

Defining Democracy Down Explaining the Campaign to Repeal Term Limits

by Patrick Basham

Executive Summary

A campaign to place term limits on elected officials swept the country in the 1990s. Since then, however, a concerted effort has been made to undo the restrictions imposed by term limits. This paper examines the incentives behind the campaign to repeal term limits at the state and local levels. Particular attention is paid to recent experience in California, Idaho, and New York City. Career politicians, senior bureaucrats, and special interest groups are intent on overcoming clearly articulated voter intent on this issue.

The repeal campaigns are not grassroots affairs. Typically, they are initiated, funded, and managed by career legislators, legislative staff, bureaucrats, and lobbyists. Legislative opposition to term limits is bipartisan. Term-limited legislatures undergo many positive institutional changes that are unsettling for career politicians. Absent term limits, it is unlikely that the currents of public opinion will rock the career politician's electoral boat.

Some career politicians oppose term limits on ideological, outcome-based grounds. They correctly assume that term limits produce both legislators and legislative incentive structures that are inherently more inclined toward more limit-

ed government. The principal concern of legislative staff is that the relatively rapid turnover of legislators will make it harder to build career-length relationships with legislators.

In many instances, senior bureaucrats' fiefdoms are protected in state and local budgets written by career legislators with whom they have enjoyed mutually beneficial long-term relationships. Freshman term-limited legislators tend to ask tougher questions of bureaucrats and demand a higher level of performance from government agencies. Lobbyists can no longer rely on informal, long-lasting friendships with senior members who can exert major influence over a particular piece of legislation.

Efforts to repeal term limits have failed because they have been led by those who are seemingly intent on preserving their professional advantages and institutional perks regardless of "common good" considerations. Only once have such efforts passed voter inspection.

A great deal is at stake with the repeal of term limits. Without term limits, a state's political infrastructure risks stagnation. Term limits offer state taxpayers hope for an end to endless spending and taxing.

Despite an onslaught of negative commentary from the political and media establishments, public opinion remains solidly in favor of term limits.

Introduction

Rules create winners and losers. . . . Nor should we assume that politicians and others are indifferent to manipulating the rules themselves; they cannot afford disinterest.¹

Term limits are under assault across the nation.² After they swept the country in the 1990s, there was a backlash from those parties who felt threatened by their retention. Consequently, a concerted effort was made to undo the restrictions imposed by term limits. This paper examines the incentives behind the campaign to repeal term limits at the state and local levels. Particular attention is paid to recent experience in California, Idaho, and New York City. Those jurisdictions best illustrate the central facets of the contemporary campaign to repeal term limits.

Throughout this paper, the campaign to repeal term limits is analyzed from the public choice perspective. The case is made that those leading and supporting the repeal campaign are rational actors pursuing their own self-interested goals, as are the voters who continue to support term limits through the ballot.

The term limits movement remains one of the most successful grassroots political efforts in U.S. history. From 1990 to 1995, legislative term limits passed in 18 states, with an average of 68 percent voter support. In November 2000, Nebraska became the 19th state to limit the terms of state legislatures. By the end of 2002, term limits had affected well over 700 legislative seats in 11 states. Despite a steady onslaught of negative commentary emanating from the political and media establishments, public opinion remains solidly in favor of term limits.⁴

The widespread popular appeal of limiting the terms of elected officials is also evident in the passage of term limits in municipalities across the country, including Los Angeles, New York City, San Francisco, and Dallas. According to the Initiative and Referendum Institute, "municipal term lim-

its are the least documented yet most prevalent component of the term limits movement."⁵ Seventeen thousand local politicians in 2,890 cities, counties, and towns throughout 40 states are now subject to term limits. Clearly, "municipal limits are changing the political culture of our country and paving the way to real reform."⁶

Public Choice and the Repeal of Term Limits

Sixteen states currently limit legislative tenure through term limits. However, according to journalist Alan Greenblatt, "In virtually every . . . state that has not adopted a term limits system, approval by the legislature itself would be required, and that does not appear to be on the horizon anywhere."⁷ However, highly organized, well-funded opposition has been typical across the nation since Oklahoma, California, and Colorado became the first states to term limit their legislators in 1990. Thirteen years later, a majority of term-limited states have experienced campaigns to repeal those laws.

Term limits continue to be opposed by a majority of incumbent politicians. A survey by the Council of State Governments found 76 percent of politicians opposed to term limits.⁸ A majority of the legislative staff, bureaucrats, journalists, and interest groups that depend on politicians for employment, patronage, sources, and votes also opposed term limits. Most special interest groups, especially large, heavily regulated corporations as well as unions that rely on government intervention in the labor market, view term limits as anathema to their interests.⁹

Term limits laws also have been attacked in the courts. To date, three of the five successful repeal campaigns at the state level took place courtesy of judicial decisions. The Massachusetts term limits law was overturned by the state supreme court in 1997. The next year, the state supreme court invalidated Washington State's term limits. Most recently, on January 11, 2002,

term limits in Oregon were repealed by a state supreme court decision.¹⁰ Nonjudicial overturning of term limits has occurred only twice: first, in Idaho last year (see “Case Studies,” below) and, second, in Utah earlier this year.

