

CONGRESSIONAL TERM LIMITS: A GOOD IDEA?

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This article focuses on Congress's lack of performance over the past few years and analyzes whether term limits should be implemented as federal law. First, the article provides background on how the debate for and against term limits began, and delves into how the procedure would be implemented. Second, the article turns to the common arguments by both proponents and opponents for the change. Third, the article analyzes six states which do and do not have term limits, focusing specifically on the effects that term limits would have on lobbying, leadership, turnover, partisanship, and the economy. Finally, the article concludes with an application of findings on the federal level, and consequently argues for an alternative way to achieve the results advocated by proponents.

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The road to Congress is a tumultuous one. During campaigns, candidates must contend with an onslaught of opinion from the public sphere. While in Congress, arguments among legislators have the capacity to inflame and reach a fever pitch. In recent years, Congress has received considerable national criticism for its subpar performance.¹ As a result, the concept of installing congressional term limits is gaining traction, and the arguments for and against their implementation have been brought to the forefront.²

Part I of this Article discusses the history and development of term limits, and whether they can be implemented statutorily or by alternate means. Part II covers the arguments for and against term limits and the policy implications behind those arguments. Part III analyzes term limits on the state level in three of the largest states—California, Florida and New York—assessing what, if any, effects term limits have had on the states’ economic productivity, legislative composition and overall benefit. The analysis is offered to understand whether term limits are a viable, useful, option that should indeed be implemented on the federal level or, rather, more of an academic possibility. Part IV concludes with an overall analysis of term limits, coupled with an opinion and brief recommendation for a possible alternative to term limits which could still achieve the same effect.

¹ See Ezra Klein, *14 Reasons Why This Is The Worst Congress Ever*, WASH. POST (July 13, 2012, 8:00 AM), <http://www.washingtonpost.com/blogs/wonkblog/wp/2012/07/13/13-reasons-why-this-is-the-worst-congress-ever/>; Ezra Klein, *Good Riddance to Rottenest Congress in History*, BLOOMBERGVIEW (Jan. 2, 2013, 6:17 PM), <http://www.bloombergview.com/articles/2013-01-02/good-riddance-to-rottenest-congress-in-history>; Bridget Bowman, *Congress, the White House, and the Terrible, Horrible, No Good, Very Bad, 2013*, PBS (Dec. 13, 2013, 10:30 AM), <http://www.pbs.org/newshour/rundown/the-white-house-congress-and-the-no-good-very-bad-2013/>; Jon Terbush, *Confirmed: This is the Worst Congress Ever*, THE WEEK (Dec. 26, 2013), <http://theweek.com/article/index/254566/confirmed-this-is-the-worst-congress-ever>.

² See, e.g., Ariel Zangla, *U.S. Rep. Chris Gibson Pushes Back Against Democratic Challenger Sean Eldridge*, DAILY FREEMAN (Aug. 19, 2014 11:20 AM), <http://www.dailyfreeman.com/general-news/20140819/us-rep-chris-gibson-pushes-back-against-democratic-challenger-sean-eldridge>.

I. HISTORY & DEVELOPMENT

The debate over term limits is not a novel issue, but rather one that has sparked controversy since the writing of the U.S. Constitution.³ Although initially promulgated in the Articles of Confederation, the design for term limits was ultimately a failure.⁴ Rather, the Framers decided to hold frequent election cycles for members of Congress in order to preserve the accountability that term limits would achieve.⁵ Prior to congressional debates in the 1990s, there had been legislation which alluded to term limit implementation, but the absence of real political pressure caused the push for such requirements to be abandoned.⁶ Currently, members of Congress are not subject to term limits; a member may be in office from the young age of 25 or 30, and could possibly stay in office for life.⁷ Until the mid-1990s, the party affiliation in both chambers of Congress had remained primarily the same.⁸ But Republicans' anger with the political dominance of the Democratic Party, coupled with their frustration over the productivity of the federal government, fueled a new movement.⁹ Pushed by Minority Whip Newt Gingrich of Georgia,¹⁰ heightened conservatism saw an unprecedented rise and presented a newfound challenge to liberals.¹¹ This movement preached tax cuts, welfare reform and social security reform, but most of all

³ See 1 MAX FARRAND, THE RECORDS OF THE FEDERAL CONVENTION OF 1787 214 (1911).

⁴ ARTICLES OF CONFEDERATION of 1781, art. V, para. 2 (“[N]o person shall be capable of being a delegate for more than three years . . .”).

⁵ See Neil Gorsuch & Michael Guzman, *Will the Gentlemen Please Yield? A Defense of the Constitutionality of State imposed Term Limits*, 20 HOFSTRA L. REV. 341, 345–46 (1991).

⁶ See *Limiting Terms of Office for Members of the U.S. Senate and U.S. House of Representatives: Hearings Before the Subcommittee on the Constitution and the House Committee on the Judiciary*, 105th–105th Cong. (1997) (testimony by Rep. Bill Frenzel) available at <http://www.brookings.edu/research/testimony/1997/01/22governance-frenzel>.

⁷ See U.S. CONST. art. I, § 2, cl. 2 (“No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.”); U.S. CONST. art. I, § 3, cl. 1 (“The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.”).

⁸ See *Party Divisions of the House of Representatives: 1789–Present*, U.S. HOUSE OF REPRESENTATIVES: HISTORY, ART & ARCHIVES, <http://history.house.gov/Institution/Party-Divisions/Party-Divisions/> (last visited Dec. 19, 2013) (Democrats in the U.S. House of Representatives dominated the chamber from 1955–1995); See *Party Divisions in the Senate, 1789–Present*, U.S. SENATE: ORIGINS AND DEVELOPMENT, http://www.senate.gov/pagelayout/history/one_item_and_teasers/partydiv.htm (last visited Dec. 19, 2013) (Democrats in the U.S. Senate dominated the chamber from 1987–1995).

⁹ *How Americans View Government*, PEW RESEARCH CENTER FOR THE PEOPLE & THE PRESS (1998), <http://www.people-press.org/1998/03/10/how-americans-view-government/> [include when it was last visited] (finding that between 1990 and 1992, 67–70 percent of the public agreed the Federal Government was inefficient and wasteful).

