) (allowing state to prohibit candidate nomination by more than one party in same election year and for same office to ensure voter reliance on party affiliation); United States v. Manning, 215 F. Supp. 272, 284-85 (W.D. La. 1963) (granting states power to regulate election process from beginning to end because state in best position to ensure honest returns). *See generally* Francine Miller, Note, *Fairness in the Election Arena: Congressional Regulation of Federal Ballot Access*, 32 N.Y.L. SCH. L. REV. 903, 914 (1987) (listing examples of appropriate concerns of state, such as preventing intra-party feuding, in order to maintain fair and just process of selecting congresspersons); David Dahl, *Mack Shifts on Term Limits*, ST. PETERSBURG TIMES, Jan. 29, 1993, at 6A (showing incumbent support term limitations in order to restore natural order to political system).

112. State regulations under both the Time, Place, and Manner Clause and term limitations are enacted to ensure the integrity of the process by which voters elect congressional representatives. *Compare Jenness*, 403 U.S. at 438 (holding that purpose of Georgia statute, which required independent candidates to obtain certain number of signatures in order to gain balance access, was constitutional state regulation to preserve democratic election of congresspersons) *and* Erik Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 588-89 (1991) (discussing constitutionality of ballot-access regulations being based on state efforts to control equity in campaign process)

example, the term limitations enacted by the State of Washington lay out seven purposes for the amendment, all with the goal of restoring democracy to the election process.[113] Specifically, one of the main objectives of term limitations is to remove the unfair advantages incumbents maintain over newcomers to an election.[114] Therefore, term limitations should be classified as a manner regulation owing to the similar purpose of maintaining the in-

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with WYO. STAT. § 225-105(a)(v) (Michie 1992) (stating that term limitations are best way to ensure that state can maintain integrity of election process) *and* Mark P. Petrecca, *Term Limit Backers Should Focus on Local Offices*, SAN FRANCISCO CHRON., Oct. 14, 1991, at 21A (arguing that term limitations will restore fairness to elections by eliminating the ruling class of elected officials).

113. The Washington statutes list the following as reasons for enacting term limitations:

> (1) The people will best be served by citizen legislators who are subject to a reasonable degree of rotation in office; (2) Entrenched incumbents have become indifferent to the conditions and concerns of the people; (3) Entrenched incumbents have an inordinate advantage in elections because of their control of campaign-finance laws and gerrymandering electoral districts; (4) Entrenched incumbency has discouraged qualified citizens from seeking public office; (5) Entrenched incumbents have become so preoccupied with their own reelection and devote more effort to campaigning than to making legislative decisions for the benefit of the people; (6) Entrenched incumbents have become too closely aligned with special-interest groups who provide contributions and support their reelection campaigns, give entrenched incumbents special favors, and lobby office holders for special-interest legislation to the detriment of the people of this state, and may create corruption or the appearance of corruption of the legislative system; (7) The people of Washington have a compelling interest in preventing the self-perpetuating monopoly of elective office by a dynastic ruling class.

WASH. REV. CODE § 43.01 (1)-(7) (1992). Each of the above purposes leads to the ultimate goal of restoring the democratic process. *See id.* (eliminating advantages of incumbency, breaking ties with special-interest groups, and limiting reelection will all change voting process in which voice of each citizen is reflected by true representation). *See generally* GEORGE F. WILL, RESTORATION: CONGRESS, TERM LIMITS, AND RECOVERY OF DELIBERATIVE DEMOCRACY 9-10 (1992) (criticizing present condition of Congress); J. Jennings Moss, *Congress Tackles Reform; Foley Draws Fire at First Hearings*, WASH. TIMES, Jan. 27, 1993, *available in* LEXIS, Nexis Library, CURRNT File (stating that current system of Congress is not citizen legislators as envisioned by Founding Fathers).

114. *See* OR. CONST. art. II, § 20 (stating that term limitations are intended to reduce power of incumbency); Lowe v. Kansas City Bd. of Elections Comm'rs, 752 F. Supp. 879, 901-02 (1990) (finding that city regulation limiting term of city council member to eight years was enacted for purpose of reducing power of incumbents). Not only do incumbents have a higher success rate but they also enjoy privileges that challengers do not have, such as the free use of the mail system and superior fund-raising abilities through use of "war chest." *See generally* Dennis Camire, *Lott Leads State Delegation in Use of Free-Mail Privilege*, GANNETT NEWS SERV., June. 26, 1992 (listing totals as over $50,000 in free mail for some members of Congress); Rob Mosbacher, *Basic Change in System Begins with Term Limits*, HOUS. CHRON., Feb. 2, 1993, at 13A (illustrating power of incumbency by statistic that out of 110 new members to House of Representatives, only 21 of them defeated incumbent); Paul A. Urbank, *Time To Change the Patter*, HOUS. CHRON., Dec. 25, 1992, at 13B (discussing incumbent's ability to raise funds year round to stuff "war chest" for next election).

tegrity of the political process.[115]

Second, the degree of finality of an action determines whether it is a qualification or a manner regulation.[116] The courts and Congress utilize this reasoning to classify both ballot-access statutes and resignation-to-run statutes as manner regulations rather than as qualifications.[117] For example, in

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115. Manner regulations are enacted by the states under the Time, Place, and Manner Clause for the purpose of ensuring state voters an efficient and equitable voice in the election process. *See White*, 415 U.S. at 782-85 (recognizing states' interest in controlling number of candidates on ballot in order to promote integrity of election and to avoid voter confusion). *See generally* Erik Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 595 (1991) (listing guaranteeing competitive elections, preventing corruption, and ensuring fair procedure for tabulation of votes as legitimate state interests that justify state manner regulations of election of congresspersons). Similarly, state term-limitation statutes proclaim their purpose to be restoring effectiveness to the election of congresspersons. *See* CAL. ELEC. CODE § 25003(2)(f) (West 1992) (stating that one purpose of California term limits is to improve the integrity of ballot in order to promote competitive elections). *See generally* Linda Cohen & Matthew Spitzer, Symposium: *Positive Political Theory and Political Law: Term Limits*, 80 GEO. L.J. 477, 479-80 (1992) (discussing advantages of term limitations as returning competition to election of congresspersons).

116. *Compare Powell*, 395 U.S. at 492-93 (holding that refusing to seat Powell for abusing official privileges and completely restricting Powell from holding office, Congress in effect placed additional qualifications on congressional membership) *with Storer*, 415 U.S. at 736-37 (ruling that requiring independent candidate to obtain signatures from voters who did not vote in primary elections in order to gain ballot access was appropriate manner regulation because it did not permanently bar potential candidate from office, but merely regulated ballot access in order to preserve states' interest in fair and effective elections). Further, term-limitations statutes that allow for write-in candidates are not a total bar; rather, they are state regulation of the manner by which incumbents may be reelected. *See* MONT. CONST. art. IV, § 8(1)(d) (stating that nothing in statute will deny right to run as write-in candidate). *See generally* James C. Otteson, *A Constitutional Analysis of Congressional Term Limits: Improving Representative Legislation Under the Constitution*, 41 DEPAUL L. REV. 1, 2-3 (1991) (supporting constitutionality of term limitations); Bruce Frankel, *Term Limits To Be Among Clinton's First Challenges*, USA TODAY, Nov. 5, 1992, at 13A (defending constitutionality of term limitations).

117. Ballot-access provisions and resign-to-run statutes are classified as manner regulations because they do not completely bar the right to candidacy, rather they require certain steps by prospective candidate in order to maintain the integrity of the election process. *See* Clements v. Flashing, 457 U.S. 957, 970-71 (1982) (upholding state regulation that required judges to resign in order to run for Congress as appropriate manner regulation in effort to ensure honesty in congressional elections); State v. Swanson, 257 N.W. 255, 256 (Neb. 1934) (ruling that prohibiting candidate who was defeated in primary from obtaining ballot access for general election is appropriate manner regulation). *Contra* State v. Crane, 197 P.2d 864, 874 (Wyo. 1948) (holding that it is unconstitutional qualification for state to require its governor to resign in order to run for Congress). *See generally* Nancy Northup, Note, *Local Nonpartisan Elections, Political Parties and the First Amendment*, 87 COLUM. L. REV. 1677, 1678 (1987) (discussing role of manner regulations in states allowing ballot access to minor parties); *Review of Supreme Court's Term: Individual Rights*, 61 U.S.L.W. 3043 (Aug. 4, 1992) (discussing Supreme Court ruling that if state is going to deny write-in voting, state must have easy ballot access laws).

Storer v. Brown,[118] the Supreme Court held that a California provision denying the right to appear on the ballot as a candidate for two different political parties within a period of one year was not a qualification, but a manner regulation.[119] Further congressional statutes, such as the Hatch Political Activity Act,[120] and statutes requiring candidates to resign from their present positions in order to run for Congress are appropriate manner regulations protecting the integrity of government.[121] Finally, in *Hopfmann v. Connolly*,[122] the First Circuit Court of Appeals adopted a test for determining whether a restriction is a qualification for the Presidency that can be applied to possible congressional qualifications.[123] The test states that the

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118. 415 U.S. 724, 724 (1974).

119. *See Munro*, 479 U.S. at 193 (using *Storer*, reasoning to uphold state ballot-access statute for determining access for minor-party candidates); *Storer*, 415 U.S. at 735-36 (holding that preventing primary losers from appearing on general ballot is clearly within state's interest to uphold integrity of election); Iowa Socialist Party v. Nelson, 909 F.2d 1175, 1179-80 (8th Cir. 1990) (upholding Iowa voter-registration statute as appropriate manner regulation). *See generally* Robert Brett Dunham, *Defoliating the Grassroots: Election Day Restrictions on Political Speech*, 77 GEO. L.J. 2137, 2176 (1989) (describing compelling state interest in regulating ballot access as stated by Supreme Court); Stephen E. Gottlieb, *Compelling Governmental Interests: An Essential But Unanalyzed Term in Constitutional Adjudication*, 68 B.U. L. REV. 917, 956 (1988) (identifying state's interest in regulating ballot access as articulated by Supreme Court in *Storer*).

120. Hatch Political Activity Act, 5 U.S.C. § 7324(a) (1988). The Hatch Political Activity Act prohibits most federal government employees from "taking an active part in political management or in political campaigns." *Id.*; *see* United States Civil Serv. Comm'n v. National Ass'n of Letter Carriers, 413 U.S. 548, 566 (1973) (upholding Act because of interest in maintaining neutral civil service); United Public Workers v. Mitchell, 300 U.S. 75, 81 (1947) (upholding Hatch Act for first time). The constitutionality of the Hatch Act lends merit to the argument for constitutionality of term limitations because both regulate congressional candidates. *See generally* Louis Lawrence Boyle, *Reforming Civil Service Reform: Should the Federal Government Continue To Regulate State and Local Government Employees?*, 7 J. L. & POL. 243, 263-67 (1991) (discussing challenges to Hatch Act); Roderick M. Hills, Jr., *A Defense of State Constitutional Limits on Federal Congressional Terms*, 53 U. PITT. L. REV. 97, 146-48 (1991) (illustrating relationship between Hatch Act and term limitations).

121. *See* Joyner v. Mofford, 706 F.2d 1523, 1531 (9th Cir. 1983) (requiring resignation to run for public office is valid manner regulation under Time, Place, and Manner Clause); Signorelli v. Evans, 637 F.2d 853, 863 (2d Cir. 1980) (holding that New York qualification requiring resignation in order to run for Congress is constitutional because of its purpose in protecting separation of powers). *See generally* Brendan Barnicle, Comment, *Congressional Term Limits: Unconstitutional by Initiative*, 67 WASH. L. REV. 415, 427 (1992) (listing other resign-to-run cases in which courts have not consistently found all resign-to-run statutes constitutional). Resign-to-run requirements also exist on the local level. For example, a New York court upheld a municipal code requirement that a member of a town board must resign in order to run for position on another town board. *Local Ethics Law on Conflicts Is Found To Be Constitutional*, N.Y. L.J., May 23, 1991, at 21.