Why is there unrelenting (albeit usually unsuccessful) pressure to return to the days of unlimited legislative tenure? Can one characterize the general nature of these repeal campaigns? The repeal campaigns are certainly not grassroots affairs. Typically, they are initiated, funded, and managed by career legislators, legislative staff, bureaucrats, and lobbyists.

In their influential book, *Beyond Politics: Markets, Welfare, and the Failure of Bureaucracy*, political scientists William C. Mitchell and Randy T. Simmons articulate a comprehensive public choice model of politics and democracy, a model directly relevant to our understanding of the campaign to repeal term limits. Mitchell and Simmons explain:

Politics is assumed to be a system consisting of four groups of decision-makers—voters, elected officials or politicians, bureaucrats, and interest groups. Individuals are assumed to be rational utility-maximizers who seek benefits from the political system. Politicians are assumed to seek votes, and bureaucrats seek job security and budgets. Interest groups and voters seek more wealth and income. . . . Each actor is assumed to want something possessed and/or controlled by others; for example, voters and interest groups want services from politicians and bureaucrats, and bureaucrats want greater revenues or budgets from politicians and taxpayers. And, of course, politicians want votes and other forms of support from citizens and interest-group members. . . . In our model, each individual is assumed to control certain assets. Each is self-inter-

ested and purposively oriented, and each engages in rational decision making. Unfortunately, and precisely contrary to markets with well-defined and defensible property rights, political processes have certain properties that less efficiency and discourage harmony among the self-interested. . . . As maximizers who follow their own strongest impulses, without necessarily having the most noble ends in mind, citizens in the polity act much like economic agents in the economy.¹¹

The political class in several states has attacked term limits. Here, the political class is defined by its collective self-interest irrespective of party lines. Its focus is on the institutional context of its members’ professional lives (i.e., career maintenance, career opportunities, and career advancement).¹² Incumbent politicians, and those who benefit from close, established relationships with incumbents, are clearly disfavored by term limits.¹³ In most states, the absence of term limits severely limits the competition for legislative seats. In Idaho, for example, the 2000 election saw 66 percent of state senators and 50 percent of state house members elected without opposition.¹⁴ As journalist J. E. McReynolds observes, in states such as Oklahoma the “chance of a challenger unseating an incumbent is slim to none in many districts. Some offices are filled without an election because no one files against the incumbent.”¹⁵ Consequently, legislative opposition to term limits is bipartisan.

Term-limited legislatures undergo many positive institutional changes that are unsettling for career politicians. In American politics, seniority has traditionally been the key factor in determining who holds leadership positions. Term-limited legislatures, in contrast, become more merit based and less governed by an outdated seniority system that values longevity rather than competence. Therefore, term limits eliminate the possibility of entrenched legislative leaders dominat-

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ing a legislative chamber. As a result, leadership positions (especially that of Speaker) become less powerful as a more decentralized power structure evolves in response to the growing independence of term-limited freshmen legislators.

Michael H. Michaud, president of the Maine state senate, argues that “term limits have weakened the legislature by making it a more chaotic, less stable institution.”¹⁶ Absent term limits, personal relationships among legislators and with staff, bureaucrats, and lobbyists are very important. Most career politicians prefer things that way. Lengthy tenures produce relatively civil climbs up the legislative career ladder.¹⁷ Pre-term limits, the seniority system ensured that long-serving legislators automatically advanced to influential posts as committee chairmen and in the party leadership. Overall, their professional lives were more stable, more predictable, and more secure under a relationship-driven, rather than a policy-driven, regime.

In legislatures without term limits, committee members set legislative priorities and subsequent challenges to those priorities on the legislative floor prove mostly unsuccessful. Prior to term limits, the legislative leadership in many of the affected states frequently distributed issue ownership to individual members rather than the legislator adopting a proactive policy agenda. By contrast, under term limits new legislators are more likely to propose legislation, to take strong positions, and to vote against their leadership’s wishes.¹⁸ According to Michigan State Senator Bill Schuette, term limits “compresses decision making. It frees me from hesitations, of—‘Gee, is it risky politically?’”¹⁹ More often than not, controversial social issues (for example, abortion, capital punishment, and gun control) are relegated to the bottom of the legislative priority list. For example, the now term-limited Michigan state legislature recently considered the death penalty issue for the first time since 1938. Absent term limits, it is far less likely that the currents of public opinion will rock the careerist politician’s electoral boat.

Some career politicians also oppose term limits on ideological, outcome-based grounds. They correctly assume that term limits produce both legislators and legislative incentive structures that are inherently more inclined toward more limited government.²⁰

The legislative staff echoes the political class in deriding term limits. Seventy-eight percent of state legislative staffers surveyed oppose term limits.²¹ The principal concern of legislative staff is that the relatively rapid turnover of legislators will make it harder to build career-length relationships with legislators.²² That self-interested concern has an empirical foundation. Political scientist Timothy Hodson found that the turnover rate for California state legislative committee staff more than doubled under term limits.²³ In fact, in post-term limits California, 73 percent of legislative staffers remain in their positions for three years or less,²⁴ thereby reducing the staffers’ alleged value to legislators as purveyors of institutional knowledge. Political scientist Thad Kousser found that, generally, “Across the term-limited states, staff members who retain much of the institutional memory have lost the close relationships they had with veteran members.”²⁵