¹⁰ Keith J. Larson, *Republican Revolutionaries and Tea Party Patriots: A Public Choice Analysis of Congressional Term Limits*, 86 ST. JOHN’S L. REV. 761, 770 (2012).

¹¹ *Id.*

it argued for term limits.¹² In the 1994 elections, this movement caught fire among a populace frustrated with its government's lack of productivity, and a number of veteran Democrats were ousted.¹³ The promise of term limits, however, was never delivered.¹⁴

Although a bill imposing term limits never passed Congress, the idea gained traction at the state level, leading several states to impose limits on their own national legislators.¹⁵ Those state mandates on legislative officials were unprecedented. Yet in 1995, the U.S. Supreme Court handed down a landmark decision invalidating them in *U.S. Term Limits, Inc. v. Thornton*.¹⁶ That case concerned a 1992 dispute, in which Bobbie Hill and the League of Women Voters of Arkansas filed a suit to invalidate Amendment 73 of the Arkansas Constitution on the grounds that it violated Article 1 of the U.S. Constitution.¹⁷ Amendment 73 of the Arkansas Constitution imposed term limits on Arkansas's U.S. Senators and U.S. Representatives who had served for at least two or three terms, respectively, in that capacity.¹⁸

In an opinion delivered by Justice Stevens, the Supreme Court's majority reiterated its earlier opinion in *Powell v. McCormack*, which stated that the Qualification Clause¹⁹ does not give Congress the power to impose additional qualifications on its members other than those set out explicitly in the U.S. Constitution.²⁰ The Court went on to hold that the states do not have authority under the 10th Amendment²¹ to add additional qualifications beyond those set forth in the Constitution, since the Framers intended the Constitution to be the exclusive source of qualifications for Congressional

¹² *Id.* at 771.

¹³ *Id.*

¹⁴ *Id.* at 776; See Jennifer Babson, *House Rejects Term Limits; GOP Blames Democrats*, 53 CONG. Q. WKLY. REP. 918, 918 (1995); See David S. Cloud, *Term Limits Stall in Senate; GOP Blames Democrats*, 54 CONG. Q. WKLY. REP. 1153, 1153 (1996) ("A vote to shut off debate on the term limits amendment... failed 58-42, two short of the 60 votes necessary to invoke cloture. All 53 Senate Republicans voted for cloture..."); see also Shawn Zeller, *Term Limits: Paying To Overstay*, 67 CQ WKLY. 2568, 2568 (2009) (providing that of the seventy-three legislators who pledged term limits, sixty-eight broke them).

¹⁵ Larson, *supra* note 10, at 771-772.

¹⁶ See *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

¹⁷ *U.S. Term Limits v. Hill*, 316 Ark. 251, 258 (1994).

¹⁸ *Id.* at 255-256.

¹⁹ U.S. CONST. art. I, § 5, cl. 1 (stating "[e]ach House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide"); see also U.S. CONST. art. I, § 2, cl. 2; see also U.S. CONST. art. I, § 3, cl. 2.

²⁰ *Thornton*, 514 U.S. at 779, 788.

²¹ U.S. CONST. amend. X.

members.²² Finally, and most notably, the Court opined that, to enact term limits, the People only have authority under the amendment clause in Article 5 of the Constitution.²³ The Court reasoned “that allowing the several States to adopt term limits for congressional service would effect a fundamental change in the constitutional framework,”²⁴ and that only a constitutional amendment would not erode the structure of the Preamble as envisioned by the Framers to create a “more perfect Union.”²⁵

II. THE DEBATE OVER A CONSTITUTIONAL AMENDMENT IMPOSING TERM LIMITS

In 1997, Congressman Bill Frenzel testified before the Subcommittee on the Constitution of the House Committee in favor of congressional term limits, stating that “without term limits, the Congress is immortal.”²⁶ Congressman Frenzel stated that twelve years was a good time limit for service, as stricter options would look far too extreme and any more than twelve years would “fail[] the excitement test.”²⁷ Further, he testified that such a term limit would not be so restrictive as to strangle a legislator, but rather would allow an elected official to rotate between the two congressional chambers and return to his or her initial chamber once the chain of years served had been broken.²⁸ Doing so would “restore mortality, and accountability, to Congress.”²⁹ In Congress, he noted, accountability is important since a member who is immortal cannot be held accountable and, according to Frenzel, this is a “plague on Congress’s house.”³⁰ Today, current proposals for such implementation have slowly developed support by those who think that it would rebuild Congress’s image and provide for a better working government.³¹ As the distaste for career politicians thickens

²² *Thornton*, 514 U.S. at 800–801.

²³ *Id.* at 837.

²⁴ *Id.* at 837.

²⁵ *Id.* at 837–838.

²⁶ *Limiting Terms of Office for Members of the U.S. Senate and U.S. House of Representatives*, *supra* note 1, 4.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*

³¹ Pete Kasperowicz, *GOP Members Seek Constitutional Amendment to Impose Term Limits on Congress*, THE BLAZE (Jan. 12, 2015 11:26 AM), <http://www.theblaze.com/blog/2015/01/12/gop-members-seek-constitutional-amendment-to-impose-term-limits-on-congress/>.

and the demand from constituents increases, the idea of term limits grows ever more appealing.³²

At that same time, congressional scholar Thomas E. Mann testified in opposition to congressional term limits, arguing that this reform would “offer little beyond emotional release of pent-up frustrations with the performance of the economic and political system.”³³ Mann further testified that “seasoned legislative leaders” solved problems and Congress already grappled with changes to limit seniority advantages, such as the President’s line-item veto power.³⁴ Most importantly, Mann focused on the fact that mandatory rotation was rejected by the Framers of the Constitution, because they wanted elected officials to focus on the long term issues and not just issues relevant to the time period they might serve.³⁵ In fact, Congress in the nineteenth century had “[h]igh turnover and amateurism and in state legislatures [the turnover] did more to nurture parochialism, corruption, and special interest influence than enhance the public welfare.”³⁶ Most importantly, if term limits would make building a congressional career impossible, then the federal government would have to rely on the expertise of others—such as staff members, bureaucrats, and lobbyists—to do its job.³⁷ Moreover, such mandatory rotation was rejected by the Framers of the U.S. Constitution.³⁸ Elections of federal legislators were meant to focus on uniformity and not be exposed to the abuse of power by hyping current issues.³⁹ Alternatively, opponents of term limits have argued such restrictions impede their First Amendment right to free speech.⁴⁰ A state which limits who a constituent may vote for, arguably, hinders the ability to facilitate their political beliefs and vote effectively.⁴¹ Finally, not only is the

³² See Catalina Camia, *Term Limit Supporters Add to Ranks in Congress*, USA TODAY (Nov. 18, 2014 12:30 PM), <http://onpolitics.usatoday.com/2014/11/18/term-limits-congress-brat-sasse/>.