122. 746 F.2d 97 (1st Cir. 1984), *vacated*, 471 U.S. 459 (1985), *aff'd*, 769 F.2d 24 (1st Cir. 1985), *cert. denied*, 479 U.S. 1023 (1987).

123. *Id.* at 103 (citing *Crane*, 197 P.2d at 871). According to the case, Hopfmann's name

issue in determining if a restriction is a qualification "is whether the candidate 'could be elected if his name were written by a sufficient number of electors.' "[124] The degree of finality of a term limitation depends on the type of statute that the state enacts.[125] If the term-limitation statute does not allow for write-in candidates, it is a qualification.[126] This would constitute a

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was excluded from the primary ballot because he failed to receive the requisite 15% of the vote at the convention. *Id.* at 99. The state was justified in excluding Hopfmann from the ballot under the Time, Place, and Manner provision of the Constitution because the state regulation was intended to ensure the honesty and order in the election process. *Id.* at 103. *See generally* Andrew Price, *Regulating Our Mischievous Factions: Presidential Nominations and the Law*, 78 KY. L.J. 311, 343 (1990) (discussing action by court in upholding party ballot-access provision).

124. *Hopfmann*, 746 F.2d at 103 (1st Cir. 1984) (citing *Crane*, 197 P.2d at 871). Additionally, the court relied on *Storer* to show that the exclusion of Hopfmann from the ballot was a constitutional manner regulation protecting the state's interest in regulating elections. *See id.* (citing *Storer*, 415 U.S. at 730 (finding valid state interest in maintaining order in election process). Although the Supreme Court found a valid state interest in regulating elections, there is concern over the states' maintaining the ability to control their own election process. *See generally* Stephen L. Smith, Comment, *State Autonomy After Garcia: Will the Political Process Protect States' Interests?*, 71 IOWA L. REV. 1527, 1544 (1986) (expressing concern over possible loss of state autonomy for courts' failure to recognize legitimate state interest). Finally, it is interesting to note that some commentators believe states should have a stronger interest in regulating campaign falsehoods). *See generally* Stephen D. Sencer, *Read My Lips: Examining the Legal Implications of Knowingly False Campaign Promises*, 90 MICH. L. REV. 428, 439 (1991) (comparing false campaign promises to libel and defamatory statements).

125. *Compare* COLO. CONST. art. XVIII, § 9a (prohibiting any citizen from representing Colorado in House of Representatives more that six consecutive terms and more that two consecutive terms in Senate) *and* OR. CONST. art. II, § 20 (limiting service to 6 years in House of Representatives and 12 years in Senate in any one person's lifetime) *with* CAL. ELEC. CODE § 25003 (West 1992) (denying ballot access but allowing those incumbents who have reached their term limit to run as write-in candidates) *and* 1992 WASH. LEGIS. SERV. INIT. MEAS. (West) (limiting ballot access to 6 out of 12 years for those running for House of Representatives and to 8 out of 14 years for prospective Senators; however, specifically allowing write-in candidacy during ballot-access denial period). *See generally* Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 344-45 (1991) (limiting defense of term limitations to those that contain write-in provisions); Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 180 (1991) (discussing importance of write-in provision when distinguishing manner regulation from qualification).

126. *See* State *ex rel.* Handley v. Superior Court, 151 N.E.2d 508, 515 (Ind. 1958) (per curiam) (holding that state may not add to or take away from qualifications listed in Constitution for membership in House of Representatives or Senate); Application of Ferguson, 294 N.Y.S.2d 174, 174 (1968) (finding New York statute prohibiting felon from seeking place in United States Senate constituted unconstitutional additional qualification). Thus, if a candidate is denied the ability to be elected to Congress after a certain number of years, this total ban on service would equal a qualification in violation of the Constitution. *See generally* Hon. Willie L. Brown, Jr., *Legislative Term Limits: Altering the Balance of Power*, 7 J.L. & POL. 747, 752-53 (1991) (discussing constitutional problems surrounding term-limitations); Joshua Levy, Note, *Can They Throw the Bums Out? The Constitutionality of State-Imposed Congres-*

bar to election and, as courts have held, serves as a fourth qualification in violation of the Qualifications Clause.[127] On the other hand, if the term-limitation statute contains a provision to allow election of a write-in candidate, it is a manner regulation.[128] Under these circumstances, the term limitation is merely a question of ballot access, which is controlled by the state.[129] The incumbent does not face a complete bar to election; he or she is

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sional Term Limits, 80 GEO. L.J. 1913, 1940 (1992) (concluding that Colorado's term-limitation statute without write-in provision is unconstitutional).

127. The Constitution does not allow for any additional qualifications to be placed on the members of Congress by the states and, thus, classifying a term limitation as an additional qualification would require a constitutional amendment. *See Lowe*, 240 S.E.2d at 71 (holding that Qualifications Clause contains sole and exclusive qualifications for members of Congress); *Superior Court of Marion County*, 151 N.E.2d at 513 (limiting qualifications for members of Congress to those enumerated in Article I of Constitution); Shub v. Simpson, 76 A.2d 332, 341 (Md. 1950) (prohibiting state from imposing additional qualification on candidates for Congress other that those listed in Constitution); *Ekwall*, 30 P.2d at 1040 (stating that Constitution is sole source for qualifications of congresspersons). *See generally* THOMAS M. COOLEY, THE GENERAL PRINCIPALS OF CONSTITUTIONAL LAW 285 (1898) (discussing eligibility for membership in United States Congress).

128. By allowing incumbents who have reached their term limitation to be reelected as write-in candidates, the state is not denying them the right to hold public office but rather the right to appear on the ballot. *See Munro*, 479 U.S. at 194 (allowing state to restrict ballot access to candidates showing significant amount of support); *Storer*, 415 U.S. at 729-30 (requiring independent candidates to evidence support in order to gain access to general election ballot). Some courts have recognized that allowing write-in voting can prevent state ballot access regulations from being unconstitutional. *See Stack*, 315 F. Supp. at 1297 (N.D. Fla. 1970) (classifying Florida statute that required resignation of state officials before they could run for federal office as qualification because the official could not even be elected if he obtain sufficient number of write-in votes). Thus, if the state allows write-in voting for incumbents who have served beyond their term limitation the statute would be classified as a manner regulation because it is not a complete bar to the office. *See generally* Erik H. Corwin, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 589 (1991) (stating that addition of write-in provision may help preserve constitutionality of term limitations); Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 180 (1992) (discussing role of write-in voting in *Stack* decision).

129. The addition of a write-in provision makes term limitations a question of ballot access because the incumbent is not denied the right to serve as an elected official, but rather his or her access to the ballot is limited to a set number of years. *See, e.g.*, *Munro*, 479 U.S. at 198-99 (upholding Washington ballot-access provision as within state's right to regulate election of congresspersons); *White*, 415 U.S. at 790-93 (finding Texas ballot-access regulations for minority parties in conformity with Constitution); *Storer*, 415 U.S. at 730-31 (stating that it must be within state's power to regulate elections in order to ensure equity in democratic process); Rosario v. Rockefeller, 410 U.S. 752, 762 (1973) (upholding ballot-access provision because it is "tied to [the] particularized legitimate purpose" of state regulating elections). The City of Houston term limitations on city council members are truly a question of ballot access because it allows councilmen who have served beyond their term limitation to obtain ballot access if they can receive a certain number of petition signatures. *See generally Area Briefs: Activist To Face Reyes*, HOUS. CHRON., Feb. 9, 1993, at A13 (stating that Councilman Ben Reyes is in process of obtaining necessary signatures to gain ballot access beyond his term limitation);

only temporarily denied access to the ballot in order to maintain the integrity of the election.[130] In applying the *Hopfmann* test, the term-limitation statute is not a qualification because the candidate "could be elected if his name were written in by a sufficient number of" voters.[131] Therefore, the existence of a "write-in" clause saves the term limitation from a constitutional challenge by incumbents.[132] Because term limitations without a

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Election '91; Political Term-limitations Rejected in Wash., But Approved Elsewhere, ATLANTA J. & CONST., Nov. 6, 1991, at A7 (stating that Houston voters approved measure to limit mayor and city council to 3, 2-year terms while enacting provision to allow incumbents to run beyond limitations if obtain signatures of approximately 20,000 voters).

130. As allowed by the Time, Place, and Manner Clause of the Constitution, states may restore competition and effectiveness to elections by limiting ballot access of powerful incumbent. *See, e.g.*, ARIZ. CONST. art. VII, § 18 (limiting ballot access at end of candidate's second consecutive term as Senator and third consecutive term in House of Representatives); MONT. CONST. art. IV, § 8(1)(d)(e)(3) (restricting ballot access to 6 of every 12 years for Representatives and 12 of every 24 years for Senator, but also allowing election by write-in votes); NEB. CONST. art. XV, § 19 (allowing write-in candidacy but denying ballot after four consecutive terms as Representative and after two consecutive terms as Senator). *See generally* Lloyd N. Cutler, *Party Government Under the American Constitution*, 134 U. PA. L. REV. 25, 39 (1985) (calling for reduction in power of incumbent legislators); Jorge Casuao, *Courts Lets Term-Limit Law Stand California Case Could Boost Referendums in Twelve States*, CHI. TRIB., Mar. 10, 1992, at 4C (1992) (stating that goal of term limitations is to reduce power of incumbent through least drastic means).

131. *Hopfmann*, 746 F.2d at 103. Applying this test to term limitations, it is important to note that the term-limitation statutes themselves state that nothing will prohibit an otherwise qualified candidate to be elected to office if he receives the necessary votes. *See* MONT. CONST. art. IV, § 8(3) (stating that nothing in amendment will prohibit qualified candidate from being elected to office if she obtains necessary number of write-in votes); CAL. ELEC. CODE § 25003(b) (West 1992) (declaring that nothing in section will prevent any qualified person from running write-in campaign and winning elective office upon obtaining majority of votes); WASH. REV. CODE § 29.51 (1992) (allowing election of incumbents who have served beyond their term limitation by means of write-in campaign). *See generally* Harold Johnson, *Show Them the Door: Term-limitations Initiatives in California and Washington State National Review West Editorial*, NATIONAL REV., Nov. 2, 1992 (stating that both California and Washington term-limitation statutes allow for write-in candidacy); Mark Petracca, *The Term-Limit Movement Gathers Steam*, CHRISTIAN SCI. MONITOR, Oct. 1, 1992, at 18 (stating that disqualified incumbents may still run for office as write-in candidates).

132. Although the Qualifications Clause limits the qualifications for congresspersons to age, residency, and citizenship, the states are allowed to regulate the time, place, and manner of congressional elections. *See* U.S. CONST. art. I, § 2, cl. 2 (stating qualifications for members of House of Representatives); U.S. CONST. art. I, § 3, cl. 3 (listing requirements for membership in Senate); U.S. CONST. art. I, § 4, cl. 1 (granting states power to regulate elections for members of Congress). Term limitations fall under the Time, Place, and Manner Clause because their purpose is similar to that of manner regulations and those containing write-in provisions do not constitute a complete bar to election. *See* FLA. CONST. art. VI, § 4 (stating that purpose of Florida term limitations is to return representation to Congress); MONT. CONST. art. IV, § 8(1)-(3) (denying ballot access for 6 out of 12 years for Representatives and 12 out of 24 years for Senators, yet allowing write-in campaigns during denial period). Thus, term limitations are a constitutional method by which states can maintain the integrity of the election

write-in clause are unconstitutional, the remainder of this Comment will focus on term-limitation statutes that allow write-in candidacy.