Why do bureaucrats oppose term limits? Research shows that the longer an official holds office, the more likely it is that he or she will vote for higher government spending.²⁶ After all, in terms of the political culture, experience in government tends to produce legislators who are interested in defending government. Inherent in larger government is greater bureaucracy. In many instances, senior bureaucrats’ professional fiefdoms are protected in state and local budgets written by career legislators with whom they have enjoyed mutually beneficial long-term relationships.²⁷ Furthermore, freshman term-limited legislators, generally speaking, tend to ask tougher questions of bureaucrats and demand a higher level of performance from government agencies than did their predecessors.²⁸

Mitchell and Simmons inform us:

Unlike the business firm, which gets its funds from sales of products or

services, a public agency gets its funds from elected representatives convened in legislatures. The critical question, then, is how the legislature decides how much money is to be allocated each agency. . . . All of the major political actors—politicians, voters, bureaucrats, and interest groups—interact to make collective budgets and, incidentally, to insure growth in governmental spending and taxation. . . . Bureaucrats engage most directly and continuously with legislators . . . who have authority to recommend budgets to the entire legislature. Such interaction and mutual dependence is certain to guarantee or reinforce powerful tendencies to spend more funds. These committees consist of largely self-selected politicians interested in winning the votes of grateful constituents.²⁹

Term limits, however, lead in the opposite direction. Bureaucrats know that term limits foster institutional settings that are favorable to smaller government. Limiting legislative terms may lead to limited government, or at least a smaller government than would have existed in the absence of term limits. A pattern is developing across the term-limited states. In states as disparate as Arizona, Colorado, Florida, Maine, Montana, and Ohio, the composition of the legislature is evolving from higher spending professional legislators to more fiscally conservative citizen legislators.³⁰

Of course, bureaucrats are not alone in recognizing that term limits promise (or, from their point of view, threaten) a more limited government. Therefore, bureaucrats assert that term limits make lobbyists more powerful because they become the source of information in the absence of experience, a refrain frequently heard in the media.³¹ That argument ignores a basic truth: the mere prospect of term limits causes the lobbying industry to fear for its professional survival.

Taxes and regulations have increased the

ambit of government at all levels. Increasing government activity leads to more efforts, especially lobbying, to influence political decisions, a relationship confirmed by scholarly studies.³² Long-term occupants of elected office become socialized to favor the higher spending advocated by special interest lobbyists.³³

In part, that results from the fact that the witnesses before legislative committees, along with lobbyists and constituents, usually favor higher levels of spending.³⁴ The interest groups themselves favor income redistribution in their direction. Because term limits threaten such spending, organizations such as the American Association of State Colleges and Universities decry term limits on the grounds that the latter produce uninformed legislators deciding on budget priorities.³⁵ In other words, citizen legislators are less likely than professional politicians to agree that post-secondary educational institutions are underfunded.

Lobbyists also oppose term limits because they mean more work.³⁶ According to political scientists Gary Moncrief and Joel A. Thompson: “Most lobbyists . . . believe that term limits have changed the nature of their job. They must work harder to get to know the legislators and to communicate their message to them. They view the legislature as more unpredictable.”³⁷ Lobbyists can no longer rely on informal and long-lasting friendships with senior members (for example, the Speaker or senate president) who can exert major influence on a particular piece of legislation.³⁸ Clearly, this counts as evidence against the claim that term limits make lobbyists more powerful.

In states as dissimilar as Maine, Michigan, and Ohio, term limits have forced lobbyists to build new political relationships from scratch with each new crop of term-limited legislators; those lobbyists naturally worry about losing legislative influence as a result.³⁹ In that way, term limits act as a form of campaign finance reform. Term limits diminish the value of a legislative seat to lobbyists and the special interests they represent in state capitals. That reduces the incentive for lobbyists to raise and distribute the large contributions so publicly

Freshman term-limited legislators demand a higher level of performance from government agencies than did their predecessors.

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decried by the political and media establishments. Hence, as Moncrief and Thompson conclude, “The overall assessment of the lobbyists . . . is a negative one.”

The generic critique of term limits put forward by lobbyists, bureaucrats, legislators, and staffers ensured that, during the past few years, the American political landscape (at both the state and local levels) was regularly dotted with repeal campaigns. Between 1999 and 2002, 83 separate efforts were made to repeal, amend, or modify existing term limits legislation.⁴⁰ Nearly all of the repeal efforts sought to overturn the voters’ original ballot box decision, and the vast majority flew in the face of continuing, and overwhelming, public support for term limits. Consider, first, these brief examples:

Oklahoma, the first state to pass term limits, saw a repeal campaign launched by the Association of County Commissioners. Almost 90 percent of the state’s 231 county commissioners favored abolishing the state’s constitutional provision that limits terms.⁴¹ They were joined by career legislators, legislative staffers, bureaucrats, leading journalists, business organizations, labor unions, and an assortment of special interest groups. However, the repeal campaign failed because term limits are even more popular in Oklahoma today than when they passed 12 years ago. According to an Oklahoma University poll, 82 percent of Oklahomans approve of term limits (67 percent of voters supported term limits in 1990).⁴²

During the 2000 election season, attempts to repeal term limits began and failed in Arizona, Michigan, and Missouri. However, this did not deter the pro-repeal forces in those states or elsewhere. In 2001, measures to repeal or weaken term limits were introduced in 10 of the then 19 states with term limits. However, Arizona, Arkansas, Colorado, Florida, Louisiana, Maine, Michigan, Missouri, Oregon, and Utah failed to pass bills extending legislators’ terms beyond existing limits.