³³ *Limiting Terms of Office for Members of the U.S. Senate and U.S. House of Representatives: Hearings Before the Subcommittee on the Constitution of the House Committee on the Judiciary*, 105th105th105th Cong. (1997) (testimony by Rep. Thomas E. Mann) available at <http://www.brookings.edu/research/testimony/1997/01/22uscongress-mann>.

³⁴ *Id.*

³⁵ *Id.*; See *Powell v. McCormack* 395 U.S. 486, 539 (1969) (citing THE FEDERALIST No. 60 (Alexander Hamilton)) (“The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the legislature”).

³⁶ *Limiting Terms of Office for Members of the U.S. Senate and U.S. House of Representatives*, *supra* note 29..**Error! Bookmark not defined.**

³⁷ *Id.*

³⁸ See THE FEDERALIST No. 60 (Alexander Hamilton).

³⁹ See THE FEDERALIST Nos. 59, 60 (Alexander Hamilton)

⁴⁰ See *Citizens for Legislative Choice v. Miller*, 993 F. Supp. 1041, 1045–46 (E.D. Mich. 1998).

⁴¹ *Id.* at 1046.

argument against term limits a substantive one, but a procedural one as well. On the rare occasions that a bill for term limits was brought to Congress's floor, it was voted down.⁴²

Although the arguments for and against term limits are persuasive, *Thornton* has created a steep threshold to overcome.⁴³ This article seeks to answer the seminal issue: Should, or even can, Congress take the necessary steps to implement term limits for its members?

III. THE STATES: CONSTITUTIONAL AMENDMENTS FOR STATE TERM LIMITS

Although the movement did not result in a constitutional amendment which limited Congressional terms, many states have made efforts to install such restrictions on their state legislators. Since 1990, there have been more than twenty states which have proposed amendments to their own constitutions imposing term limits on state legislators.⁴⁴ The following data details the issues behind the passage or failure of certain state amendments and which of those issues, if any, may present a concern if brought to the national level.

Currently, there are fifteen states that have imposed term limits on their state legislatures. However, within the past fifteen years, some states have taken measures through legislative or judicial action to repeal the instituted term limits.⁴⁵ Two state legislatures have actually repealed their term limits,⁴⁶ while courts in four other states have struck down term limit provisions, holding them unconstitutional.⁴⁷

In *League of Women Voters v. Secretary of the Commonwealth*, the Massachusetts Supreme Court found a law, which purported to restrict the number of consecutive terms a public official may serve in a certain capacity, to be unconstitutional.⁴⁸ Before even deciding the issue of whether the purported law was a term-limited statute and its effect on the Massachusetts constitution, the court struck down the law holding that, because the

⁴² Stanley M. Caress, *Term Limits Don't Work*, U.S. NEWS (Jan. 16, 2015 8:00 AM), <http://www.usnews.com/opinion/articles/2015/01/16/states-show-term-limits-wouldnt-work-for-congress>.

⁴³ *United States Term Limits v. Thornton*, 514 U.S. 779 (1995).

⁴⁴ Brian Costin, *Term Limits are Overwhelmingly Successful*, ILLINOIS POLICY INSTITUTE (Sep. 23, 2013)), available at <http://illinoispolicy.org/term-limits-referendums-are-overwhelmingly-successful/>; *The Term Limited States*, NCSL, (Mar. 13, 2015), available at <http://www.ncsl.org/research/about-state-legislatures/chart-of-term-limits-states.aspx#Repeals>.

⁴⁵ *See id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *League of Women Voters v. Secretary of the Commonwealth* 425 Mass. 424, 425, 432 (1997).

legislature promulgated the law by statute rather than through a constitutional amendment, its *method* was violative of the Massachusetts constitution.⁴⁹ In Washington, the state Supreme Court held that a law adding qualifications for appearing on the ballot to be repugnant to the Washington constitution.⁵⁰ The court stated “Washington’s constitutional framers believed qualifications for state constitutional officers were a matter of constitutional, not statutory, concern,” and that in order to supplement the state constitution, the legislature would have to do it through a formal amendment.⁵¹

In ascertaining the intent of its framers, the Wyoming Supreme Court found a ballot initiative, which prescribed term limits on a candidate to be placed on the ballot, contrary to the Wyoming constitution.⁵² The Wyoming Supreme Court held that the added qualifications, whether adopted through statute or ballot initiative, violated the equal political rights clause found under the Wyoming constitution since Wyoming’s constitution “forbids the passage of any law making the exercise of Wyoming citizens’ political rights dependent upon a circumstance or condition otherwise than as provided.”⁵³ Similarly, in *Lehman v. Bradbury*, the Oregon Supreme Court held a ballot proposal, which interwove two separate constitutional changes, to violate the Oregon constitution on the grounds that the process to promulgate the constitutional change failed to follow proper procedure under the Oregon constitution.⁵⁴

Unlike the U.S. Supreme Court, the Oregon and Wyoming courts held their respective states to the unique clauses in their state constitutions imposing additional burdens in order to achieve a constitutional amendment implementing term limits. However, similar to *Thornton*,⁵⁵ the Massachusetts and Washington supreme courts both required a constitutional amendment to institute term limits on the state legislature.

Since this article addresses the issue of whether Congress should implement term limits, it presents research on the effects of term limits at the state and local levels in California, Florida, New York, and New York City. The first two states (as well as New York City) have passed term limits,

⁴⁹ *Id.* at 425, 431–32.