B. *Challenges by Voters*

The most compelling challenge to term limitations is by voters who claim the limits violate their First Amendment rights.[133] Some voters contend that term limitations deny their right to vote by restricting the choice of incumbents as elected officials.[134] However, the current system denies voters an effective right to vote by virtue of tremendous incumbency advantages.[135]

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process by eliminating the power of the abusive incumbents. *See generally* Roderick M. Hills, Jr., *A Defense of State Constitutional Limits on Federal Congressional Terms*, 53 U. PITT. L. REV. 97, 100 (1991) (stating additional theory under which state enacted term limitations are constitutional addition to the Qualifications Clause, which is floor of requirements rather than ceiling).

133. Challenging term limitations based on denial of the right to vote is interesting because the standard by which constitutionality is determined has changed dramatically in the last thirty years. *See, e.g.*, Burdick v. Takushi, __ U.S. __, __, 112 S. Ct. 2059, 2067, 119 L. Ed. 2d 245, 258 (1992) (defining right to vote as right to participate in election process); Anderson v. Celebrezze, 460 U.S. 780, 789 (1983) (applying balancing test between states' interest in regulating election process and right to vote); Reynolds v. Sims, 377 U.S. 533, 562 (1964) (describing right to vote as "the essence of a democratic society, and any restrictions on that right strike at the heart of representative government"); *see also* Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 168-70 (1991) (tracing development of right to vote); Kurt Wittenberg, Note, Anderson v. Celebrezze: *Ballot Access and the Due Process Clause—An Alternative to Equal Protection Analysis*, 33 DE PAUL L. REV. 411, 426-28 (1984) (estimating impact of *Anderson* balancing test).

134. "Election regulations that prevent some candidates from running narrow the field and limit voters' choices; it is that restriction on fundamental right to vote, not the burden on a particular candidate, that violates the Constitution." El-Amin v. State Bd. of Elections, 717 F. Supp. 1138, 1140 (E.D. Va. 1989); *see also* Amended Complaint, Kenneth A. Plante & H. Lee Moffitt v. Jim Smith, No. 92-40410-WS (N.D. Fla. Jan. 4, 1993) (challenging Florida's term limitations on several grounds including denial of right to vote); Complaint, Bobbie E. Hill, the League of Women Voters of Arkansas v. Bill Clinton, No. 92-6171 (Cir. Ct. of Pulaski County, Ark. Dec. 15, 1992) (claiming that Arkansas term-limitations statute denies voters right to vote for candidate of their choice). *See generally* Bennett Roth, *Term-Limit Ax Looming on Ballot in Fourteen States*, HOUS. CHRON., Oct. 24, 1992, at A1 (giving conflicting opinions as to whether or not term limitations violate right to vote); *Undermining the Right To Vote*, N.Y. TIMES, Nov. 3, 1992, at A18 (discussing effect of term limitations on First Amendment right to vote).

135. *See* GEORGE WILL, RESTORATION: CONGRESS, TERM LIMITS AND RECOVERY OF DELIBERATIVE DEMOCRACY 80-85 (1992) (showing statistic of high reelection rate among incumbents that undermines right to vote by making it next to impossible for newcomer to defeat incumbent); Cleta Dealtherage Mitchell, *Limiting Congressional Terms: A Return to Fundamental Democracy*, 7 J.L. & POL. 733, 744 (1991) (stating that under present system, voters' choice is already so limited because competitive elections no longer exist); Rupert Cornwell, *Whiff of Three Scandals Drifts Out of Congress*, THE INDEPENDENT (Wash., D.C.), May 16, 1992, at 12 (showing effectiveness of write-in voting when Republican incumbent also won Democratic primary as write-in candidate); Rob Mosbacher, *Basic Change in System Be-*

As discussed earlier, the constitutional form of term limitations contains a provision to allow voters to write in the name of an incumbent. At this point, some courts terminate the analysis, reasoning that if a term limitation is constitutional, there is no denial of the right to vote.[136] Yet, courts must then apply the *Anderson* test to ensure fully that term limitations do not violate the right to vote.[137]

According to *Anderson*, the state must have a compelling interest to justify the burdens imposed on the right to vote.[138] In the case of term limitations, a quick look at the daily newspaper shows that states have a strong

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gins with Term Limits, HOUS. CHRON., Feb. 2, 1993, at 31A (discussing efforts of Texans for Term Limitations and what must now be done so that voters in Texas can regain effective right to vote by passing term limitations).

136. *See* Maddox v. Fortson, 172 S.E.2d 595, 599 (Ga. 1970) (ruling that having held that Georgia term limitation on governor was constitutional, question of term limitation denying right to vote was moot). In *Maddox*, the governor challenged a state provision that required a four-year break from office before serving a second term as governor. *Id.* at 596. The court found the term limitation was a constitutional action by the state in exercise of Georgia's right to regulate election. *Id.* at 597. Once finding the term limit to be constitutional, the court terminated its analysis of the right-to-vote issues by concluding that "[the] right to vote is to vote only for a candidate who is eligible to hold the office of Governor." *Id.* at 599. *See generally* W. Tarver Rountree, Jr., *Constitutional Law, Annual Survey of Georgia Law*, 22 MERCER L. REV. 111, 113 (1970) (discussion of court's analysis); Hugh B. McNatt, Note, *Constitutional Law—Incumbency Prohibition—Is Georgia in Step with the Times?* 22 MERCER L. REV. 473, 474-75 (1970) (analyzing court's treatment of the right to vote in *Maddox*).

137. Since 1983, courts have consistently applied the balancing test in *Anderson* in order to determine whether state interests sufficiently outweigh the burdens on the voters' First Amendment rights. *See, e.g.*, Manifold v. Blunt, 863 F.2d 1368, 1371 (8th Cir. 1988) (discussing district court's use of *Anderson* test to state regulation for establishment of independent parties' presidential electors); Dixon v. Maryland St. Admin. Election Laws, 878 F.2d 776, 783-84 (4th Cir. 1989) (analyzing constitutionality of fee for write-in candidates under *Anderson* test); Pilcher v. Rains, 853 F.2d 334, 336-37 (5th Cir. 1988) (utilizing *Anderson* test to determine constitutionality of Texas minority party ballot-access statute); *El-Amin*, 721 F. Supp. at 773-75 (applying *Anderson* test to requirement for financial disclosure). *See generally* David Kurtz, Note, *Ballot Access Laws in West Virginia—A Call for Change*, 87 W. VA. L. REV. 809, 816-19 (1985) (discussing application of *Anderson* test); Lloyd E. Selbst, Note, *State Restrictions on Candidate Access to the Ballot in Presidential Elections:* Anderson v. Celebrezze, 25 B.C. L. REV. 1117, 1133-36 (1984) (discussing implications of *Anderson* test).

138. *Anderson*, 460 U.S. at 787-88 (citing Williams v. Rhodes, 393 U.S. 23, 30-31 (1986); Illinois St. Bd. of Elections v. Socialist Workers Party, 440 U.S. 173, 183 (1979)); American Party of Tex. v. White, 415 U.S. 767, 780-81 (1974); Storer v. Brown, 415 U.S. 724, 730 (1974); Bullock v. Carter, 405 U.S. 134, 142-43 (1972). "The rule is not self-executing and is no substitute for the hard judgments that must be made." *See generally* Sarah A. Biety, *Constitutional Law—Ballot-Access Restrictions and the First Amendment: Status of the Right to Candidacy:* Anderson v. Celebrezze, 103 S. Ct. 1564 (1983), 17 CREIGHTON L. REV. 187, 198-99 (1983) (analyzing balancing test of state interest and burden on voters); Katherine E. Schuelke, Note, *A Call for Reform of New York State's Ballot-Access Laws*, 64 N.Y.U. L. REV. 182, 198 (1989) (stating that court's decision in *Anderson* and *Munro* is consistent with First Amendment).

interest in curtailing the abuses and advantages of perpetual incumbency.[139] It is well within the states' interest to provide an efficient and fair method for electing congressional representatives.[140] On the other hand, voters are faced with the burden of writing in a vote for incumbents.[141] While casting a write-in ballot is not always seen as an effective means of expression, it clearly allows voters to chose any candidate they desire.[142] Additionally,

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139. *See, e.g.*, John Duricka, *The Checkbooks Are in the Mail; Backed Against a Political Wall, Lawmakers Turn over Their Records*, TIME, May 11, 1992, at 11 (avoiding more voter outrage, Congress decides to turn over records of all members); Nancy Traver, *Stamps of Disapproval; A Federal Probe into Alleged Campaign Fund Abuses Focuses on One of Congress's Most Influential Budget Decision Makers—And One of Clinton's Most Powerful Allies*, TIME, Dec. 21, 1992, at 46 (discussing abuse of franking privilege and laundering campaign funds through House Post Office); *Voter Disenchantment Boosts Women Candidates Nationwide; Feinstein, Boxer Win Senate Nominations in California*, HOUS. CHRON., June 3, 1992, at A10 (reporting election of Senator Boxer who had 143 overdrafts as member of House of Representatives).

140. *See* Erum v. Cayetano, 881 F.2d 689, 692 (9th Cir. 1989) (allowing Hawaii to regulate ballot access for nonpartisan candidates in different manner than major party candidates as effort to maintain legitimacy of ballot); *Manifold*, 863 F.2d at 1374 (finding Missouri requirement necessary to preserve equity in election process); Geary v. Renne, 800 F.2d 1062, 1064-65 (9th Cir. 1989) (finding that California provision prohibiting political parties from endorsing candidates for nonpartisan offices was a legitimate state effort to ensure integrity of the election process). *See generally California Term Limitations Upheld, Eliminating "Career Politicians" Endorsed*, 60 U.S.L.W. 1065 (Oct. 29, 1991) (listing state interest as "restoration of free, fair, and competitive elections; encouragement of qualified candidates to seek public office, and elimination of unfair incumbent advantages that have created 'class of career politicians' "); J. Jennings Moss, *Washington State Comes to Terms*, WASH. TIMES, Oct. 28, 1991, at 1A (stating Washington's state interest in term limitations).

141. *Compare Burdick*, __ U.S. at __, 112 S. Ct. at 2067, 119 L. Ed. 2d at 258 (holding it is constitutional for Hawaii to deny voters right to write in additional names on ballot during elections) *with Dixon*, 878 F.2d at 783-84 (holding state regulation requiring filing fee for votes of write-in candidates to be counted was unconstitutional). The burden of writing in a name is not insurmountable, but what must be considered is the effectiveness of this form of voting. *See generally* Bradley A. Smith, Note, *Judicial Protection of Ballot-Access Rights: Third Parties Need Not Apply*, 28 HARV. J. ON LEGIS. 167, 195 (1991) (discussing effectiveness of write-in voting); Rupert Cornwell, *Whiff of Three Scandals Drifts Out of Congress*, THE INDEPENDENT (Wash., D.C.), May 16, 1992, at 12 (illustrating effectiveness of write-in voting as Republican incumbent wins Democratic primary by write-in votes).