Utah is one of only two states that imposed term limits through the legislature rather than a citizen’s initiative on a statewide ballot. Utah legislators chose to

beat the voters to the punch, thereby enabling the legislature to pass a less draconian term limits law than in many states.⁴³ However, such legislative maneuvering did not satisfy many career politicians. Therefore, in mid-February 1999 the Utah state house voted for the second time to repeal the 1994 term limits law. For the second time, the state senate failed to act on the repeal bill. In mid-February 2001, the persistent state house voted for the third time to repeal term limits. However, the bill failed to pass the state Senate, apparently ensuring that term limits would formally impact the composition of the state legislature, as scheduled, in 2006. Nevertheless, on March 5, 2003, the state house passed yet another bill to repeal term limits.⁴⁴ That followed a February 25, 2003 state Senate vote in favor of repeal.⁴⁵ The governor signed the bill into law on March 17, 2003. The new law flies directly in the face of public opinion. A recent statewide poll found 76 percent of Utahans against repeal, and only 18 percent in favor.⁴⁶

During the past two years, repeal campaigns took place in two of the nation’s most important political jurisdictions—New York City and California—and in one of the most commonly overlooked jurisdictions—Idaho. Regardless of the stark ideological, cultural, and demographic differences between those jurisdictions, individually and collectively they best illustrate the central facets of the contemporary campaign to repeal term limits. Therefore, it is to those individual cases that we now turn.

The Campaign to Repeal Term Limits: Case Studies

Challenging Term Limits in Pre- and Post-9/11 New York City

During the spring of 2001, local politicians inadvertently united proponents and opponents of term limits who were dismayed at those politicians’ effort to overturn New York City’s term limits law.

As recounted by the Citizens Union Foundation's Lenore Chester:

Term limits came to New York City via a 1993 citizens' initiative organized by New Yorkers for Term Limits (NYTL), a new group founded and largely financed by businessman, philanthropist and former Mayoral candidate Ronald Lauder. It wasn't easy. NYTL filed over 129,000 petition signatures, sued the City of New York, received a favorable ruling from the New York State Supreme Court, and only then won a place on the ballot.⁴⁷

In the November 2, 1993, citywide referendum, 60 percent of New York City voters supported limiting senior municipal politicians to two four-year terms in office. The 1993 vote was subsequently the subject of a failed court challenge by the city council. In a November 1996 referendum, the city council asked New Yorkers to delay the implementation of term limits and to lengthen the allowable term in office to 12 years. Overwhelmingly, New York voters replied, "No." An early 2001 opinion poll found that two-thirds of New Yorkers remained in favor of term limits.⁴⁸

Therefore, Election Day 2001 saw two-term Mayor Rudolph W. Giuliani, the city comptroller, the public advocate, four of five sitting borough presidents, and 35 of 51 council members barred from seeking reelection. Anti-term limits politicians alleged that the electorate's unsophisticated majority twice failed to appreciate that these term limits would exert a "destructive force" on City Hall, robbing it, for example, of vital institutional memory. Leaving aside the question of how laudable New York City Hall's institutional memory may be, such concerns were overwhelmed by the reality, succinctly articulated in public hearings by term limits supporter Cathy Stewart, that "term limits foster competition and bring new blood into government." She continued, "They break up institutionalized incumbency protection,

eliminating the career politician and the patronage system that nourishes him or her."⁴⁹

Revealingly, the repeal bill would only have overturned term limits for council members. Apparently, New York City is sufficiently sophisticated to survive the loss of a veteran mayor, but not the loss of veteran council members. One suspects that this debate was really about more than disinterested public service. Was it purely a coincidence, for example, that 20 of the 22 original cosponsors of the repeal bill were barred from seeking reelection that year? This repeal effort sufficiently galvanized local opinion that so stalwart an opponent of term limits as the *New York Times* editorialized against "this self-serving rebellion . . . by Council members trying to keep their jobs," urging council members to "spike the bill that would overturn term limits."⁵⁰

An alternative instrument for repealing term limits was to seek New York City residents' stamp of approval in a third referendum on the issue in less than a decade. This was the route favored by those anti-term limits politicians wary of appearing undemocratic. In practice, this would have also constituted recounting the votes of New Yorkers until a count generated the desired outcome.

Fearful of further antagonizing the electorate a little more than six months before Election Day, in the spring of 2001 the New York City Council narrowly failed to pass the repeal bill. However, following the harrowing events of September 11, 2001, many New Yorkers wanted their term-limited Mayor Giuliani to remain in office. In hypothetical match-ups, a Marist College poll showed Giuliani, a Republican, defeating possible Democratic mayoral candidates by as much as 30 points.⁵¹ New York voters knew what they wanted—to keep Giuliani in office—and Giuliani's comments revealed that he wanted the same thing.⁵²

There were two problems, however, with "everyone" getting what they want. First, it would be illegal. It is important to recall that term limits did not arrive in New York City

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on a whim. When Giuliani ran for reelection in 1997, he knew that the term limits law (which he originally supported) prohibited a third consecutive term and, consequently, his tenure as the city's Republican mayor would end on January 1, 2002. Enter the New York Conservative Party offering its mayoral candidacy to Giuliani if he successfully repealed the term limits law. Astonishingly, this "conservative" organization paid such little heed to its philosophical heritage that it is was willing to dismiss the spirit of the original law if the latter ran counter to the party's political infatuation.