⁵⁰ *Gerberding v. Munro*, 949 P.2d 1366, 1372, 1377 (Wash. 1998); *see also Thornton v. Gregoire*, 841 F. Supp. 1068 (W.D. Wash. 1994) (holding that the implementation of term limits on Washington’s federal legislators was contrary to the U.S. Constitution).

⁵¹ *Id.* at 1374, 1377.

⁵² *Cathcart v. Myer*, 88 P.3d 1050, 1055–56, 1065 (Wyo. 2004).

⁵³ *Id.* at 1071 (emphasis added).

⁵⁴ 333 Ore. 231, 239, 250–251 (2002).

⁵⁵ *United States Term Limits v. Thornton*, 514 U.S. 779 (1995).

while New York State has not. The article focuses on the term-limited states to see what, if any, effect term limits may have had on that state's progress. It also compares the New York State legislature to the term-limited New York City Council in order to analyze whether there has been any significant difference at all in the respective chambers' legislative and economic growth.

A. CALIFORNIA

1. Background

Pursuant to California's constitution, the people of California may reform the government in the name of the public good.⁵⁶ California permits the people to amend the state constitution through a ballot initiative.⁵⁷ Such an initiative enables voters to proffer statutes or amendments to the state constitution by presenting a petition to the Secretary of State setting forth the proposed amendment signed by at least eight percent of the total votes cast in the previous gubernatorial election.⁵⁸ The public may then accept or reject it. In 1990, California passed an initiative known as Proposition 140, which imposed term limits on the Executive and Legislative branches.⁵⁹ In response to the initiative's passage, the California legislature, as well as various taxpayers and other individual legislators, filed suit seeking to invalidate Proposition 140 in *Legislature v. Eu*.⁶⁰ Proposition 140 imposed, among other things, term limits on specific public officials.⁶¹ The term limit clause restrained state senators and other public officials to two terms and state assembly members to three terms.⁶² After analyzing the proposed language, the California Supreme Court ruled that Proposition 140 imposed a lifetime, rather than consecutive, ban, meaning that after a legislator had served a specific number of terms, that legislator could never run for that position again even if that the legislator occupied another position afterwards.⁶³

Ultimately, the California Supreme Court held the term limit qualification to be constitutional on the grounds that the term limits it imposed would protect against the incumbent advantage.⁶⁴ The court opined that a ban with only consecutive, rather than lifetime, limits would mean only

⁵⁶ California Constitution Art. 2, § 1.

⁵⁷ *Id.* at Art. 2, § 8–9.

⁵⁸ Art. 2, § 8, para. (a).

⁵⁹ *State Legislative Term Limits*, U.S. TERM LIMITS, <http://termlimits.org/term-limits/state-term-limits/state-legislative-term-limits/> (last visited Mar. 11, 2014).

⁶⁰ *Legislature v. Eu*, 816 P.2d 1309, 1312 (Cal. 1991).

⁶¹ *Id.* at 1313–1315.

⁶² *Id.* at 1313.

⁶³ *Id.* at 1316.

⁶⁴ *Id.* at 1328.

that legislators would trade places so that the other could be re-eligible for the initial position they had once held.⁶⁵ Moreover, any other alternatives that could have been offered would have been inadequate to meet the quintessential goal of eliminating the career politician.⁶⁶

By 2012, the voters of California wanted stricter limits on legislators and sought to diminish the total time that a legislator may serve between both houses.⁶⁷ Prior to 2012, legislators could alternate between the senate and assembly and serve a total amount of fourteen years. Proposition 28 sought to reduce the total years to twelve.⁶⁸ Although the Proposition was passed, all legislators currently serving at the time of passage received “grandfather” protection, thus allowing them to serve for the extra two years.⁶⁹

2. Legislative Composition and Economic Productivity

One of the arguments for term limits addressed earlier in this Article centered on the desire to rebuild an image and increase accountability.⁷⁰ One way to achieve accountability is variety in the partisan makeup in the legislature. For the twelve years prior to the passage of Proposition 140, California democrats controlled the majority in both houses in the legislature.⁷¹ However, for the next twenty-five years, the partisan makeup never changed once.⁷² Although no change was made in partisan makeup, there has been a change among the legislators who occupied those seats. After term limits were implemented, newly elected legislators found themselves forced to learn a substantial amount and take on significant responsibility in a short period of time.⁷³ “Members first learn the process, including the basics of writing and passing legislation, as well as procedure

⁶⁵ *Id.*

⁶⁶ *Id.* at 1327.

⁶⁷ See *Proposition 28*, CALIFORNIACHOICES.ORG, <http://www.californiachoices.org/proposition-28>.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See *supra* Part II.

⁷¹ *Partisan Composition of the State Legislatures 1978-1988*, NCSL http://www.ncsl.org/documents/statevote/legiscontrol_1978_1988.pdf

⁷² See *Partisan Composition of the State Legislatures 1990-2000*, NCSL http://www.ncsl.org/documents/statevote/legiscontrol_1990_2000.pdf; *Partisan Composition of the State Legislatures*, NCSL http://www.ncsl.org/documents/statevote/legiscontrol_2002_2014.pdf.

⁷³ BRUCE E. CAIN & THAD KOUSSER, ADAPTING TO TERM LIMITS IN CALIFORNIA: RECENT EXPERIENCES AND NEW DIRECTIONS 24 (2004), available at <http://www.ncsl.org/Portals/1/documents/jptl/casestudies/Californiav2.pdf>.

on the floor and in committees.”⁷⁴ Many legislators felt that the knowledge necessary to perform their duties could be absorbed fairly quickly—however, gathering the “policy and budget expertise took much more time, and learning how to deal effectively with colleagues and lobbyists took even longer.”⁷⁵ One assemblywoman found that in order to effectively represent her district on complex issues she would “need ten years to learn enough to make a difference.”⁷⁶ Because of this steep learning curve, many assembly members turned to lobbyists to help them sort through many of these complex issues—a problem which was a central concern among the term limit proponents in the state.⁷⁷

As for economic progress, according to one economic index correlating economic productivity based on legislative policy, California is at the bottom.⁷⁸ Consistent with the Mercatus Center at George Mason University, California ranked second to last in terms of overall personal and economic freedoms entitled to people within the state, as well as fiscal and regulatory policy implemented, and fifth to last in tax burdens imposed on the people.⁷⁹ As for business opportunity, including factors that affect businesses the most—taxation, regulation and workforce quality—California recently ranked dead last among all fifty states.⁸⁰ The intent behind installing term limits was to better the state of California—however, based on the lack of variance in the legislature, albeit new faces, one could argue that in California it was nothing more than just business as usual.