142. The right to vote is defined by the Supreme Court as the right to participate in the election process. *Burdick*, __ U.S. at __, 112 S. Ct. at 2067, 119 L. Ed. 2d at 258. Term-limitation statutes that contain write-in provisions allow for participation in the election process by stating that nothing in the provision will deny the voter the right to vote for any candidate. CAL. ELEC. CODE § 25003 (West 1992); 1992 WASH. LEGIS SERV. INIT. MEAS. 573 (West). Further, some blanket bars on write-in voting have been found unconstitutional. *See* Paul v. Indiana Election Bd., 743 F. Supp. 616, 625-26 (S.D. Ind. 1990) (holding that Indiana's provision barring write-in voting was not narrowly tailored and, thus, unconstitutional). The only possible flaw in this analysis is protecting the voting rights of illiterate citizens who may otherwise be denied the right to vote if they cannot use the write-in system. *See generally* Nancy C. Zaragoza, *Participation Without Representation: The Meaning of the Right*

write-in voting can prove effective since write-in candidates have succeeded in federal and state elections.[143] Further, an Ohio district court indicates that the "use of write-in ballots does not and should not be dependent on a candidate's chance of success."[144] Therefore, the states' interest in returning integrity to the political process outweighs the burden on the voter of writing in a name instead of pushing a button.[145]

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to Vote After Presley v. Etowah County Commission, 112 S. Ct. 820 (1992), 67 WASH. L. REV. 1023, 1043 (1992) (requiring voting in own handwriting denied illiterate citizens right to vote); Sharon N. Humble, Note, 24 ST. MARY'S L.J. 569, 582 (1993) (discussing efforts by Congress and courts to ensure effectiveness of voting).

143. Bradley A. Smith, Note, *Judicial Protection of Ballot-Access Rights: Third Parties Need Not Apply*, 28 HARV. J. ON LEGIS. 167, 194 n.142 (1991). For example, South Carolina elected Strom Thurman to the United States Senate after a successful write-in campaign in 1954. *Id.* Further, in the heat of a bitter miners' strike, campaigning for the Virginia Legislature, union official Jackie Stump was able to defeat a twenty-year incumbent through a successful write-in campaign. *Id.* (citing BALLOT ACCESS NEWS, Dec. 24, 1989, at 2). In the 1992 primaries, incumbent Republican Joseph McDade not only won his primary but also won the Democratic primary as a write-in candidate. Rupert Cornwell, *Whiff of Three Scandals Drift Out of Congress*, THE INDEPENDENT (Wash., D.C.), May 16, 1992, at 12. Further, many commentators fear stressing the possible ineffectiveness of write-in voting because, without that option, every candidate with even one supporter would have to be placed on the ballot in order to avoid denying that voter of the right to vote for the candidate of his choice. LAWRENCE TRIBE, AMERICAN CONSTITUTIONAL LAW, § 13-20, at 1103 n.12 (2d ed. 1988).

144. Socialist Labor Party v. Rhodes, 290 F. Supp. 983, 987 (S.D. Ohio 1968). In *Rhodes*, the court held that a blanket provision prohibiting write-in votes was unconstitutional, as the voters cannot be denied the right to express themselves just because their views are not among the majority. *Id.* (citing Carrington v. Rash, 380 U.S. 89, 94 (1965)). However, the voter must be allotted sufficient time and prohibit disqualification of votes for technical flaws. *See* Hendon v. North Carolina St. Bd. of Electors, 633 F. Supp. 454, 462 (W.D.N.C. 1986) (stating that write-in votes must be counted). *See generally* Brett Dunham, Note, *Defoliating the Grassroots: Election Day Restrictions on Political Speech*, 77 GEO. L.J. 2137, 2162 n.136 (1989) (stressing need for educating voters on process of write-in voting to ensure its effectiveness); Note, *Limitations on Access to the General-Election Ballot*, 37 COLUM. L. REV. 86, 97 (1937) (expressing concern over write-in votes being counted).

145. As stated in the term-limitation statutes themselves, people enact such statutes in order to reduce the influence of special interests, return representation to Congress, and restore competition in congressional races. *E.g.*, ARKANSAS TERM LIMITATION AMENDMENT PETITION (Arkansas for Governmental Reform, Inc. 1993) (on file with *St. Mary's Law Journal*); FLA. CONST. art. VI, § 4; OR. CONST. art. II, § 20; CAL. ELEC. CODE § 25003 (West 1992); N.D. CENT. CODE § 16.1-01-13 (Michie Supp. 1992); 1992 WASH. LEGIS. SERV. INIT. MEAS. 573 (West); WYO. STAT. § 22-5-102 (Michie 1992). On the other hand, the voters are guaranteed the right to vote for any candidate they choose; however, the process may be by write-in voting rather than by casting a ballot for a named candidate. *See* CAL. ELEC. CODE § 25003(4)(b) (West 1992) (stating that nothing will deny right to vote for candidate, even one who has served beyond their term-limitation period); 1992 WASH. LEGIS. SERV. INIT. MEAS. 573 (West) (granting right to vote for write-in candidates). *See generally* Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 343-44 (1991) (stating that term limitations are constitutional); Erik H. Corwin, Recent Development, *Limits on Legislative Terms:*

Finally, the definition of the right to vote ensures the constitutionality of term limitations. In *Burdick v. Takushi,*[146] the Supreme Court defined the right to vote as a "right to participate in the electoral process."[147] Term-limitation statutes that provide for write-in candidates clearly allow all voters to "participate in the electoral process." By giving voters the opportunity to cast their ballot for any candidate they chose, term limitations uphold the right to vote.[148]

VI. WHY TERM LIMITATIONS ARE NOT THE RIGHT SOLUTION

A. *Disadvantages*

Although term-limitation statutes that allow write-in voting are constitutional, they are not a viable solution to the problems created by entrenched incumbency. First, imposing term limitations on members of Congress will not achieve the goal of better representation.[149] Second, the influence of

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Legal and Policy Implications, 28 HARV. J. ON LEGIS. 569, 589 (1991) (concluding that term-limitation statutes containing write-in provisions are more likely to pass constitutional muster).

146. __ U.S. __, 112 S. Ct. 2059, 119 L. Ed. 2d 245 (1992).

147. *Id.* at __, 112 S. Ct. at 2067, 119 L. Ed. 2d at 258. In *Burdick*, a Hawaii voter challenged the state provision putting a ban on write-in voting. *Id.* at __, 112 S. Ct. at 2066, 119 L. Ed. 2d at 257. The court held that the provision did not violate the right to vote because the easy ballot-access laws only minimally burdened voters. Further, the state had a substantial interest in protecting the ballot from unrestrained factionalism and "party raiding." *Id.* at __, 112 S. Ct. at 2066-67, 119 L. Ed. 2d at 257-58 (citing *Storer*, 415 U.S. at 735). In order to avoid a constitutional challenge to the Houston City Council term limitation, the provision allows incumbents who would otherwise be barred from election to run for reelection upon obtaining a set number of petition signatures. *See Activist To Face Reyes*, HOUS. CHRON., Feb. 9, 1993, at 13A (stating that City Councilman Ben Reyes is in process of obtaining signatures so that he may appear on ballot beyond term-limitation period); *Election '91; Political Term Limitations Rejected in Wash. but Approved Elsewhere*, ATLANTA J. & CONST., Nov. 6, 1991, at 7A (discussing approval of term limitations for Houston City Council members).

148. According to the term-limitation statutes, nothing in the provision will prohibit any voter from using a write-in clause and electing an individual, even if the candidate has served beyond his or her term limitation. CAL. ELEC. CODE § 25003 (West 1992); WASH. REV. CODE § 43.01 (1992). Further, some states' term limitations merely limit access and one must refer to another statute to see that write-in voting is permissible. *See* FLA. CONST. art. VI, § 4 (limiting ballot access but not permanently barring incumbents); FLA. STAT. ch. 99.061(3)(b) (1990) (providing ballot space for "write-in" candidates). Therefore, through the write-in clause the voters may participate in the election process. *See* Stack v. Adams, 315 F. Supp. 1295, 1297 (N.D. Fla. 1970) (holding that Florida statute requiring resignation of state officials before running for federal office is unconstitutional because candidate could not even be elected if he or she obtained sufficient number of write-in votes). *See generally* Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 180 (1992) (discussing role of write-in voting in *Stack* decision).

149. *See generally* Steven R. Greenberger, *Democracy and Congressional Tenure*, 41

special-interest groups on Congress is likely to increase rather than decrease.[150]

Term limitations are intended to eliminate careerism and to restore representation to Congress. Inexperienced, lame-duck legislators, along with the congressional system, will decrease representation. First, term limitations punish those with experience and can have a detrimental effect on representation.[151] Not only will the lack of experience among members of Congress

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DEPAUL L. REV. 37, 37 (1991) (arguing that rather than increasing representation, term limitations only decrease representation by lessening power of Congress as compared to other branches of government); Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 162 (1991) (comparing Congress to Presidency and concluding that presently Congress is more powerful than President who is subject to term limitations and, thus, if Congress is subject to term limitations its power will decrease). It is interesting to note that reapportionment is often challenged as being ineffective because it does not bring about better representation. *See* Baker v. Carr, 369 U.S. 186, 210 (1961) (complaining of denial of fair representation); Cosner v. Dalton, 522 F. Supp. 350, 358-59 (E.D. Va. 1981) (holding that Virginia's reapportionment plan denied better representation).

150. *See, e.g.*, MONT. CONST. art. IV, § 8(1)(d) (granting all voters right to participate in election process by allowing write-in candidacy); CAL. ELEC. CODE § 25003 (West 1992) (specifying that voters will not be denied right to vote for candidate of choice); WASH. REV. CODE § 43.01 (1992) (stating that term-limitations provision will not violate right to vote by allowing write-in voting); Burdick v. Takushi, ___ U.S. ___, ___, 112 S. Ct. 2059, 2067, 119 L. Ed. 2d 245, 258 (1992) (defining right to vote as right to participate in election process); Stack v. Adams, 315 F. Supp. 1295, 1297 (N.D. Fla. 1970) (illustrating effectiveness of write-in voting to guarantee right to vote); *see also* Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 343 (1991) (proclaiming that term limitations are not unconstitutional denial of right to vote); Bruce Frankel, *Terms Limits To Be Among Clinton's First Challenges*, USA TODAY, Nov. 5, 1992, at 13A (finding term limitations raise no issue as to denial or right to vote).

151. *See generally* Linda Cohen & Matthew Spitzer, Symposium: *Positive Political Theory and Public Law: Term Limits*, 80 GEO. L.J. 477, 482 (1992) (discussing implications of limiting term of office because it takes long period of time to develop expertise; this knowledge and powerful representation wasted by imposition of term limitations).

> Term limitations throw away the benefits of learning from experience. . . . New people in any complex institution are highly dependent on the people around them. Term limitations just shift the power from elected officials to the relatively inaccessible officials, bureaucrats and influence peddlers who surround them.

Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 158 (1991) (citing Polsby, *Perspectives on Term Limitations*, L.A. TIMES, Sept. 27, 1990, *available in* LEXIS, Nexis Library, CURRNT File); *see also Limit a Lawmaker's Term in Congress? NO—"Compulsory Retirement Is a Waste of Talent and Know-How"*, U.S. NEWS & WORLD REP., Nov. 14, 1978, at 71 (interviewing Senator Alan Cranston and explaining why he dislikes term limitations); Robert Presley, *Taking California Back to Amateur Status; Term Limits: In a Time When Voters Demand Efficient and Responsible Government, They Paradoxically Have Voted for Inexperience and Incompetence*, L.A. TIMES, Nov. 11, 1990, at 7B (arguing against term limitations in California because limitations will decrease state's voice in Congress).

make it more difficult to deal with the complex problems facing Congress today, it will also increase a member's reliance on his or her staff.[152] The power of congressional aides is already in question and this problem will only worsen as inexperienced members have no other choice but to rely on the guidance of their staff.[153] Second, term limitations will change the policy goals of congresspersons. Because reelection is only based on the short-term, congressional policies will neglect the long-run goals of the country.[154]

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152. *See* Steven R. Greenberger, *Democracy and Congressional Tenure*, 41 DEPAUL L. REV. 37, 55 (1991) (stating that imposing of term limitations will create "substantial loss of institutional memory" and, thus, lessen ability of Congress to deal with complex economic and social problems facing United States today and in future); Michael Rezendes, *Limits Attracting Interest of Voters Across the Nation*, BOSTON GLOBE, Jan. 5, 1993, at 20 (arguing that imposing term limitations will allow bureaucrats to gain more control over naïve members of Congress); Donald Ratajczak, *Term Limitations for Congressional Aides Also Deserves Consideration*, ATLANTA J. & CONST., Nov. 15, 1992, at 5D (stating that power of congressional staff is already so strong that term limitations should be considered for congressional aides); *Term Limits Limit Choice*, N.Y. TIMES, Oct. 13, 1992, at 22A (stating that term limitations will shift power from elected officials to unelected staff employees, thus, reducing representation); *There Ought To Be a Law . . . Study Shows Congressional Aides Have High Potential for Maalox Moments*, PR NEWSWIRE, Oct. 6, 1992, *available in* LEXIS, Nexis Library, CURRNT File (stating that fast-pace, high-pressure life of congressional aides cause health problems).