As term limits are the law, their repeal would have been a serious legislative matter requiring the agreement of either the New York State Legislature or New York City Council. Fortunately, in the post-9/11 climate neither legislative body appeared interested in revisiting an issue on which the voters had spoken loudly. Whether out of high-minded principle or simple political expediency, most New York elected officials recognized that the rule of law must take precedence over the preferences of a political leader, no matter how popular he might be at the time.

Second, a scenario in which every political actor gets what he or she wants rarely advances the public interest. During Giuliani's controversial tenure, he achieved some notable policy successes, particularly in the areas of crime, employment, and welfare.⁵³ Although Giuliani's record of accomplishment dwarfs that of his predecessors, his second term was not dominated by visionary leadership or policy innovation. As the day-to-day chief operating officer of New York City, Giuliani-the-policymaker largely ran out of intellectual steam. A third Giuliani term was far more likely to resemble his underwhelming second term than his noteworthy first term. That phenomenon is part of the term limits rationale: even the better incumbents usually need a new challenge after two terms in office. New York City residents appear to agree. Despite the city's government being in the midst of a fiscal crisis, a fall 2002 opinion poll found that two-thirds

of New Yorkers still favor term limits.

The Failure of California's Proposition 45

California recently experienced a sophisticated, self-interested campaign to eviscerate its term limits law. Highly organized, well-funded opposition has been typical of anti-term limits campaigns across the nation since states such as California first opted for term limits back in 1990. Proposition 45 proved to be no exception.

Proposition 45 was placed on the primary ballot by a successful, and expensive, initiative petition drive. Senate President Pro Tem John Burton (D-San Francisco), who was first elected to the California assembly in 1964 and who will be term-limited in 2004, spearheaded the petition effort. Revealingly, the Proposition 45 campaign was backed by the most of the state's political establishment; nearly every interest group with business before the state legislature (including the gambling, liquor, energy, and tobacco industries; the trial lawyers; the California Association of Health Plans; the California Correctional Peace Officers Association; and the California Teachers Association); labor unions; major media outlets (such as the *Los Angeles Times*); and a wide assortment of liberal groups, including the Sierra Club and the League of Women Voters.

The liberal attachment to these repeal campaigns has a certain irony since those who are most enthusiastic about increasing legislative diversity are the most supportive of term limits repeal. For example, California's term-limited state legislature reflects greater gender and racial diversity than its non-term-limited predecessor. As predicted by proponents, the number of successful female and minority candidates has risen. Female candidates seem to find it easier to gain entry to term-limited legislatures than to non-term-limited legislatures and are more likely to gain leadership positions in high-turnover legislatures. The same is true for minority candidates. During its 2001-2003 term, the California legislature contained 26 Hispanic members, up from 8 when term limits were introduced, and there

were 9 female Hispanic members, compared to none in 1990.⁵⁴

Despite a steady onslaught of negative commentary emanating from California's political and media establishments, public opinion remained solidly in favor of term limits. In a June 1999 poll 73 percent of Californians agreed that term limits had been good for their state.⁵⁵ In a June 2000 poll 69 percent said they still approved of the original term limits initiative.⁵⁶

Why do ordinary Californians continue to support term limits? Though incomplete, the experiment has proven largely successful. Since term limits were first put in place, California has experienced relatively crowded, competitive state primaries and general elections that see closer races, more incumbents defeated, and more candidates running for office. Both demographically and ideologically, the legislature is now far more representative of the California beyond the state capitol.

According to journalist Noam Levey, "while many who watch state government closely believe that term limits have eroded the quality of governing, most have a hard time explaining how that has hurt citizens."⁵⁷ Therefore, those opposed to term limits knew that the voters would overwhelmingly reject a frontal assault. Hence, it was erroneously argued that Californians could keep term limits by voting yes on Proposition 45. In fact, the anti-term limits forces employed a back-door approach to end the Golden State's term limits experiment.

Proposition 140, the original 1990 term limits initiative, allowed for a maximum of 6 years in the state assembly and 8 years in the state senate, for 14 years in total. Proposition 45 was marketed "as a way to 'preserve and protect' those limits to voters."⁵⁸ In 2002, the state's most powerful politicians were staring extinction in the face. If it had passed, California's March 2002 term limits initiative would have presented those state legislators about to be forced out of office by California's term limits law with a probable stay of execution.

Proposition 45 would have allowed those

incumbents able to collect sufficient voter signatures within their district the opportunity to extend their legislature tenure. The signature threshold was only 20 percent of the total of votes cast in the most recent election for that office and, courtesy of professional signature-gathering outfits, would not prove too onerous a hurdle for the average well-funded incumbent to overcome. Under this scenario, if an incumbent garnered the required signatures, he or she could then stand for reelection. Allowing an additional four years in office if a legislator collected signatures from 20 percent of the voters who cast ballots in the legislator's last election in many cases would require only a few thousand signatures.