B. FLORIDA

1. Background

In 1992, Florida constitutional amendment number 9, entitled “Eight is Enough” on the Florida ballot, imposed eight-year consecutive rather than

⁷⁴ *Id.* at 25.

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ See ARTHUR B. LAFFER ET AL., RICH STATES POOR STATES 62 (6th ed. 2013), available at <http://www.alec.org/publications/rich-states-poor-states/> [hereinafter ALEC].

⁷⁹ Overall, FREEDOM IN THE 50 STATES, <http://freedominthe50states.org/overall>.

⁸⁰ *States More Aggressive in Competing with One Another*, CHIEF EXECUTIVE, <http://chiefexecutive.net/states-more-aggressive-in-competing-with-one-another-2013>; *Ten Worst States for Business*, CHIEF EXECUTIVE, <http://chiefexecutive.net/10-worst-states-for-business-2013-slideshow/10>.

lifetime⁸¹ term limits on state legislators and other political officials.⁸² Prior its adoption, the Florida Attorney General sought an opinion from the Florida Supreme Court as to whether the ballot initiative proposing to amend the Florida constitution was valid.⁸³ In an advisory opinion, the court declared the ballot initiative to be constitutionally sufficient under Florida's single-subject requirement,⁸⁴ and unambiguous under Florida's statute requiring any proposed constitutional changes to be clear to the voter.⁸⁵ As a result, in the 1992 general election more than seventy-five percent of Florida voters approved the amendment.⁸⁶ However, in 1997, voters in certain state senate districts challenged the amendment in *Ray v. Mortham*.⁸⁷ As the case was post-*Thornton*, petitioners' central argument was that the amendment's clause restricting federal officials was unconstitutional and thus the entire amendment was unconstitutional.⁸⁸ In deciding the case, the court applied a severability analysis customarily applied to prospective legislative statutes.⁸⁹ After comparing a case of similar caliber in the Arkansas Supreme Court,⁹⁰ the Florida Supreme Court held the remaining provisions within the amendment to be "viable and complete" despite the invalidated clauses.⁹¹ Although the amendment was approved in 1992 and inserted into Article Six of Florida's Constitution,⁹² it did not take effect until 2000 when state legislators reached the promulgated limit.⁹³

⁸¹ *State Legislative Term Limits*, U.S. TERM LIMITS, <http://www.termlimits.org/term-limits/state-term-limits/state-legislative-term-limits/>.

⁸² *Vote Yes On Amendment No. 9 To Begin Limiting Political Terms*, SUN SENTINEL, http://articles.sun-sentinel.com/1992-10-27/news/9202250950_1_term-limits-national-constitutional-amendment-state-ballots.

⁸³ See Advisory Opinion to Atty Gen., 592 So.2d 225, 226 (Fl. 1991).

⁸⁴ Florida Constitution Art. 11, § 3.

⁸⁵ See Advisory Opinion, *supra* note 83, at 228–29.

⁸⁶ *State Legislative Term Limits*, *supra* note 81.

⁸⁷ *Ray v. Mortham*, 742 So.2d 1276, 1278 (Fl. 1999).

⁸⁸ *Id.* at 1279–80.

⁸⁹ *Id.* at 1281 (“When a part of a statute is declared unconstitutional the remainder of the act will be permitted to stand provided: (1) the unconstitutional provisions can be separated from the remaining valid provisions, (2) the legislative purpose expressed in the valid provisions can be accomplished independently of those which are void, (3) the good and the bad features are not so inseparable in substance that it can be said that the Legislature would have passed the one without the other and, (4) an act complete in itself remains after the invalid provisions are stricken.”)

⁹⁰ See *United States Term Limits v. Hill*, 316 Ark. 251 (1994).

⁹¹ *Ray v. Mortham*, *supra* note 87, at 1284.

⁹² Florida Constitution Art. 6, § 4.

⁹³ *An Analysis of the Impact of Term Limits on the Florida Legislature*, 6 (2006), FSU, <http://askew.fsu.edu/current/masters/actionreport/fa2006/Joe%20Waczewski%20-%20Analysis%20of%20the%20Impact%20of%20Term%20Limits.pdf>.

2. Partisanship, Experience, and Economics: Benefits and Costs

In 2006, Florida State University conducted an analysis of the effect of term limits on the state political process since its 1992 enactment.⁹⁴ The report noted that term limits, in Florida's case, had largely failed to abate political aspirations, referencing then-Florida House speaker Marco Rubio, who hired two lawmakers who had been term-limited out of office, or another representative who had taken a staff director job to advise new incoming legislators.⁹⁵ It added that the link between special interest groups and legislators was not weakening and, given the term limits imposed on legislators, it may have even strengthened the relationship.⁹⁶ Since, post-amendment, legislators were aware that their time in office would come to an end, they had begun to look to these special interest groups as prospective employment opportunities.

Given the short time in office mandated by Florida's amendment, legislators must act and learn quickly.⁹⁷ Rubio ascended to the top position in the state assembly at only thirty-five years old. Yet as Speaker, Rubio had to hire former legislators as consultants to assist him in understanding the Florida legislative process and rules.⁹⁸ Most interestingly during the early 2000s, then-Governor Jeb Bush, whose tenure began in 1998 and ended in 2006, exploited Florida's relatively new term limits amendment.⁹⁹ Between 1978 and 1990, the legislature had been dominated by the democratic party.¹⁰⁰ Since 1998, however, the legislature has been dominated by the republican party in both houses.¹⁰¹ Bush used term limits to sway those who wanted to continue their political paths or quickly rise in the leadership to side with him, given that the position of Governor has no term limit.¹⁰²

Nevertheless, Florida was recently selected the second best state to conduct business in, due to its low tax structure, reduced regulations and generally business-friendly environment.¹⁰³ Florida ranks seventeenth in the

⁹⁴ *Id.* at 5.

