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Term Limits for Members of Congress: State Activity

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Summary

In 1990, term limit advocates began their campaign to limit congressional terms by changing state laws, amending state constitutions, and passing state ballot initiatives, rather than by amending the U.S. Constitution. Their strategy was to circumvent the more difficult and time consuming amendment process at the federal level and go directly to the voters and legislatures of each state. By mid-1995, voters or legislatures in 23 states had approved congressional term limits. In 1995, however, the U.S. Supreme Court ruled that state-imposed limits on congressional tenure violate the Constitution and that term limits can only be set through passage and ratification of an amendment to the U.S. Constitution. Since then, term limit supporters have pressed Congress to propose a constitutional amendment and encouraged state legislatures to pass resolutions calling on Congress to propose a constitutional amendment. Since the 1996 general election, some proponents of a national constitutional convention to consider term limits have redirected their activities toward pressing Congress to propose an amendment limiting House Members to three terms (6 years) and Senate Members to two terms (12 years). Some term limit advocates are also working to elect more candidates who pledge to limit themselves to three House terms and two Senate terms.

Background

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

Proponents and opponents of term limits have sought support for their respective positions since the mid-1970s when the recurring debate on congressional terms of office began to shift from length of *term* to length of *service*. Initially, term limit advocates sought to attain their goal by amending the U.S. Constitution. In 1990, however, they began concentrating on electoral and legislative processes at the state level (i.e., state initiatives and laws). Their objective was to bypass the cumbersome amendment process at the federal level and take the term limits issue directly to the voters by means of ballot initiatives.

Ballot Initiatives

1990-1995: Maximum Service and Ballot Access Laws

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

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

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

Some political observers believed that the *Thornton* decision would end the effort of term limit proponents to use the initiative process as part of their strategy to attain congressional term limits. They were wrong. Proponents circulated petitions to place another round of term limit initiatives on the 1996 ballot. These initiatives, known as

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

[2] (*U.S. Term Limits, Inc. v. Thornton* [Sup. Ct. Doc. No. 93-1456]). See also U.S. Library of Congress, Congressional Research Service, *The Unconstitutionality of State Congressional Term Limits: An Overview of U.S. Term Limits v. Thornton (Sup. Ct. Doc. No. 93-1456)*, by Thomas M. Durbin, CRS report 95-646 A, (Washington: May 31, 1995). 3 p.

"informed voter laws," "voter compliance laws," or "voter accountability laws" contained such provisions as the following:

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

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

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

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

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

Some opponents and political observers dubbed these measures "scarlet letter laws" because of the ballot notations. Initiatives of this type were on the November 5, 1996, ballot in 14 states: AK, AR, CO, ID, ME, MO, MT, NE, NV, ND, OR, SD, WA, and WY.[3] Voters approved the measures in nine states: AK, AR, CO, ID, ME, MO, NE, NV, and SD. In nearly every state where passed, the initiative was challenged in the courts. (See table 1.)

On February 12, 1997, the House debated and voted on 11 versions of a proposed constitutional amendment to limit congressional terms (i.e., H.J.Res. 2 and 10 amendments in the nature of substitutes). Seven of the 11 proposals had been passed by voters as ballot initiatives in AR, CO, ID, MO, NE, NV, and SD. Six of these seven were essentially the same, with only minor technical variations, such as punctuation. However, in order to avoid the possibility of having the ballot statement (e.g., "disregarded voter instruction on term limits") beside their names on future ballots, most Members from the nine states voted solely for the version with the precise language of their state's law. Hence, the multiple number of virtually identical measures, and the resulting splintering of votes. None of the 11 versions received the two-thirds majority needed for passage. Since then, the courts have invalidated these "informed voter laws" in nearly all of the states where they were passed (see table 1).

Voters in California passed an "informed voter" initiative on June 2, 1998. This measure declares it the official position of the state that its elected officials should vote to help enact a constitutional amendment limiting congressional terms to three in the House and two in the Senate. It requires federal and state legislators to use their power

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

to pass the amendment, and it provides that candidates for federal and state legislative office who do not support the measure be so identified on subsequent ballots.

1998: Term Limits Pledge Laws and Term Limits Declarations

Now that the courts have invalidated "informed voter laws" in most of the states where they were passed, some term limit proponents are working to place on the 1998 ballot another round of initiatives called "term limits pledge laws" or "the Term Limits Declaration." Under these measures:

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

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

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

In Alaska, a "term limits pledge" initiative has qualified for placement on the 1998 ballot. Efforts are underway to place "term limits pledge" initiatives on the ballot in several other states (e.g., Colorado, Idaho, and Montana).

Constitutional Convention

Some term limit supporters had been campaigning for a national constitutional convention through the initiative process. In several states, they conducted petition drives to place initiatives on the 1996 ballot instructing state legislators to vote for application to Congress for a constitutional convention to consider a term limit amendment. This approach led to the reemergence of a number of such crucial questions as whether the convention can be limited to a single subject. If not, a "run away convention" might propose any number of amendments or a totally new constitution.