Opposition to Proposition 45 centered on the "No-on-45 Campaign," a coalition of taxpayer organizations, such as the National Tax Limitation Committee, and groups such as the Mexican-American Chamber of Commerce, which provided an entrée for Proposition 45 opponents into an important Democratic constituency.⁵⁹ Americans for Limited Terms, a Wisconsin-based term limits group, provided almost all of the "No" campaign's funding.⁶⁰

Senator Burton himself raised most of the Proposition 45 campaign's funding. In addition, the state Democratic Party contributed \$3 million to the campaign, as Democrats held 50 of 80 assembly seats and 26 of 40 senate seats and did not relish the prospect of sacrificing a significant number of those seats on the term limits altar. Labor unions spent an additional \$2 million, and current or former politicians spent \$1 million, while heavily regulated business groups spent several hundred thousand dollars in support of Proposition 45.⁶¹

However, as political consultant Dan Schnur observed, fortunately for term limits supporters, "the campaign to defeat Proposition 45 turned out to be a classic example of what happens when money and political power come up against deeply held beliefs by the voters."⁶² Schnur continued:

The campaign against Proposition 45

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. . . had two distinct advantages . . . most important was continuing strong support among voters for term limits. This ongoing support forced Proposition 45's supporters to deliver a two-part message that was received with marked suspicion by voters. On one hand, the Prop 45 campaign maintained that its goal was to protect term limits. At the same time, though, they argued that Prop 45 was necessary to improve those limits. The internal contradiction in the campaign's message kept it from developing broad support.⁶³

On March 5, 2002, the voters rejected Proposition 45 by a margin of 58 to 42 percent. The attempt to weaken term limits was defeated in 56 of 58 counties statewide. Proposition 45 only passed (and narrowly at that) in liberal Los Angeles and San Francisco counties. The overwhelming rejection of Proposition 45 occurred despite the initiative's supporters outspending their opponents by \$10 million to \$1 million.⁶⁴

Importantly for the "No" campaign, the self-styled campaign finance reform lobby group, Common Cause, a long-time term limits foe, had chosen to remain neutral during the campaign. Meanwhile, the nation's self-styled campaign finance reformer-in-chief, Sen. John McCain (R-Ariz.), announced his opposition to Proposition 45, despite his longstanding opposition to term limits. McCain's endorsement of the "No" campaign significantly aided the targeting of undecided moderates and independent voters. That was reflected in the final results, as self-described moderates voted "no" by a 14-point margin while independents voted "no" by a 2-to-1 margin.⁶⁵

Idaho Repeals Term Limits

Representative democracy is not alive and well in Idaho. Term limits opponents won in Idaho by a razor thin margin after a deceptive advertising campaign that unfairly benefited from taxpayer-subsidized advocacy. On Feb-

ruary 1, 2002, the state legislature overrode a gubernatorial veto to become the first state legislative body in the country to repeal term limits.

In repealing term limits, the legislature acted in flagrant opposition to the demonstrated sentiment of the Idahoan electorate, which repeatedly supported initiatives that would bring term limits into effect in 2004. The Idaho legislature also overrode Gov. Dirk Kempthorne's veto⁶⁶ and ignored a December 2001 Idaho Supreme Court ruling upholding the state's term limits law. The original House bill even contained an emergency clause that repealed term limits almost immediately. The fact that, in Idaho, these are *statutory* term limits meant the legislature could repeal them without a popular vote, unlike the situation in states where term limits are part of the state constitution and, therefore, repeal requires popular approval.⁶⁷

It was an ideologically conservative, Republican-dominated state legislature that repealed term limits.⁶⁸ The Idaho Republican Party previously supported term limits in order to remove careerist liberal Democratic congressmen from office. The party was largely successful in its quest to make Democrats something of an endangered legislative species throughout most of the state. At the time of repeal, Republicans held 89 percent of the legislative seats, making Idaho the most Republican legislature in the country. Aware that term limits would soon bite the partisan hand that fed it, by 2000 senior state Republican Party officials began to indicate support for the repeal idea.⁶⁹ At its annual convention in June 2002, the Idaho Republican Party rejected a neutral position on the term limits issue in favor of supporting the majority of Republican legislators who voted to repeal term limits.⁷⁰

Term limits critics erroneously maintain that this instrument for enhanced political competition will reduce the quality of the average elected official.⁷¹ In Idaho, foes of term limits asserted that a majority of the 1994 electorate was dazzled by the pro-term-limits campaign and, consequently, failed to

appreciate how such limits would weaken state government. Either before a jurisdiction adopts term limits or during a repeal campaign, critics always present the argument that term limits unfairly restrict the right of voters to elect whom they want.

But the critics' argument rang a little hollow in this case. After all, Idaho voters overwhelmingly approved term limits by initiative in 1994 and reaffirmed term limits in 1996, 1998, and 2000. Idaho voters repeatedly demonstrated that they wanted some reasonable restrictions placed on the options available on any given ballot for the state legislature.

In large measure, democracy is about respecting the choices of the people. Idaho's term limits law was the product of overwhelming public opinion as registered in a free and fair election. Over the past decade, the term-limits-by-referendum experience was replicated innumerable times at both the state and local levels. In the Idaho case, the state Supreme Court upheld the term limits law against the latest legal challenge. One is led to ask whether or not legitimately expressed, constitutionally defensible popular sentiment counts for something in our representative democracy. Apparently, the contemporary political class of careerist Idaho legislators thinks not.