⁹⁵ *Id.* at 23.

⁹⁶ *See id.* at 24–25.

⁹⁷ *See id.* at 26.

⁹⁸ *Id.*

⁹⁹ *Id.* at 26–27.

¹⁰⁰ *Partisan composition of State Legislatures 1978-1988*, NCSL, http://www.ncsl.org/documents/statevote/legiscontrol_1978_1988.pdf; *Partisan composition of State Legislatures 1990-2000*, NCSL, http://www.ncsl.org/documents/statevote/legiscontrol_1990_2000.pdf.

¹⁰¹ *Partisan composition of State Legislatures 2002-2014*, NCSL, http://www.ncsl.org/documents/statevote/legiscontrol_2002_2014.pdf

¹⁰² FSU report at 27; *see* Florida Constitution Art. 6 § 4.

¹⁰³ *States More Aggressive in Competing with One Another*, *supra* note 80.

United States for its fiscal and regulatory policies and thirtieth for campaign finance laws, but number one for educational freedom initiatives.¹⁰⁴ Yet, the state's GDP growth between 2003 and 2013 was only thirty-seven percent, placing it fortieth overall in the nation.¹⁰⁵ Despite the low productivity, its future economic outlook ranks in the top third of all the states.¹⁰⁶

Overall, the term-limited legislature of Florida has not seen complete success. Its goals to reduce the effects of special interests, foster political equality, and create more constituent-focused representatives have been colossal failures, and its economic performance has been mainly mediocre. Although Florida has scored highly as a business-friendly state in attracting businesses, that is only one outstanding policy initiative of the many policies promulgated.

C. NEW YORK STATE

Since 1978, the New York State Assembly and Senate were ruled by opposite parties, democrats in the Assembly and republicans in the Senate.¹⁰⁷ Only in 2008 did that continuum cease to exist, upon the election of Barack Obama for President, whose election turned out a higher number of democratic voters than usual.¹⁰⁸ The New York Senate saw a turn where democrats controlled the house until 2012, where it returned to the republican majority which stands today.¹⁰⁹ Although term limits are not implemented on the state level, the Senate has included term limits on senators in leadership positions, specifically senators who are the chair or ranking member of a specific committee.¹¹⁰ The rule prohibits any chair or ranking member of a committee from serving eight consecutive years in that

¹⁰⁴ *Ranking: Education Freedom*, FREEDOM IN THE 50 STATES, <http://freedominthe50states.org/education/florida>; *Economic Freedom*, FREEDOM IN THE 50 STATES, <http://freedominthe50states.org/economic/florida>; *Campaign Finance Freedom*, FREEDOM IN THE 50 STATES, <http://freedominthe50states.org/campaign-finance/florida>.

¹⁰⁵ *Rich States, Poor States*, ALEC, http://alec.org/docs/RSPS_8th_Edition.pdf.

¹⁰⁶ *Id.*

¹⁰⁷ *Partisan Composition of State Legislatures, 1978-1988*, NCSL, http://www.ncsl.org/documents/statevote/legiscontrol_1978_1988.pdf; *Partisan Composition of State Legislatures, 1990-2000*, NCSL, http://www.ncsl.org/documents/statevote/legiscontrol_1990_2000.pdf; *Partisan Composition of State Legislatures, 2002-2014*, NCSL, http://www.ncsl.org/documents/statevote/legiscontrol_2002_2014.pdf.

¹⁰⁸ See *Federal Elections 2008*, FEC, <http://www.fec.gov/pubrec/fe2008/federalections2008.pdf> at 5.

¹⁰⁹ *Partisan Composition of State Legislatures, 2002-2014*, NCSL, http://www.ncsl.org/documents/statevote/legiscontrol_2002_2014.pdf.

¹¹⁰ NYS Senate Rule VIII(b).

capacity, thus the rule technically permits a senator after his eighth year to take a year off, then serve another eight years in that same position.¹¹¹ The Assembly however, has no such rule.

Over the past two decades, New York has seen vast strides in passing effective, as well as controversial, legislation - most notably over the last few years. New York has legalized same sex marriage, created a property tax cap for municipalities, revised the union retirement system, enacted stricter gun laws, and raised the minimum wage.¹¹² Despite New York's recent legislative developments, its state productivity has been troubling. New York is ranked dead last in economic performance in the forthcoming years based on the burdens of property taxes (despite the tax cap), personal and corporate income taxes, and other tax burdens.¹¹³ It was cited last year as having almost the worst tax codes for business due to its high regulations.¹¹⁴ Moreover, New York has become notorious for overregulation, noted as being third-to-last in its regulatory policies.¹¹⁵ Its ranking for its regulations is due, among other things, to New York's notoriety as a lawsuit haven, where costs of liabilities must be pushed onto consumers, its state laws over rent control, the unfettered uses of eminent domain, and health insurance mandates.¹¹⁶

Over the years, New York has been exposed to widespread scandals, little change in partisanship, and barely any productivity to push the state economy forward. Whether term limits would be the independent change needed to curb these issues and propel a change is highly unlikely.

D. NEW YORK CITY

1. Legislative Background

New York City has its own lawmaking body, the New York City Council ("the Council").¹¹⁷ Composed of fifty-one members from all five boroughs, the Council oversees the City's agencies, creates and passes its own budget, makes land use decisions within the City, and passes

¹¹¹ *Id.*

¹¹² See, e.g., McKinney's Domestic Relations Law § 10-a; General Municipal Law §3-c; Retirement and Social Security Law §376(a)(2); Labor Law § 652(1); Penal Law § 265.36-.37; Penal Law § 400.10.

¹¹³ *Rich States, Poor States*, ALEC, http://alec.org/docs/RSPS_8th_Edition.pdf, at 32.

¹¹⁴ *NYS Business Climate Ranked Second to Last*, CRAINS NEW YORK, <http://www.craainsnewyork.com/article/20141028/BLOGS04/141029856/nys-business-climate-ranked-second-to-last>.