Initiatives that instructed state legislators to vote for application to Congress for a constitutional convention to consider a term limit amendment were on the 1996 ballot in 11 states.[4] If a state legislature failed to pass the measure, dissenting legislators would have a statement printed beside their names on ballots in subsequent elections, indicating their failure to comply with voter instruction on term limits. Such initiatives were on the

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

1996 ballot in AK, AR, CO, ID, ME, MT, NE, NV, OR, WA, and WY. In addition, an initiative in North Dakota would have provided that the people of that state act as the state legislature for the sole purpose of applying to Congress to call a constitutional convention to consider a term limits amendment. Voters in AK, AR, CO, ID, ME, NE, and NV approved initiatives calling for a constitutional convention. The Arkansas initiative was challenged in the courts. On February 24, 1997, the U.S. Supreme Court denied a petition for *certiorari* concerning the constitutionality of this initiative, thus letting stand a ruling by the Arkansas Supreme Court, which had struck down the Arkansas initiative.

According to a term limits activist, "the next battery of [1998] initiatives will not include the requirement to apply for a 'convention to propose amendments.' The term limits movement believes that the ballot working alone can put enough pressure on Congress to force them to act."[5]

Earlier this century, increasing support for a national constitutional convention helped proponents of direct election of Senators convince Congress to propose the 17th Amendment.[6] In the early 1900s, an increasing number of state legislatures were calling for a constitutional convention to propose an amendment providing for the election of Senators by popular vote. In 1910, a Senator who had proposed such an amendment claimed that 33 state legislatures supported his proposal "in substance if not in exact phraseology."[7] By 1911, another Member said that 19 states had formally petitioned Congress to call a constitutional convention.[8] Faced with increasing support for a constitutional convention, most Members (including some who opposed direct election) chose to propose a definitive amendment rather than risk the uncertainties a national convention might pose. The Senate debated and passed an amendment providing for the direct election of Senators on June 12, 1911 (64 to 24). The House concurred in the Senate version on May 13, 1912 (238 to 39). On May 31, 1913, the Secretary of State proclaimed the 17th Amendment ratified by 36 of the 48 states.

Legislation Proposed in the State Legislatures

The legislatures of three states—ID, SD, and UT—have passed proposals for either a constitutional convention or Congress to propose a constitutional amendment to limit congressional tenure. During the 1997 and 1998 state legislative sessions, various proposals have ranged from expressing support for congressional term limits to proposing an amendment to the U.S. Constitution. The state legislature in South Dakota passed legislation repealing the ballot initiative ("informed voter law") that voters passed on November 5, 1996. Proponents circulated a referendum petition and collected signatures in an effort to stay the legislature's repeal and reinstate the law (see Table 1).

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[5] Colorado Term Limit Coalition. Letter from Dennis Polhill. http://members. aol.com/ cotermlim/Polhill4Feb97.html, visited May 13, 1997.

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

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

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

Table 1. Congressional Term Limit Initiatives on State Ballots in 1996[a]

State	Measure number[b]	Recent Developments
Alaska	Ballot Measure No. 4	11/05/96: Voters passed measure.
Arkansas	Amendment 9	02/24/97: Invalidated.[c]
Colorado	Amendment No. 12	01/ /98: State Supreme Court invalidated measure.
Idaho	Proposition 4	08/07/97: State Supreme Court partially invalidated measure.[d]
Maine	Question 1	05/15/97: Federal District Court invalidated measure. Appeal filed but subsequently withdrawn by appellant.
Missouri[e]	Constitutional Amendment No. 9	02/ /98: Federal District Court invalidated measure.
Nebraska	Initiative Petition Measure 409	05/ /97: Federal District Court's preliminary injunction barred the state from enforcing the measure. 01/16/98: Federal District Court's final ruling upheld the earlier decision.
Nevada	Question 17	11/5/07: Voters passed the measure; must be passed again in 1998 to become law.
South Dakota	Initiated Measure 1	03/ /98: Federal District Court invalidated the initiative.[f]

a. Information is necessarily summarized. Consult the full text of all measures for further detail. For example, the full text of all of the measures stipulates legislators and candidates support an amendment prescribing limits of three House terms (6 years) and 2 Senate terms (12 years).

b. Refers to the number used to identify the proposal on the ballot.

c. On October 21, 1996, the Arkansas Supreme Court had struck down this initiative and had ordered the secretary of state not to count the votes on it. On November 2, 1996, however, the U.S. Supreme Court suspended the State Supreme Court order and allowed votes on Amendment 9 to be counted. The U.S. Supreme Court did not rule on the initiative's constitutionality. Later (February 24, 1997), the U.S. Supreme Court denied a petition for *certiorari* concerning this initiative's constitutionality, thus letting stand the ruling by the Arkansas Supreme Court.

d. The Court struck down a provision of the initiative that would have required legislators to sign a pledge supporting congressional term limits or have the statement, "disregarded voters' instructions on term limits" beside their names on subsequent election ballots. The Court did not invalidate the part of the initiative that requires legislators to call for a constitutional convention to amend the U.S. Constitution to limit congressional terms.

e. There were two separate term-limit initiatives in Missouri. One would instruct state legislators the other, federal legislators. The former was challenged on the basis of the number of signatures; it was not on the 1996 ballot. The latter (Amendment 9) qualified for the 1996 ballot.

f. Voters passed the initiative on November 5, 1996. In February and March 1997, the state legislature passed and the Governor signed legislation repealing the initiative. Term limit proponents circulated a referendum petition to stay the repealing legislation and to reinstate the initiative. The requisite number of signatures was attained on June 19, 1997. Consequently, the legislation repealing the initiative was not to go into effect and the initiative was to remain in force until 1998, when voters would approve or reject a referendum on the repealing legislation. In March 1998, however, a Federal District Court ruled the initiative unconstitutional.