The legislative effort to repeal term limits, led by House Speaker Bruce Newcomb, was encouraged by the political action committees sponsored by a variety of special interest groups. Idaho's largest business and agricultural lobbies, such as the Idaho Association of Commerce and Industry and the Idaho Farm Bureau Federation, backed the Republicans' repeal campaign, as did the Idaho Association of Counties and the Association of Cities. During the referendum campaign, those special interest groups coalesced under the organizational umbrella of Idahoans for Voter Rights, headed by Steve Ahrens, a lobbyist for the Idaho Association of Commerce and Industry.

In a challenge led by stockbroker Don Morgan, term limits supporters sought to send the state's political class an opposing message.

Over the course of a few weeks, more than 66,000 Idahoans signed a petition to place an anti-repeal referendum question — Proposition 2—on the November ballot.⁷² The pro-term-limits campaign also targeted repeal-supporting incumbents seeking their respective party's renomination in the May 28 primaries. Of the 10 incumbents who lost their party's primary, 3 defeats were directly attributable to the term limits vote. Less than two months before the vote, polling showed the anti-repeal campaign comfortably ahead.⁷³

Therefore, Proposition 2's defeat came as a surprise to term limits supporters. It was also an agonizingly close loss. The anti-term-limits yes vote secured 50.2 percent support; the pro-term-limits "no" vote secured 49.8 percent support. Therefore, the repeal passed by a margin of just 1,825 votes out of more than 403,000 votes cast. Why did the Idaho repeal campaign succeed, albeit very narrowly, at the polls? Why did the term limits vote decline from a high of 59 percent in the original 1994 initiative?

Obviously, the political landscape changed between Labor Day and Election Day. There appear to be several reasons for this unexpected set-back for term limits. First, the repeal campaign was astutely marketed. Mitchell and Simmons restate the noted public choice economist Gordon Tullock's observation that "the name of the political game is shaping preferences and their distribution. That is why political advertising . . . is such an important ingredient in the electoral process . . . Shaping the options and the agenda become additional subjects of intense scrutiny among activists, for on such factors the outcomes of elections depend."⁷⁴

The pro-repeal campaign was popularized under the guise of protecting those small, rural communities that find it increasingly difficult to fill offices from diminishing pools of candidates. When the votes were tallied, "the number of rural Idahoans voting to support repeal of the law offset the number opposing it in the cities," according to journalist Wayne Hoffman's analysis of the results.⁷⁵ Only two rural counties supported

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term limits, as pro-term-limits sentiment was almost exclusively confined to the urban centers of Boise and Coeur d'Alene.

The pro-repeal campaign also warned voters that their safety could be at stake when they voted on November 5. Included in the Idahoans for Voter Rights' voter pamphlet were the following questions: "If someone kidnapped your daughter, would you want the most experienced sheriff at the crime scene—or someone just out of the academy with no experience?" and "At the trial, would you want an experienced prosecuting attorney putting the bad guys in jail or would you be satisfied with someone who just got out of law school?"⁷⁶ The pro-repeal campaign also marketed a yes vote by taking a page out of the term limits movement's populist playbook. The "pro-yes" advertising claimed that a yes vote would "Stop Special Interests from Running Idaho"—a powerful message, indeed.

Second, the ambiguous nature of the question's wording may have confused some voters. According to columnist Jim Weatherby, "this is the first referendum that proposed to repeal a repeal of a state law. That created the double-negative ballot question—do you support the repeal of term limits? Yes meant no to term limits. No meant yes."⁷⁷ In other words, term limits supporters had to educate voters that a "no" vote was a vote to keep term limits. Furthermore, according to Stacie Rumenap, executive director of U.S. Term Limits, "the import of the referendum was more clearly expressed in newspaper summaries than it was on the ballot itself—which seemed to present two opposite interpretations of what a yes vote would do, depending on whether you were reading the short version of the question or the long one."⁷⁸ Morgan maintains that the ballot wording confusion cost the term limits campaign up to 8 percent of the vote on Election Day.⁷⁹

Third, the anti-repeal campaign was disadvantaged by the taxpayer-subsidized nature of the repeal campaign. As Morgan pointed out during the campaign, taxpayer-funded organizations, such as the Association of Cities and the Idaho Association of Counties, should not

have been actively campaigning in favor of repeal.⁸⁰ In addition to those groups, Idaho's secretary of state, Pete Cenarrusa, the state's chief elections officer, appeared on campaign billboards throughout the state calling for Idahoans to vote yes on Proposition 2. Morgan asserts that this taxpayer subsidy was worth 5 percent of the vote to the "Yes" campaign.⁸¹ Finally, voter fatigue may have marginally affected the pro-term-limits tally, as Idaho voters were asked about term limits in five separate statewide votes over eight years.⁸²

Idaho's repeal left 17 term-limited states. Even if one dismisses the above concerns regarding the marginal nature of the repeal victory in Idaho, there is little, if any, evidence to suggest that term limits are no longer popular with voters, either nationally or locally. In fact, the consistent failure of other repeal campaigns both prior to and including the 2002 election strongly suggests that the Idaho outcome was an aberration.