¹¹⁵ *Regulatory Freedom*, FREEDOM IN THE 50 STATES, <http://freedominthe50states.org/regulatory>.

¹¹⁶ <http://freedominthe50states.org/how-its-calculated#Regulatory>.

¹¹⁷ See generally, *Home*, NEW YORK CITY COUNCIL, <http://council.nyc.gov/html/home/home.shtml>.

legislation.¹¹⁸ Until 1993, term limits were mainly undiscussed, but during the term limit vogue of the 1990s, New York City constituents voted for a change to the New York City charter, imposing two four-year term limits for select City officials and members of the Council.¹¹⁹ The intent of term limits was written “so that elected representatives are ‘citizen representatives’ who are responsive to the needs of the people and are not career politicians.”¹²⁰ In 1996, the Council placed on the ballot the topic of term limits, except this time proposing to extend term limits to three consecutive terms and replacing the current two-term restriction.¹²¹ The measure failed.¹²² A few years later, the Council attempted to extend the limits again, this time by an amendment rather than voter initiative. This was due to the fact that some legislators would be disqualified from seeking reelection after serving only six years, rather than the prescribed eight (§ 25 of the New York City Charter prescribed that any official elected in the year 2001 and thereafter would serve only two year terms—a move to allow for redistricting).¹²³ After a finding by the trial court that a voter referendum was necessary to alter the Charter language, the Appellate Division reversed, finding that a referendum is mandatory only when it actually changes the term of an elected official.¹²⁴ Although passed by referendum, it was still within the purview of the Council to amend the provision since the referendum is “entitled to no greater sanctity or dignity” and the Council’s actions did not seek to curtail the referendum in any way.¹²⁵ As a result, § 25 was amended stating that two two-year terms would only count as one term for term limit purposes, thus permitting a select few to serve for a total of ten years.¹²⁶

These limits stood until 2008 when the Council, after formidable persuasion by then-Mayor Michael Bloomberg who was closing in on the end of his second term, passed an extension of term limits from two terms to three terms, thereby giving all those to whom the term limits applied an extra

¹¹⁸ *About*, NEW YORK CITY COUNCIL, <http://www.council.nyc.gov/html/about/about.shtml>.

¹¹⁹ Richard G. Niemi & Kristin K. Rulison, *The Effects of Term Limits on state legislatures and their applicability to the executive branch*, 4 ALB. GOV'T L. REV. 641, 657 (2011).

¹²⁰ New York City Charter Chap. 50 § 1137 (2004), available at http://www.nyc.gov/html/records/pdf/section%201133_citycharter.pdf.

¹²¹ See *Golden v. N.Y. City Council*, 196 Misc.2d 276, 278 (2003).

¹²² *Id.*

¹²³ *Id.*; NYC Charter § 25(a); *Favoring a Simple Way to Get Another Term*, NY TIMES, <http://www.nytimes.com/2008/10/01/nyregion/01process.html>.

¹²⁴ *Golden v. N.Y. City Council*, 305 A.D.2d 598, 599 (2003).

¹²⁵ *Id.* at 600.

¹²⁶ See NYC Charter §25(a); see also *Favoring a Simple Way to Get Another Term*, NY TIMES, <http://www.nytimes.com/2008/10/01/nyregion/01process.html>.

four years.¹²⁷ The move was challenged in *Cohen v. Bloomberg*, in an effort to restrict all incumbents to the two-term limit restriction in the Charter.¹²⁸ In *Cohen*, the trial division deferred to an ethics board finding on the issue of whether a conflict of interest existed where the Council voted on an extension of its own limits, a vote that affected thirty-five of the fifty-one legislators in the upcoming election.¹²⁹ The board found that a conflict would exist only when it concerned a legislator's *private* financial condition, not the terms and conditions of their service in office.¹³⁰ As such, the trial division concurred with the board's decision, opining that such deference was proper in matters that involved "broad statutory term[s]."¹³¹

By 2010, in the midst of serving his third term, Mayor Bloomberg sought to change back to the two term limit prescribed prior to 2008, except this time through the ballot.¹³² After passing voter approval, New York City has now implemented a maximum two-term limit for city officials and councilmembers, as well as a prohibition on any local law amending that section in the future.¹³³

2. The Idea of the "Citizen Legislature" in the New York City Council

Since the implementation of term limits in 1993, New York City saw an enormous change in power. By 2001, the Council saw two-thirds of the legislators become barred by the term limits.¹³⁴ In the mid 2000s, new legislation passed which had been defeated in the pre-2001 legislature, specifically since the prior Speaker in charge of the Council had opposed certain issues.¹³⁵ By 2013, more than twenty new members were elected to the Council, including the Speaker of the Council.¹³⁶ New style and fresh faces entered the Council chamber, which immediately began passing

¹²⁷ Richard G. Niemi & Kristin K. Rulison *supra* note 119, at 657; *see Council Votes, 22 to 29, to Extend Term Limits*, NY TIMES, http://cityroom.blogs.nytimes.com/2008/10/23/council-to-debate-term-limits-change/?_r=0.

¹²⁸ *Cohen v. Bloomberg*, 24 Misc.3d740, 741 (2009).

¹²⁹ *Id.* at 742; *see Council Votes, supra* note 127.

¹³⁰ *Id.* at 743.

¹³¹ *Id.*

¹³² *See Final Report of the 2010 New York City Charter Revision Commission*, NYC.GOV, http://www.nyc.gov/html/charter/downloads/pdf/final_report_2010_charte_revision_9-1-10.pdf, 11; *Bloomberg Now Backs Two-Term Limit In His Third Term As Mayor*, HUFFINGTON POST, http://www.huffingtonpost.com/2010/10/25/bloomberg-term-limits-_n_773570.html.

¹³³ *See NYC Charter* § 1138(a)–(b) (2010).

¹³⁴ *See NYC Term Limits Revisited*, GOTHAM GAZETTE, <http://www.gothamgazette.com/index.php/about/2783-nyc-term-limits-revisited>.