153. *See generally* Joshua Levy, Note, *Can They Throw the Bums Out? The Constitutionality of State-Imposed Congressional Term Limits*, 80 GEO. L.J. 1913, 1918 (1992) (stating that term limitation will create new class of congresspersons who, because of inexperience with system, will be forced to rely on staff more than ever before, thus, making unelected class powerful). Already, many question whether congressional aides have too much power. *See* Louis M. Seidman, *Ambivalence and Accountability*, 61 S. CAL. L. REV. 1571, 1584-85 (1988) (complaining of disproportionate power held by congressional committee chairman and his staff). "If a lawmaker is subjected to term limitations, aides will only become more powerful in proposing and writing legislation." Donald Ratajczak, *The Georgia Outlook: Term Limitations for Congressional Aides Also Deserves Consideration*, THE ATLANTA J. & CONST., Nov. 15, 1992 at 5D. "Further, it is the congressional aides that will develop the expertise necessary to bring about change in the Congress and not the congresspersons themselves." *Id.*; *see also* Ben B. Blackburn, *Curbing Power of Staffs*, ATLANTA J. & CONST., Feb. 9, 1992, at 2F (calling for reform in power of congressional staff); Michael Rezendes, *Limits Attracting Interest of Voters Across the Nation*, BOSTON GLOBE, Jan. 5, 1993, at 20 (stating that inexperience will allow nonelected persons to seize power of elected officials).

154. *See generally* Linda Cohen & Matthew Spitzer, Symposium: *Positive Political Theory and Public Law: Term Limits*, 80 GEO. L.J. 477, 482 (1992) (arguing that congresspersons facing reelection maintain different voting behavior than those not facing reelection); Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 161 (1991) (stating that although constituent service bills do have positive points, consistent denial of necessary long-term legislation can be detrimental). Cohen and Spitzer argue that whether a legislator will choose long-run or short-run legislation depends on his or her motivation for reelection, rather than a desire to maximize public interest. Linda Cohen & Matthew Spitzer, Symposium: *Positive Political Theory and Public Law, Term Limits*, 80 GEO. L.J. 477, 482 (1992). Because the pay-off on long-term legislation requires a waiting period, and reelection is never 100% certain, there is no guarantee the selfishly motivated legislator will reap the rewards created by the long-term legislation and, thus, the legislator may be more

Third, elimination of career politics may decrease the quality of people willing to run for Congress.[155] Finally, until term limitations are universal, the states that place term limits on their congresspersons will be at a significant disadvantage.[156] The key to power in Congress is seniority, which representatives from term-limitation states cannot achieve.[157]

The influence of special-interest groups will expand by imposing term limitations on members of Congress. First, the inexperience of legislators necessitates a stronger reliance on special-interest groups for guidance and direction.[158] Second, lame-duck legislators have the incentive to increase

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highly motivated to use the quick-fix. *Id.* Finally, there are several areas in need of legislation designed for the long-haul. *See generally American Forest Resource Alliance Issues Statement on Supreme Court Ruling*, PR NEWSWIRE, Mar. 25, 1992, *available in* LEXIS, Nexis Library, CURRNT File (calling for long-term legislation to protect environment).

155. *See generally* Hon. Willie L. Brown, Jr., *Legislative Term Limits: Altering the Balance of Power*, 7 J.L. & POL. 747, 750-51 (1991) (stating that term limits will discourage citizens from running for public office); Steven R. Greenberger, *Democracy and Congressional Tenure*, 41 DEPAUL L. REV. 37, 55 (1991) (illustrating that politics is life-long job, and those who are talented may be discouraged if term limitations will bar them from ascending to most powerful positions in Congress); James J. Kilpatrick, *Term Limits Can Work Against Voters*, HOUS. CHRON., Sept. 8, 1992, at 6C (explaining why it is necessary to have experienced and quality individuals in Congress); *Term Limits Limit Choice*, N.Y. TIMES, Oct. 13, 1992, at 22A (stating that although term limitations may open way for newcomers, they will also discourage most talented and devoted from seeking public offices as profession).

156. *See generally* Howard Chen, *Term Limits an "Uphill Battle" for Pennsylvania*, STATES NEWS SERV. (Wash., D.C.), Nov. 17, 1992, *available in* LEXIS, Nexis Library, CURRNT File (arguing that term limitations will prohibit members of Congress from obtaining necessary seniority); Tara P. Pope, *Term-Limit Propositions Winning Favor in at Least Ten States*, HOUS. CHRON., Nov. 4, 1992, at A26 (stating that states with term-limitation statutes are at competitive disadvantage because limitations make gaining necessary seniority impossible); *Undermining the Right To Vote*, N.Y. TIMES, Nov. 3, 1992, at A18 (stating that until all 50 states approve term limitations, those members of Congress bound by their state's term limitations will be limited to junior congressional status). In recognition of this problem, two of the fourteen states that enacted term limitations in the 1992 election place a condition on the effectiveness of their statute, requiring passage of similar provisions in a set number of states before the amendment could go into effect. *See* MO. CONST. art. III, § 45(a) (withholding effective date until one-half of the states pass similar provisions); 1992 WASH. LEGIS. SERV. INIT. MEAS. 573 (West) (limiting effective date until nine states pass similar provisions).

157. *See* Alfred C. Aman, Jr., *Administrative Law in a Global Era: Progress, Deregulatory Change, and the Rise of the Administrative Presidency*, 73 CORNELL L. REV. 1101, 1238-49 (1988) (illustrating power of seniority); Joshua Levy, Note, *Can They Throw the Bums Out? The Constitutionality of State-Imposed Congressional Term Limits*, 80 GEO. L.J. 1913, 1919 (1992) (stating that seniority is key in United States Congress and those states choosing to deprive their Representatives and Senators from obtaining that key commodity are actually depriving themselves of powerful representation). *See generally* RICHARD MCKELVEY & RAYMOND RIEZMAN, SENIORITY IN LEGISLATURES (California Institute of Technology, Social Science Working Paper No. 725, 1990) (studying effects of congressional seniority system).

158. *See generally* Hon. Willie L. Brown, Jr., *Legislative Term Limits: Altering the Balance of Power*, 7 J.L. & POL. 747, 750-51 (1991) (arguing that term limitations will only create

their own pocket-book as much as possible during their short terms in office.[159] Their ethical obligations may be ignored since they won't be facing the voters again.[160] Finally, the post-legislative plans of congresspersons may create a more powerful group of lobbyists.[161] A congressional "revolv-

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less experienced congresspersons); Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 159 (1991) (stating that powerful lobbyist will be able more easily to manipulate newcomer congresspersons); Michael Merrill & Sean Wilentz, *The Big House: An Alternative to Term Limits*, NEW REPUBLIC, Nov. 16, 1992, at 16 (stating that term limitations will not decrease power of lobbyist); *Term Limits Limit Choice*, N.Y. TIMES, Oct. 13, 1992, at 22A (discussing power lobbyist can have in influencing term-limitation congresspersons). Finally, limiting terms will place the inexperienced members of Congress "right in the grubby, grubby hands of Washington lobbies and lawyers." Mark Shields, *Limiting Terms in Congress Will Only Make Things Worse*, NEWSDAY, Mar. 21, 1989, at 59.

159. *See generally* Linda Cohen & Matthew Spitzer, Symposium: *Positive Political Theory and Public Law, Term Limits*, 80 GEO. L.J. 477, 490 (1992) (analyzing legislators' incentives in terms of prisoner's dilemma). Under the prisoner's dilemma theory, if all congresspersons vote according to the needs of their constituents, rather than according to the urgings of special interests, there will be an equal benefit for all. *Id.* at 490-91. However, if one congressperson comes under the influence of special interests while other congresspersons do not, the one voting in accordance with special interests will receive a higher benefit through donations by special interests. *Id.* at 495. Some people believe that term limitations will help solve the prisoner's dilemma; however, term limitations will actually increase congresspersons' incentive to work for their own benefit rather than for the whole. *Id.* at 508. Finally, abuses are already rampant in Congress, without increasing the prisoner's dilemma incentives. *See* People v. Ohrenstein, 531 N.Y.S.2d 942, 945 (1988), *aff'd*, 565 N.E.2d 493 (1990) (charging minority leader from New York with theft of state property and using public funds for campaigning); *see also* James A. Gardner, *The Uses and Abuses of Incumbency:* People v. Ohrenstein *and the Limits of Inherent Legislative Power*, 60 FORDHAM L. REVIEW 217, 218 (1991) (discussing numerous abuses by members of Congress).

160. *See generally* Joshua Levy, Note, *Can They Throw the Bums Out? The Constitutionality of State-Imposed Congressional Term Limits*, 80 GEO. L.J. 1913, 1919 (1992) (opposing term limitations because members serving their final terms will pay less attention to their constituents and ignore their ethical obligations); William T. Bagley, *Constitutionality of Measure Limiting Terms Is Challenged*, SAN FRANCISCO CHRON., Oct. 28, 1992, at A19 (stating that term limitations could hurt representation in districts with lame-duck congresspersons); Michael Rezendes, *Limits Attracting Interest of Voters Across the Nation*, BOSTON GLOBE, Jan. 5, 1993, at 20 (discussing possible negative repercussions associated with term limitations); Nancy Tarver, *Stamps of Disapproval; A Federal Probe into Alleged Campaign-Fund Abuses Focuses on One of Congress's Most Influential Budget Decision Makers—and One of Clinton's Most Powerful Allies*, TIME, Dec. 21, 1992, at 46 (showing example of current abuses by incumbents who are supposedly responsible to constituents); *The Wrong Way To Clean House*, N.Y. TIMES, Sept. 22, 1990, at A22 (illustrating problems associated with having officials in office who are responsible to no one because they will not be running for reelection).