The Voters' Verdict on Term Limits

In fall 2001, a campaign orchestrated by an interest group failed to extend Michigan's term limits to 12 years. This latest repeal effort followed on the failure of two bills to either repeal or extend term limits in time for the 2000 election. The campaign was jointly led by Kevin Kelly, a Michigan State Medical Society executive who had served as outgoing Republican Gov. John Engler's former campaign manager and chief of staff, and Richard Cole, a Blue Shield executive and member of former Democratic Gov. James Blanchard's administration.⁸³ The anti-term-limits coalition continued to battle against overwhelming public sentiment on this issue. A February 2002 poll by Basswood Research found that 71.5 percent of respondents favored term limits, whereas just 20 percent opposed them.⁸⁴ During this campaign, the state Republican Party remained opposed to term limits; however, the state Democratic Party changed its mind on the issue, moving from support to opposition, as its leadership concluded that term limits would provide an electoral advantage

to Democrats in the 2002 election.⁸⁵

The Michigan repeal effort failed for the same fundamental reason that most repeal efforts fail: term limits themselves have not failed the voters. As recounted by Lawrence W. Reed, president of the Michigan-based Mackinac Institute:

Term limits do not guarantee better government. They don't eliminate influence peddling. They don't make saints of legislators. But all that can be said of the absence of term limits. This illuminates the conundrum that the anti-term limits people have not yet solved: They have not made much of a case that term limits have been a setback for Michiganders.⁸⁶

During the spring of 2002, repeal efforts were unsuccessful in politically important states throughout the southwestern and southern regions of the country. In March, a bill to repeal the Arizona term limits law was withdrawn after having passed a house committee. The career legislators pushing repeal backed off after coming face to face with the latest evidence that Arizonans continue to oppose long political careers: 58 percent support term limits.⁸⁷ Meanwhile, a Florida proposal to extend legislative tenure from 8 to 12 years passed a state house committee but was withdrawn from legislative consideration due to highly negative voter reaction. In early May 2002, Austin, Texas, voters rejected by 55 to 45 percent a proposition that would have repealed term limits for the mayor and city council members.

On the same day that a tiny majority of Idahoans voted yes to the repeal of term limits, voters in several other cities and states around the country indicated a clear unwillingness to weaken or repeal term limits. In Colorado, voters defeated the effort to exempt district attorneys from term limits. In Nashville, Tennessee, and in Troy, New York, campaigns to weaken mayoral and city council term limits were comprehensively defeated. The voters in Palm Beach, Florida, sup-

ported the introduction of terms limits on county commissioners.

Conclusion

The almost universal failure of repeal campaigns reflects the fact that it is politically premature, to say the least, for the average state legislature or city council to consider either repealing or watering down term limits. Legislative term limits are a fact of life, at least in the short- to medium- term. Hence, it may be reasonable to assume that their opponents would adjust their sights accordingly. Clearly, however, that is not the case. Instead, it appears that each network of career politicians, senior bureaucrats, and influential special interest groups inexorably coalesces into a self-interested cabal intent on skewering clearly articulated voter intent on this issue.

Most efforts to repeal term limits have failed because their sponsors are clearly self-interested. Ohio state Sen. Mark L. Mallory (D-Cincinnati) says any successful relaxation of term limits or a repeal movement will have to be started by individuals or groups "that don't have a vested interest" or it will appear self-serving.⁸⁸ To date, however, repeal campaigns have been led by those seemingly intent on preserving their professional advantages and institutional perks regardless of other, larger considerations. Only once has this approach passed voter inspection, and then by a narrow margin, trickery, and tax-subsidized campaigning.

A great deal is at stake with the repeal of term limits. Without term limits, a state's political infrastructure (that is, its elections, legislature, legislative committee system, legislative staff, and bureaucracy) risks stagnation. Term limits offer hope to state taxpayers that the future will not be like its past of endless spending and taxing—the seemingly inevitable results of state political systems dominated by careerist politicians.

As importantly, if the politicians that term limits constrain can overturn them, one must ask whether voters have ultimate con-

The fundamental reason that most repeal efforts fail: term limits themselves have not failed the voters.

trol over their political servants. Term limits' critics reply that the people always have the power to reject incumbents. But relatively few incumbent politicians are defeated in the normal course of events. Absent term limits, significant turnover only occurs after years of fiscal irresponsibility and incompetence. In most jurisdictions, the ship of state apparently has to sink before the crew can be fired, such are the advantages of incumbency.

Democracy is about political choice fostered by meaningful political competition. In a democracy, all partisan interests and ideological flavors have a chance to make their case to the electorate. A well-functioning democracy does not guarantee success in the political marketplace. It does ensure that everyone should potentially be capable of securing elected office.

Term limits further this democratic goal by guaranteeing the regular turnover of politicians in and out of office. Without term limits, the average challenger finds it extremely difficult and expensive to overcome the inherent advantages of incumbency, such as name recognition, office staff and mailings, and constituency service. Absent term limits, not only are fewer incumbents threatened by serious challengers, thereby reducing political competition, but fewer candidates step forward to challenge these incumbents in the first place, thereby reducing political choice.

What if the voters were correct the first time? After all, a growing body of evidence suggests term limits help to foster a reinvigorated political culture. This remedial measure remains overwhelmingly popular and appears increasingly effective at fostering political competition and strengthening the political culture. The belated democratization of state politics threatens only entrenched incumbents. Term limits should be a vital part of our system of representative government. However, a public-choice-based analysis of the institutional actors who invest so heavily in non-term-limited legislatures speaks to why term lim-

its are vigorously opposed and sheds light on why their repeal is repeatedly sought.

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