¹³⁵ *Id.*

¹³⁶ *New City Council Gets Work*, DECIDE NYC, <http://www.decidenyc.com/new-city-council-gets-work/>

legislation to expand paid sick leave - a move promulgated despite notable objections.¹³⁷

Do these new faces truly emulate the “citizen representative” ideology? Of the fifty-one legislators, approximately half have little-to-no experience in government.¹³⁸ However, among the new Council members are teachers, entrepreneurs, attorneys, not-for-profit organizers, ex-state legislators, a past councilmembers’ chief of staff, and New York State delegates.¹³⁹ Naturally, there are those legislators who have no relevant background but community representation, but also those who are tightly connected politically and thus exude the aura of a career politician. Moreover, a considerable increase in the numbers of “citizen representatives” has not come to fruition. This is especially in recent years with the onslaught of controversies within the Council concerning corruption and deceit.¹⁴⁰ Although there will always be “bad apples,” whether term limits is the solution seems to be *a* factor but not *the* factor given New York City’s unique demographic and local structure which although permitting change, does not substantially abate the issues entirely. Although objectively better than its counterpart in the New York State legislature, to juxtapose the benefits realized in New York City to the United States Congress based solely on term limits would be an unjustifiable stretch indeed.

IV. CONCLUSION

Ultimately, applying term limits to the United States Congress would be misguided. Based on the research discussed above, legislative experience would suffer, the idea of “the citizen legislator”¹⁴¹ would be more idealistic than realistic, lobbyists would have a heightened influence, and partisanship would not result in any dramatic polarization of ideology.

¹³⁷ *Id.*

¹³⁸ *See About the Council*, NYC CITY COUNCIL,
<http://council.nyc.gov/html/members/members.shtml>

¹³⁹ *Id.*

¹⁴⁰ *See The City Council's Residency 'Scandal' - Not So Simple*, NY DAILY NEWS,
<http://www.nydailynews.com/opinion/city-council-residency-scandal-not-simple-article-1.124088>; *New York City Councilman Arrested on Corruption Charges*, NY TIMES,
<http://www.nytimes.com/2015/02/04/nyregion/new-york-city-councilman-arrested-on-corruption-charges.html>; *Manhattan U.S. Attorney Announces Agreement*, JUSTICE.GOV,
<http://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-agreement-former-new-york-city-council-member>.

¹⁴¹ *See Part II.*

Thornton ruled that term limits would need to be applied through the mechanism of a constitutional amendment and, under Article V procedure, enacting term limits would thus be implausible.¹⁴² Pursuant to Article V, two-thirds of both houses of Congress or two-thirds of the states must call a constitutional convention to propose such an amendment.¹⁴³ Congress's extreme partisanship today would make it nearly impossible for two-thirds of the members in each house, especially in these economic and social times, to agree on such a controversial issue so low among the public's priorities. Moreover, as it stands now, thirty-five states do not have term limits.¹⁴⁴ To provoke states which do not have a term limit in their own legislature to push for one in their national legislature would be an uphill battle indeed. Moreover, the constitutional amendment would need to be ratified by three-fourths of the states.¹⁴⁵ That would require thirty-eight states to ratify term limits—a feat in this day and age that is highly implausible. The amount of public opinion, lobbying and media focus required to generate a following of that caliber is simply not feasible.

Just a glimpse at the history and data for the few states provided in this Article suggests that term limits are not worth the effort, and that federal term limits would not work in reality. The argument for term limits is a state-level argument, one that should be decided on a state-by-state basis and which meshes with each state's culture. To push the nation through such a daunting task, while alternative remedies like simply voting out the undesired legislator are available, is just nonsense.

Voter turnout is the true key to change.¹⁴⁶ If constituents feel that their lawmaker - freshman or veteran - is relying on special interests or lobbyists' opinions, or advocating for wealthy donors, then the voters should vote that lawmaker out of office.¹⁴⁷ If constituents believe that their lawmaker is overly partisan, then they should vote for a moderate. If constituents feel that their representative is solely career-oriented, then they should vote for someone who is more focused on their constituency. But that is not the way it is. In the 2014 elections for example, voter turnout was a dismal 36.3% overall.¹⁴⁸ The 2008 elections—one of the higher turnouts in

¹⁴² See generally *United States Term Limits v. Thornton*; U.S. CONST. ART. V.

¹⁴³ U.S. CONST. ART. V.

¹⁴⁴ See Part III.

¹⁴⁵ U.S. CONST. ART. V (emphasis added).

¹⁴⁶ See *Voter Turnout*, FAIRVOTE, (2014), available at <http://www.fairvote.org/research-and-analysis/voter-turnout/>. (“Robust voter turnout is fundamental to a healthy democracy”).

¹⁴⁷ See *What Affects Voter Turnout Rates*, FAIRVOTE, (2014), available at <http://www.fairvote.org/research-and-analysis/voter-turnout/what-affects-voter-turnout-rates/>. (“politicians are more likely to respond to the desires of their wealthy constituents than of their poorer constituents, in part because more of their wealthy constituents' vote”).

¹⁴⁸ *The Worst Voter Turnout in 72 Years*, NY TIMES,

http://www.nytimes.com/2014/11/12/opinion/the-worst-voter-turnout-in-72-years.html?_r=0.

history—was only slightly above 60%.¹⁴⁹ This means that approximately 40% of the United States eligible to vote (or over 82,000,000 people) did not exercise that privilege.¹⁵⁰ To put this in even greater perspective, the United States is ranked 120th in national vote to voter registration ratio.¹⁵¹ Although the methods to increase voter turnout and education are issues outside the scope of this Article, those tasks may be less exhaustive and more productive than implementing term limits on Congress, when the current data is unpersuasive to justify commanding such a significant constitutional change to the operation of our federal government.

For democracy to function effectively, and for the Congress to function effectively, the people of this country must go to the ballot box. At the end of the day, the people shouting for change need only look within and make a difference by showing up at the polls on Election Day.

¹⁴⁹ *Voter Turnout Increases by 5 Million in 2008 Presidential Election*, CENSUS.GOV, <https://www.census.gov/newsroom/releases/archives/voting/cb09-110.html>.

¹⁵⁰ *Id.*

¹⁵¹ *See Voter Turnout Rates from a Comparative Perspective*, IDEA.INT, <http://www.idea.int/publications/vt/upload/Voter%20turnout.pdf> (at 78-79).