161. As a congressman's term limit approaches, he or she must decide what option to next pursue. If the member of Congress desires to continue his or her career in the political arena, three main options remain open: running for a higher office; lobbying; or seeking a bureaucratic, judicial, or party appointment. *See generally* Linda Cohen & Matthew Spitzer, Symposium: *Positive Political Theory and Public Law: Term Limits*, 80 GEO. L.J. 477, 512-18

ing door" already exists in Washington whereby defeated members of Congress use their contacts to lobby newcomers and former colleagues.[162] With the imposition of term limitations, the door is likely to turn into a flood gate for politicians who refuse to leave Washington after the ends of their terms.[163] Therefore, because term limitations will not achieve better repre-

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(1992) (applying congressional decision-making to prisoner's dilemma theory). If the politician decides to seek a higher office, the purposes of term limitations are defeated because the congressperson can still use the incumbency power and advantage, and receive help from special-interest groups, in order to survive election to a new office. *Id* at 51. In an effort to eliminate the possibility of seeking a higher office, some states worded their statutes as to limit the total number of years an individual can serve in Congress. *See* N.D. CENT. CODE § 16.1-01-13(1) (1992) (limiting to 12 years of service in House, Senate, or both). However, a more important threat to representation in Congress occurs when legislators refuse to leave Washington and become lobbyists to their former colleagues. *See* Linda Cohen & Matthew Spitzer, Symposium: *Positive Political Theory and Public Law: Term Limits*, 80 GEO. L.J. 477, 513-14 (1992) (stating that former members of Congress are among most powerful lobbyists); Jason P. Isralowitz, Comment, *The Reporter as Citizen: Newspaper Ethics and Constitutional Values*, 141 U. PA. L. REV. 221, 245 (1992) (alluding that revolving door in Washington has deep historic roots); *see also* Beth Nolan, *Public Interest, Private Income: Conflicts and Control Limits on the Outside Income of Government Officials*, 87 NW. U. L. REV. 57, 84-5 (1992) (arguing that control of revolving door could produce some beneficial results); Richard L. Barnes, *Revolving Door Becomes More Like a Maze*, LEGAL TIMES, Dec. 21, 1992, at 21 (describing present system by which defeated and retired congresspersons become lobbyists). In recognition of this problem, some states have made efforts to close the revolving door. Rick Pearson, *Netsch Hopes To Get Legislators To Pass Ethics Reform This Time*, CHI. TRIB., Feb. 12, 1993, at 4N, (calling for two-year waiting period before employment with lobbyist).

162. *See generally* Richard L. Barnes, *Revolving Door Becomes More Like a Maze*, LEGAL TIMES, Dec. 21, 1992, at 21 (using contacts developed while serving in legislature makes ex-congresspersons valuable commodity for both public interest and special interests). Further, the need for postlegislative employment may have an effect on the congressperson during their term in office. Linda Cohen & Matthew Spitzer, Symposium: *Positive Political Theory and Public Law: Term Limits*, 80 GEO. L.J. 477, 513 (1992) (arguing that members of Congress will be more partial to special-interest groups in hopes of obtaining lobbying position after their term limit runs). Although some efforts have been made, the present postfederal employment restrictions leaves gaps. *See* Robert C. Newman, *New York's New Ethics Law: Turning the Tide on Corruption*, 16 HOFSTRA L. REV. 319, 343 (1988) (calling for regulations of congressional aides); Joseph I. Hochman, Comment, *Post-Employment Lobbying Restrictions on the Legislative Branch of Government: A Minimalist Approach To Regulating Ethics in Government*, 65 WASH. L. REV. 883, 889 (1990) (describing regulations that do exist and calling for more); Kenneth J. Cooper, *Leeway Found in New Anti-Lobby Restrictions: Ethics Law Puts Congress Off-Limits to Ex-Lawmakers, But Executive Agencies Are Fair Game*, WASH. POST, Jan 24, 1993, at A6 (stating that although present laws prohibit lobbying of Congress, executive agencies excluded from prohibition); *cf. Promises, Promises: Congress Needed To Enact the Next Ones*, THE HOTLINE, Feb. 3, 1993, New Administration, *available in* LEXIS, Nexis Library, CURRNT File (stating that efforts to revise laws governing revolving door are presently underway).

163. *See generally* Richard L. Barnes, *Revolving Door Becomes More Like a Maze*, LEGAL TIMES, Dec. 21, 1992, at 21 (stating that term limitations will intensify already existing revolving door). Additionally, Texas is among several states who have made their own efforts to

sentation for the people or break members' ties with special-interest groups, alternative solutions may be better for what ails Congress.

B. *Alternative Solutions*

Increased interest surrounding term limitations has sparked intensive debates over alternative solutions for the problems of Congress. Most commentators believe that some type of reform is necessary.[164] The solutions put forth range from requiring incumbents to receive more that 60% of the vote in order to win reelection,[165] to enlarging the House of Representatives.[166] The most viable solutions can be placed in two broad categories:

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prohibit postlegislative abuses. *See* SUPREME COURT OF TEXAS, STATE BAR RULES ART. § 9, 1.10 (TEXAS DISCIPLINARY RULES OF PROFESSIONAL CONDUCT) (1989) (attempting to curb postlegislative or other postpublic office abuses); Ronald D. Rotunda, *Professional Responsibility*, 45 SW. L.J. 2035, 2041-44 (1992) (discussing Texas rules governing successive government and private employment). Finally, evidence of the ineffectiveness of term limitations can be found in the fact that even some commentators who support the constitutionality of term limitations refuse to endorse their usefulness. Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State-Imposed Term Limitations*, 20 HOFSTRA L. REV. 341, 383-84 (1991) (arguing constitutionality of term limits while noting that limits themselves may be ineffective).

164. *See* People v. Ohrenstein, 565 N.E.2d 493, 495 (N.Y. 1990) (illustrating corruption that continues to plague Congress; reviewing criminal trial of congressman accused of stealing from federal government to finance his campaign). *See generally* James A. Gardener, *The Uses and Abuses of Incumbency:* People v. Ohrenstein *and the Limits of Inherent Legislative Power*, 60 FORDHAM L. REVIEW 217, 220 (1991) (discussing need for change in wave of uncovering congressional abuses); *Time To Step Down*, CHI. TRIB., Feb. 14, 1993, at 3C (calling for abusive congresspersons to come home); Jacob Weisberg, *Springtime for Lobbyists; Reforming Lobbying Laws*, NEW REPUBLIC, Feb. 1, 1993, at 33 (stating that lobby laws must also be reformed). However, some commentators feel that the people already have the power necessary to rid Congress of its abusers by voting out the unresponsive and unethical members. *Debate Voters Can Limit Congressional Terms Most Seniority*, USA TODAY, Dec. 18, 1990 at 12A.

165. *See* Jim Jacob, *Kallas Studies Term Limit Idea*, CHI. TRIB., Nov. 13, 1992, at 3D (arguing that requiring incumbent to obtain more than 50% of vote may be better alternative to term limitation). However, the proponent of this idea could cite no authority to support his proposal. *Id.* An additional proposal is to prohibit candidates from maintaining a "war chest." Paul A. Urbanek, *Time To Change the Patter*, HOUS. CHRON., Dec. 25, 1992, at 13B. Presently, fund raising is a constant process whereby incumbents spend their entire term building up funds, "the war chest," in order to be prepared for the next election. *Id.* Mr. Urbanek believes a rule requiring all money raised for campaign to be spent by election day or be used to reduce the deficit will reduce off-season fund raising. *Id.*

166. *See generally* Christopher St. John Yates, *A House of Our Own Or a House We've Outgrown? An Argument for Increasing the Size of the House of Representatives*, 25 COLUM. J.L. & SOC. PROBS. 157, 159-60 (1992) (arguing that current system of apportionment for House of Representatives denies one-man, one-vote rule and that freeze on membership has created disproportionate member-constituent ratio from that intended by Framers of Constitution); Michael Merrill, *The Big House: Alternative to Term Limits*, NEW REPUBLIC, Nov. 16, 1992, at 16 (stating that when Framer's designed House member-constituent ratio was 1 to

internal reforms[167] and campaign-finance reforms.[168] A combination of

30,000, but today it is one to every 600,000 persons); Jonah J. Goldberg, *To Reform Congress, Enlarge It*, WALL ST. J., Nov. 5, 1992, at 16A (suggesting enlargement rather than limitation); Mary Benanti, *Enlarge the House? Idea May Be Catching On*, GANNETT NEWS SERV., Mar. 4, 1992, *available in* LEXIS, Nexis Library, CURRNT File (arguing for broad look at reapportionment and increasing number of members in House); James K. Glassmann, *Let's Build a Bigger House; Why Shouldn't the Number of Congressmen Grow with Population?*, WASH. POST, June 17, 1990, at D2 (suggesting increase in House of Representatives); James K. Glassmann, *Why Just 435? After Eighty Years, This May Be the Time To Increase the Number of Members in the House*, ROLL CALL, June 11, 1990 at 1 (stating that now is appropriate time to increase size of House). The time may be right for an increase in the size of the House of Representatives as states who lost representatives in the last apportionment claim the move violates the rule of "one man one vote." *See* Montana v. United States Dept. of Commerce, 775 F. Supp. 1358, 1362 (D. Mont. 1991) (challenging apportionment of Congress that takes away one of Montana's representatives may lead to increase in number of House members); Kim Mattingly, *Montana May Sue To Keep Second Seat; First Legal Manifestation of Growing Movement To Increase Size of House Beyond 435*, ROLL CALL, Oct. 8, 1990, at 8 (discussing Montana's effort to maintain two seats in Congress may lead to increase in total membership).

167. *See generally* Ann McBride, *Ethics in Congress: Agenda and Action*, 58 GEO. WASH. L. REV. 451, 457-458 (1990) (suggesting such in-house reforms as banning honoraria fees, prohibiting excessive gifts, limiting expenses, and other efforts to ensure use of office for public good rather than private gain); Ernie Freda & Mike Christensen, *Washington in Brief: "Kiss-in" Protests Nunn's Removal of Gays*, ATLANTA J. & CONST., Dec. 8, 1992, at 6B (calling for reform of congressional privileges, such as franking privilege). Finally, other commentators feel ethics reforms should be the first priority in attempting to solve problems of Congress. *See* William E. Clayton, Jr., *Ford: Congress Needs To Change Its Ways*, HOUS. CHRON., June 2, 1992, at 3A (stating that internal reforms must be made in order to restore party leadership, which is most effective to accomplishing goals of long-term progress); Bill McAllister, *Term Limit Initiatives Win Overwhelming Support of State Voters*, WASH. POST, Nov. 4, 1992, at 1A (stating that term-limit victory is evidence of need for internal reform); Norman Ornstein, *Renewing Congress . . . to the Core*, WASH. TIMES, Dec. 3, 1992, at G1 (stating that in-house reform will bring about constructive changes that are necessary to renew public's faith in Congress); *see also* John Dillin, *Calls Mount for Ethics Reform in Congress*, CHRISTIAN SCI. MONITOR, Mar. 2, 1993, at 3 (demanding stricter ethics guidelines and enforcement mechanisms on Capitol Hill).

168. *See generally* Erik H. Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 600-03 (1991) (stating that campaign-finance reform is better alternative to term limitations in order to decrease influence of special-interest groups); Tara Parker Pope, *Election '92: State; Term-limit Propositions Winning Favor in at Least Ten States*, HOUS. CHRON., Nov. 4, 1992, at 26A (arguing that resources would be better utilized by supporting campaign reforms that lessen power of lobbyist and special-interest groups); *Term Limits Limit Choice*, N.Y. TIMES, Oct. 13, 1992, at 22A (stating that Bill Clinton supports campaign-finance reform over term limitations). Some states have already implemented campaign finance-reform laws. *See* N.C. GEN. STAT. § 163-278.45 (1988) (establishing publicly financed campaign fund to reduce need of fund raising so that public officials may concentrate on legislating); James Demarest Secor III, Recent Development, *Campaign Finance Reform in North Carolina: An Act To Limit Campaign Expenditures and To Strengthen Public Financing to Political Campaigns*, 67 N.C. L. REV. 1349, 1349 (1989) (discussing North Carolina's efforts to reduce cost of campaigns and, thus, lower control by special-interest groups).

both would most effectively cure the nation's congressional woes.[169]

Reformation of the congressional system will lead to better representation by restoring Congress's ability to debate issues and make effective public policy.[170] First, Congress needs to set an agenda and act upon it in order to ensure that all issues are met each session.[171] Second, strong party leadership should be encouraged in order to give direction to legislative goals.[172]

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169. A combination of both in-house reforms and campaign-finance reform is necessary so that each can be as effective as possible. If only campaign finance reforms were enacted, the abuses of incumbent privileges would become more rampant; and if only in-house reforms were enacted, the congresspersons will still spend too much time campaigning. *See* William E. Clayton, Jr., *Congress Needs To Change Its Ways*, HOUS. CHRON., June 2, 1992, at 3A (addressing need for in-house reforms to make Congress more effective and restore faith of congressional power in voters); Norman Ornstein, *Renewing Congress . . . to the Core*, WASH. TIMES, Dec. 3, 1992, at G1 (recognizing need for in-house reforms such as agenda setting, strong party leadership, and effective debate among members that will make Congress more effective legislative body); Tara P. Pope, *Election '92: State Term-Limit Propositions Winning Favor in at Least Ten States*, HOUS. CHRON., Nov. 4, 1992, at 26A (noting voter desire to send career politicians out of office through term limits); *Term Limits Limit Choice*, N.Y. TIMES, Oct. 13, 1992, at A22 (stating that President Bill Clinton supports campaign-finance reform which could aid in expedient passage of reforms).

170. *See* Norman Ornstein, *Renewing Congress . . . to the Core*, WASH. TIMES, Dec. 3, 1992, at 1G (calling for Congress to address its core problems: division of labor, valueless discussion rather than debates, faulty scheduling, putting individual interest over collective responsibility, and destruction of party leadership). Ornstein suggests an overhaul of the congressional system including efforts to set agendas, improve party leadership and relations, and facilitate constructive debate among members. *Id.* The implementation of these policies will create a climate in which Congress can solve the difficult problems of our times. *Id.* Some commentators believe that the number of committees must also be reduced. Dave Mason, *Reform at the Starting Gate*, WASH. TIMES, Feb. 2, 1993, at 3F (stating that Congress has presently too many committees that overlap, wasting money and causing deadlock in legislative process). *See generally* Helen Dewar, *Idea of New Campaign Finance Law Gives Hill the Chills*, WASH. POST, Feb. 17, 1993, at A7 (discussing Clinton administration's efforts to reform Congress); Craig Winneker, *Joint Committee Urged To Restrict Number of Panels, To Consider Restructuring Ethics*, ROLL CALL, Feb. 18, 1993, *available in* LEXIS, Nexis Library, CURRNT File (discussing theories of Ornstein and Mann on congressional reform).

171. *See* Norman Ornstein, *Renewing Congress . . . to the Core*, WASH. TIMES, Dec. 3, 1992, at 1G (calling on Congress to create timetables and follow them). Ornstein suggests the creation of a sixteen-member Majority Agenda Committee with a wide range of members who would meet in December to plan the schedule for the following session and meet throughout the year to evaluate the progress. *Id.*; *see also* Ben B. Blackburn, *Curbing Power of Staffs*, ATLANTA J. & CONST., Feb. 9, 1992, at 2F (suggesting that congressional schedule include off-days which would give congresspersons time to keep in touch with constituents, avoid lobbyists, and develop assistant, rather than confidential relationships with staff). Some effort to reform Congress are currently being considered on Capitol Hill. *See generally* David Schaefer, *It's Slow Going in the House, Freshmen Say—State's Four New Representatives Frustrated with Snail-Like Pace*, SEATTLE TIMES, Feb. 15, 1993, at 1 (discussing efforts to present congressional reform package); *Today in Congress*, WASH. POST, Feb. 16, 1993, at 5A (stating that Joint Organization of Congress meeting was held to discuss congressional reform).

172. *See generally* Jonathan R. Macey, *The Role of the Democratic and Republican Par-*

Not only must the majority party be led, but the minority party should have a reasonable role in order to lessen partisanship.[173] Additionally, efforts must be made to facilitate deliberation among congresspersons.[174] Finally, an intermediate form of term limitation should be enacted by placing limitations on the tenure of committee chairpersons.[175] There is no question that limiting the tenure of chairpersons is constitutional, and such a limit would eliminate the most harmful tendency of careerism, the "iron triangle."[176]

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ties as Organizers of Shadow Interest Groups, 89 MICH. L. REV. 1, 12-13 (1990) (arguing that strong party leadership will allow congresspersons to better serve their constituents); Harold A. McDougall, *Lawyering and the Public Interest in the 1990s*, 60 FORDHAM L. REVIEW 1, 16 (1991) (discussing problems created by lack of party leadership); Erik Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 572 (1991) (stating that Congress characterized by weak party leadership); Norman Ornstein, *Renewing Congress . . . to the Core*, WASH. TIMES, Dec. 3, 1992, at 1G (encouraging party leadership in order to promote efficiency and move towards legislation for whole rather than individuals).

173. *See* Stephen E. Gottlieb, *Election Reform and Democratic Objectives—Match or Mismatch?*, 9 YALE L. & POL'Y REV. 205, 217 (1991) (calling for return to strong party leadership in order to return power to voters); Norman Ornstein, *Renewing Congress . . . to the Core*, WASH. TIMES, Dec. 3, 1992, at 1G (stating that along with strong majority-party leadership, minority party must have active voice or strong partisanship will put hold on effective legislation).

174. *See* Norman Ornstein, *Renewing Congress . . . to the Core*, WASH. TIMES, Dec. 3, 1992, at 1G (arguing that Congress no longer reflects intent of Framers because debates intended to reflect public opinion are reduced to cheap shot against individuals); *see also* Frederick M. Biddle, *GOP Fails in House Reform Bid; Rule Changes Die in Partisan Voting*, BOSTON GLOBE, Jan. 10, 1991, at 63 (Metro/Region) (discussing attempts to reorganize Massachusetts Legislature, including reform of voting and debate process). In order to facilitate debate, Ornstein suggests streamlining the committee system, creating a standard, regulated process for debating important issues, and maintaining organized scheduling. Norman Ornstein, *Renewing Congress . . . to the Core*, WASH. TIMES, Dec. 3, 1992, at 1G. Finally, to accomplish these goals, Ornstein calls for a Joint Committee to be created to reorganize Congress. *Id.*

175. *See* David M. Mason, *Term Limits or Partisan Discipline: House Rules Votes Provide First Test of Reform*, HERITAGE FOUND. REP., Jan. 4, 1993, No. 348, *available in* LEXIS, Nexis Library, CURRNT File (calling for intermediate step of limiting terms of congressional committee chairmen); *see also* M.L. Lusby, *In Place of Term Limits*, WASH. POST, Aug. 10, 1992, at A18 (stating that term limitations on committee chairs are better than term limits on congresspersons); *Q & A on the News*, ATLANTA J. & CONST., Oct. 17, 1991, at 2A (calling committee chairman permanent fixtures that control the legislative process); *cf.* D.C. Fed'n of Civic Ass'ns v. Volpe, 459 F.2d 1231, 1246 (D.C. Cir. 1971) (requiring Secretary of Transportation to use factors other than desires of congressional committee chairman when approving bridge routes). *But see* James J. Kilpatrick, *Term Limits Can Work Against Voters*, HOUS. CHRON., Sept. 8, 1992, at 6C (arguing that electing congressional committee chairman based on merit rather than seniority could be detrimental).

176. *See* David M. Mason, *Term Limits or Partisan Discipline: House Rules Votes Provide First Test of Reform*, HERITAGE FOUND. REP., Jan. 4, 1993, No. 348, *available in* LEXIS, Nexis Library, CURRNT File (stating that term limits on committee chairs will destroy iron triangle). Mason describes iron triangles as the relationship that forms between committee chairs, special-interest groups, and bureaucrats whereby special-interest groups influence con-

The power of a long-term committee head allows him or her to form an iron triangle with special-interest groups and bureaucrats, leaving the rest of the government, and particularly the public, out of the legislative process.[177] By limiting the term of the committee head, there will be less time to form an "iron triangle," thus breaking the ties with special-interest groups.[178]

Campaign-finance reforms will bring about an additional decrease in the power of special interests.[179] Examples of such reforms come in a wide vari-

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gressional decision-making. *Id.* This relationship also exists when corporations enter the political scene in order to ensure legislation passed by Congress is beneficial to their interest. *See generally* Douglas M. Ramler, Comment, Austin v. Michigan Chamber of Commerce: *The Supreme Court Takes a "Less Speech, Sounds Great" Approach to Corporate Political Expression*, 43 FED. COMM. L.J. 419, 428-29 (1991) (discussing role of private corporations in campaign financing and efforts to reduce their voice); *see also* Kari Beth Kipf, Comment, 25 SUFFOLK U. L. REV. 280, 287-288 (1991) (discussing constitutional step toward curbing corporate abuses of political speech).

177. *See* Kenneth C. Smurzynski, *Modeling Campaign Contributions: The Market for Access and Its Implications for Regulation*, 80 GEO. L.J. 1891, 1891 (1992) (citing *Remarks at the Republican National Committee Countdown Rally*, 26 WEEKLY COMP. PRES. DOC. 1698 (Oct. 30, 1990)) (stating that President George Bush recognizes that congressional elections are paid for by special-interest groups who in turn gain congressional influence); David M. Mason, *Term Limits or Partisan Discipline: House Rules Votes Provide First Test of Reform*, HERITAGE FOUND. REP., Jan. 4, 1993, No. 348, *available in* LEXIS, Nexis Library, CURRNT File (describing process of special-interest groups and bureaucrats controlling committee heads in order to achieve their legislative goals, without regard for public goals).

178. *See* David M. Mason, *Term Limits or Partisan Discipline: House Rules Votes Provide First Test of Reform*, HERITAGE FOUND. REP., Jan. 4, 1993, No. 348, *available in* LEXIS, Nexis Library, CURRNT File (arguing that constant change of committee heads will reduce their power, making them less attractive to special-interest groups); *cf.* Pat M. Holt, *Congressional Reform: Handle with Care*, CHRISTIAN SCI. MONITOR, July 2, 1992, at 19 (describing failure of 1974 congressional reforms and suggesting need for further reforms). Further, limiting the terms of committee heads will help to level the playing field so that one congressperson is not more influential than another and, thus, no more attractive to special-interest groups. David M. Mason, *Term Limits or Partisan Discipline: House Rules Votes Provide First Test of Reform*, HERITAGE FOUND. REP., Jan. 4, 1993, No. 348, *available in* LEXIS, Nexis Library, CURRNT File. Finally, Mason believes that term limits on committee heads might cure the back-up problem in Congress by encouraging congresspersons to act quickly in their committees before their tenure expires. *Id.*

179. *See, e.g.*, Erik H. Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 607 (1991) (suggesting campaign-finance reform and strengthening ethics laws); *Undermining the Right To Vote*, N.Y. TIMES, Nov. 3, 1992, at 18A (stating that campaign-finance reform is better than term limitations to solve problems of Congress). *Contra* James C. Otteson, *Constitutional Analysis of Congressional Term Limits: Improving Representative Legislation Under the Constitution*, 41 DEPAUL L. REV. 1, 19-21 (1991) (explaining why campaign-finance reform is inadequate to solve congressional problems). Although it may not be apparent, national campaign-finance regulations do exist. *See* 2 U.S.C. § 431 (1988) (regulating disclosure of federal campaign funds); Federal Election Campaign Act of 1971, 2 U.S.C. § 411(a)-(i) (1988) (setting limits on contributions, media access, and honorariums); Buckley v. Valeo, 424 U.S. 1, 9-10 (1976) (upholding Federal Election Campaign Act). However, the current efforts are not enough. *See* Public Citizen v.

ety, including: campaign-spending limits;[180] public financing of congressional campaigns;[181] restrictions on the franking privilege and other perquisites of incumbency;[182] and ensuring equal media access for challengers.[183] By imposing these reforms, the role of special-interest groups will be

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National Advisory Comm. on Microbiological Criteria for Foods, 886 F.2d 419, 424 (D.C. Cir. 1989) (illustrating failure of campaign-finance reform by creating nesting place for special-interest groups); Kenneth A. Gross, *The Enforcement of Campaign Finance Rules: A System in Search of Reform*, 9 YALE L. & POL. REV. 279, 279-80 (1991) (listing five problems with Federal Election Campaign Act); *cf.* Rick Pearson, *Netsch Hopes To Get Legislators To Pass Ethics Reform This Time*, CHI. TRIB., Feb. 12, 1993, at N4 (illustrating power of special-interest groups in prohibiting campaign-finance reforms at state level).

180. *See* Daniel Hayes Lowenstein, *On Campaign Finance Reform: The Root of All Evil Is Deeply Rooted*, 18 HOFSTRA L. REV. 301, 359-60 (1989) (calling for spending limits as part of campaign-finance reform efforts); Sarah Fritz, *Where We Actually Need Real Reform: Campaign Spending*, ROLL CALL, Aug. 3, 1992, *available in* LEXIS, Nexis Library, CURRNT File (stating that cap on spending is not enough, cost of campaigns themselves must be reduced so that voter education does not suffer); Sandra Barringer Mortham, *Impact of Campaign-Finance Reform Proposals*, ST. PETERSBURG TIMES, Dec. 26, 1992, at A23 (suggesting campaign-spending limits, but warning that this type of campaign-finance reform alone is not enough). There are, however, spending limits placed on presidential campaigns. *See* 2 U.S.C. § 441a(b) (1988) (setting spending limits on presidential candidates who receive federal funding).

181. *See* Erik H. Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 607 (1991) (suggesting public financing of legislative campaigns). Public financing for campaigns has been enacted for presidential campaigns and some local campaigns. *Take "For Sale" Sign Off Candidates*, ATLANTA J. & CONST., Dec. 16, 1992, at 18A (discussing efforts in Georgia to introduce public financing of campaigns); *see also* Presidential Election Campaign Fund Act, 26 U.S.C. §§ 9001-13 (1988) (controlling distribution of public funds for presidential candidates); Presidential Primary Matching Payment Account Act, 26 U.S.C. § 9031-9042 (1988) (matching funds received by presidential primary candidates); Johnson v. Bradley, 841 P.2d 990, 1004 (Cal. 1992) (upholding city charter that allows for partial public financing by stating that it obviously reduces influence by special-interest groups); City of Seattle v. Washington, 668 P.2d 1266, 1271 (Wash. 1983) (allowing partial public campaign financing in order to reduce influence of special interests).

182. *See* Mann, *Is the House of Representatives Unresponsive to Policy Change?*, *in* ELECTIONS AM. STYLE 261, 265 (A.J. Reichley ed., 1987) (arguing for restrictions of franking privilege, among other "freebies" of incumbents); Ann McBride, *Ethics in Congress: Agenda and Action*, 58 GEO. WASH. L. REV. 451, 457-58 (1990) (arguing for ban and limits to be placed on perquisites of Congress). According to the Federal Election Campaign Act, only the Secretary of the Senate is authorized to incur travel expenses for the purpose of fulfilling his duties under the Act. 2 U.S.C. § 442 (1988). Finally, there are only limited provisions regarding the use of public funds. 2 U.S.C. § 452 (1988) (stating that funds from Economic Opportunity Act of 1964 may not be used to finance election to federal office).

183. Some provisions regarding media access for candidates for elected offices already exist. *See* 47 U.S.C. § 315(a) (1988) (granting equal time to legally qualified candidates if their opponent receives airtime); Austin v. Michigan Chamber of Commerce, 494 U.S. 652, 661 (1990) (upholding felony laws for corporations that run advertisements in opposition of candidates); Federal Elections Comm'n v. Massachusetts Citizens for Life, Inc., 479 U.S. 238, 259-

substantially reduced, particularly in financing elections.[184] Campaign-finance reform is additionally advantageous because it would increase the influence of political parties and, thereby, foster party leadership.[185] Finally, campaign-finance reform is a better solution than term limitations because Congress is more likely to accept the alteration of the campaign process as opposed to a complete and permanent elimination of the process.[186] There-

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69 (1986) (enforcing negative-campaign laws). However, the problem arises when the candidate pays for airtime, because incumbents generally have more money to spend on advertising and, thus, receive more airtime. *See generally* Jeffery A. Levinson, Note, *An Informed Electorate: Requiring Broadcasters To Provide Free Airtime to Candidates for Public Office*, 72 B.U. L. REV. 143, 149-50 (1992) (describing scope of suggested free airtime for candidates); Peter F. May, Note, *State Regulation of Political Broadcast Advertising: Stemming the Tide of Deceptive Negative Attacks*, 72 B.U. L. REV. 179, 179-80 (1992) (suggesting administrative control of campaign advertising to equalize media access among candidates).

184. *See* Erik H. Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 603 (1991) (suggesting public financing of legislative campaigns). Congresspersons presently rely on special-interest groups to aid in financing campaigns. Rick Pearson, *Netsch Hopes To Get Legislators To Pass Ethics Reform This Time*, CHI. TRIB., Feb. 12, 1993, at N4 (discussing Netsch's proposed ethics reform); *cf.* New Jersey St. Chamber of Commerce v. New Jersey Election Law Enforcement Comm'n, 411 A.2d 168, 173 (N.J. 1980) (holding that special-interest groups have standing to challenge campaign-financing laws because these groups use financing as tactic to gain influence). Thus, proper campaign-finance reforms will reduce the influence of special-interest groups by reducing the congresspersons need to rely on them for financing. Erik H. Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 603 (1991). For example, the Senate Minority Leader was subject to a criminal suit for suspected abuses in obtaining the necessary money to finance his campaign. *See Ohrenstein*, 565 N.E.2d at 495 (charging Ohrenstein with theft of state property); James A. Gardner, *The Uses and Abuses of Incumbency:* People v. Ohrenstein *and the Limits of Inherent Legislative Power*, 60 FORDHAM L. REVIEW 217, 220-21 (1991) (discussing high-priced campaigns that lead to incumbency abuses).

185. *See* Erik H. Corwin, Recent Development, *Limits on Legislative Terms: Legal and Policy Implications*, 28 HARV. J. ON LEGIS. 569, 605 (1991) (stating that campaign-finance reform will foster party leadership as candidate will be dependent on parties for contributions and endorsement); William E. Clayton, Jr., *Ford: Congress Needs To Change Its Ways*, HOUS. CHRON., June 2, 1992, at 3A (calling present congresspersons "prima donnas" who undercut effective party leadership); David M. Mason, *Term Limits or Partisan Discipline: House Rules Votes Provide First Test of Reform*, HERITAGE FOUND. REP., Jan. 4, 1993, No. 348, *available in* LEXIS, Nexis Library, CURRNT File (arguing that campaign-finance reform, in addition to overhauling congressional system, will foster party leadership); George F. Will, *Abusive Incumbents Slowly But Surely Bringing Term Limits to Congress*, HOUS. CHRON., Jan. 2, 1992, at 23A (stating that without reform, career politician will reign over party politics).

186. *See* Martin E. Latz, *The Constitutionality of State-Passed Congressional Term Limits*, 25 AKRON L. REV. 155, 185 (1991) (stating that Congress is more likely to impose restrictions that do not terminate their jobs). For example, even after term limitations were passed in fourteen states, Speaker of the House Tom Foley appears unconcerned by the possibility of an early termination of his career. *This Week with David Brinkley* (ABC television broadcast, Nov. 8, 1992) (interviewing Speaker Tom Foley) (transcript on file with *St. Mary's Law Journal*). Finally, campaign-finance reforms have a better chance of being enacted into law because

fore, a change in congressional procedure and reforms of campaign financing will better solve current legislative problems than will term limitations.[187]

VII. CONCLUSION

There is no doubt that reform is needed, more than at any time in United States history. Yet, the reform must be constructive, not simply an effort to satisfy the public's discontent with Congress. One reform effort sweeping across our nation is the congressional term-limitations movement. As of January 1, 1993, term-limitation statutes for congressional representatives are in effect for fifteen states. Politicians who will have their careers cut short by term limitations are unafraid because they doubt their constitutionality. In the next few months, the attitudes of these members of Congress will change as the courts affirm the constitutionality of congressional-term limitations. The states are granted the power under the Constitution to regulate the time, place, and manner by which congresspersons are elected. Term limitations are appropriate manner regulations because the states' interest in maintaining the integrity of the election process outweighs the voters' burden in being allowed to reelect incumbents only as write-in candidates.

Although constitutional, term limitations are not the most appropriate solution for the nation's congressional woes. Any benefit the states hope to

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they have the support of President Bill Clinton. *See generally* Helen Dewar, *Idea of New Campaign Finance Law Gives Hill the Chills*, WASH. POST, Feb. 17, 1993, at A7 (stating that Clinton administration is making efforts to pass campaign-finance reforms in Congress); *Clinton Takes Aim at Bureaucracy*, CHI. TRIB., Feb. 11, 1993, at N28 (stating that President Clinton is encouraging Congress's newly created joint committee to develop quickly plan for congressional reform); *Term Limits Limit Choice*, N.Y. TIMES, Oct. 13, 1992, at 22A (stating that President Clinton favors campaign finance reform over term limitations).

187. Reforming the process by which Congress legislates and reforming the process by which campaigns are financed will bring new respect to Capitol Hill, as these effort increase representation and decrease the influence of special-interests groups. *See generally* Norman Ornstein, *Renewing Congress . . . to the Core*, WASH. TIMES, Dec. 3, 1992, at G1 (calling for Congress to address its core problems: division of labor, valueless discussion rather than debates, faulty scheduling, emphasis of individual interest over collective responsibility, and destruction of party leadership by enacting in-house reforms); Tara Parker Pope, *Election '92: State; Term-Limit Propositions Winning Favor in at Least Ten States*, HOUS. CHRON., Nov. 4, 1992, at 26A (arguing that resource would be better utilized by supporting campaign reforms that lessen power of lobbyist and special-interest groups). Although some efforts are underway to enact reforms, the new administration is meeting opposition from the Congress and, thus, we must all encourage our representative to act in a manner to bring about these progressive changes. *See generally Promises, Promises: Congress Needed To Enact the Next Ones*, THE HOTLINE, Feb. 3, 1993, The New Administration, *available in* LEXIS, Nexis Library, CURRNT File (stating that efforts to control postlegislative employment are presently meeting opposition in Congress); *Term Limits Limit Choice*, N.Y. TIMES, Oct. 13, 1992, at 22A (stating that President Bill Clinton supports campaign-finance reform over term limitations).

achieve by limiting the tenure of their congressional representatives will be strongly outweighed by the disadvantages. Term limitations prohibit congresspersons from gaining the experience necessary to govern effectively. A more appropriate solution is to reform directly the congressional system. Measures should be enacted to facilitate debate among congresspersons and to level the hierarchy of power so that the interest of the whole is placed above the interest of the individual. Further, changing the method by which campaigns are financed will give members of Congress more time to legislate and will reduce the control of special-interest groups.

Reforming the process by which Congress legislates, as well as reforming the process by which congresspersons are elected, will bring new respect to Capitol Hill, increasing representation and decreasing the influence of special interests. Efforts are currently underway to enact these reforms; however, the new administration is meeting opposition from Congress. Therefore, it is the duty of informed citizens to encourage their representatives to bring about these progressive changes.