

Adapting to State Legislative Term Limits

Briefing

Center for Ethics in Public Life

University of Missouri St. Louis

November 2012

As of today fifteen states have had legislative term limits policies in place for anywhere from 12 to 22 years. They were voted into place beginning in 1990 with Oklahoma and Colorado. The last state to vote them in was Nebraska in 2000. Of those fifteen states six have instituted lifetime limits: Missouri (8 in each chamber), Nevada (12 in each chamber), Oklahoma and California (12 total), Michigan and Arkansas (6 in the House and 8 in the Senate); and nine states have implemented consecutive limits: Maine, Colorado, Arizona, Florida, Montana, Ohio, and South Dakota (8 in each chamber), as well as Louisiana (12 in each chamber) and Nebraska (8 in the Senate and none in the House).¹ The constitutional amendment instituting term limits in Missouri (Article III, Section 8) passed in 1992 with 75% support from the public. Reported spending on the campaign totaled \$284,000 pro, and \$12,000 against.²

The following partially summarizes information on term limits presented at the Center for Ethics in Public Life's Conference on state legislative term limits (Oct. 6th 2012) by: Dr. David Valentine of the University of Missouri Columbia; Dr. Marjorie Sarbaugh-Thompson of Wayne State University; Dr. Thad Kousser of the University of California San Diego; and Paul Jacob, former president of U.S. Term Limits.

Legislative Demographics

Counter to claims from supporters prior to their implementation, term limits have not had a significant effect on the amount of women or minorities in office. Dr. Kousser points out that according to his studies women gained more seats in states without term limits than in states with term limits from 1991-2009. Furthermore, while areas with rapidly growing minority populations did see some small gains in minority representation, stable minority populations did not seem to benefit from term limits.

Term limits have also not ushered in a new era of citizen legislators. In a study of term-limited legislators in six states Dr. Kousser found that 81% of them remained in the public sector. They either ran for another office (54%), found employment within government bureaucracy (17%), or joined a political lobbyist or interest group (10%).

¹ Cain, Bruce & Kousser, Thad "Adapting to Term Limits: Recent Experiences and New Directions" Published by the Public Policy Institute of California, 2004.

² 1992 *Missouri Campaign Finance Report*, Missouri Secretary of State. As cited in Richardson, Lilliard E.; Valentine, David; and Daily Stokes, Shannon "Assessing the Impact of Term Limits in Missouri" *State and Local Government Review* 2005 37:177. It should be noted that given the overwhelming popular support for term limits the money was probably not decisive. The imbalance may simply reflect the opposition's recognition of an unlikely victory

Shifts in Power

Lobbyists and Advocates

Term limits have significantly shifted the power structures within government, though not in the ways that one might think. A common argument against term limits is that they have made lobbyists more powerful. The idea seemed to be that long-serving lobbyists would become the institutional memory of the legislature, supplanting long-serving legislators as the go-to people for history, context and details on any particular issue. The political scientists find mixed data on this issue. Perhaps this is because the effect described above is counteracted by the fact that term limits have also made lobbyist's lives much more unpredictable in the following ways: they have to deal with an accelerated rate of change in the legislature; chamber and committee leadership positions cycle more quickly; and lobbyists and advocates can no longer rely on long-term relationships with legislators.

Dr. Valentine points out that part-time lobbyists and advocates have a more difficult time adapting to the rapid rate of change. Therefore, power among lobbyists and advocates has shifted toward those who can afford to have a constant and year-round presence in the legislature. Paul Jacob points out that moneyed special interests have rarely supported term limits, which may speak to the fact that they don't see themselves as having more power under them.

State Agencies

Dr. Sarbaugh-Thompson concludes from her extended study of term limits in Michigan that legislative oversight of state agencies has suffered significantly since term limits were implemented.³ The amount of time that legislators report spending on oversight has declined, and the amount of interaction that administrators report having with legislators has declined. Among the long-serving legislators ejected by term limits were many who had built up a certain amount of trust with administrators and potential whistleblowers, thus cutting off avenues of reporting that are crucial to transparent governance. Legislators who do spend time on oversight will necessarily have a shorter tenure, and relatedly, a more limited body of knowledge about many issues and about the balance of power between the legislature and the agencies, ceding power to the department heads.

An explicit example of this in Missouri would be the attempt during the 2003 budget process by the House to simply appropriate block amounts to agency heads without the traditional specifics about how those funds were to be spent on administration and programming. This massive ceding of power to the agencies did not happen only because some on the senate budget committee knew the issues at stake and had the expertise and trusted staff to craft a fully detailed appropriation with the necessary cuts.

Budgeting and the Executive

The budgeting process in particular is one where shifts in power and policy can be measured. Dr. Kousser measured a significant drop in the amount of changes that were made to the governor's budget in states after term limits as compared to

³ Sarbaugh-Thompson, Marjorie, et al. "Legislators and Administrators: Complex Relationships Complicated by Term Limits" *Legislative Studies Quarterly*, XXXV, 1, Feb. 2010.

before term limits, giving the governor much more power over the budgeting process. Furthermore, several studies have shown that in term limited states the budget and debt tend to increase and bond ratings tend to suffer.

Overall term limits have seen a significant shift of power away from the legislature to the executive branch and to administrators and agencies, particularly in the budgeting process.

Partisanship

Although it is perhaps the most talked-about effect of term limits, partisanship is a difficult phenomenon to measure. Also, it is difficult to differentiate the national trend toward party polarization from the possible effects of term limits. After all, as Paul Jacob pointed out, Washington has gotten significantly more partisan in recent years, but without term limits. Besides much anecdotal evidence, Dr. Kousser points to several factors that indicate that some portion of the increased partisanship in state legislatures can be attributed to term limits. For example he measured a significant shift in the minority party's ability to pass legislation in term-limited states. The number of minority sponsored bills in term limited states has decreased compared to the number of majority sponsored bills.

In Missouri specifically, the huge increase in party caucuses since term limits indicates increased party control of the process. This coincides with anecdotal evidence given by legislators at the conference. Primarily legislators point out that term limits have undermined the ability to build relationships and trust across the partisan aisle when it is necessarily short-lived. Finally, term limits have created a "lame duck" term at the end of a legislator's tenure when legislators will not be held responsible for their actions to their current constituency. This can create counterproductive incentives for political grandstanding or deal-making.

Next Steps:

The response to term limits has run the gamut: from calls to expand them to all state offices to calls for complete repeal. Given the fact that only a few state offices are not term limited (Sec. State, AG, Lt. Gov. & Auditor) the most consequential reform would be in the other direction, and this possibility has recently gotten some attention. A number of other options for modifying the statute have been put forward:

1. Lengthen to 12 years in each chamber (24 possible over-all)
—(recommended by joint committee in 2000)
2. Lengthen to 16 years in each chamber (32 possible over-all)
— (SJR 12, 2011, (Green))
3. Alter term limits to allow all 16 years in either chamber
—(HJR 41 (Nasheed), HJR 53 (Neth), HJR 62 (Schupp), HJR 65 (W. Gray), HJR 66 (Colona) 2012)
4. Alter term limits to allow less than 16 (14?, 12?) years, but in either chamber.
—(CA Prop 28, passed June 2012)

Advocates point out that any reform in this direction is distinctly undemocratic given that wherever they have been on the ballot term limits have passed by wide margins. Therefore reforming them would be counter to the will of the public. By the same reasoning weakening term limits will be politically very difficult. Paul Jacob points out that in many places where this has been attempted (Florida, Arkansas, Montana) the measure has been defeated by wider margins than that by which term limits passed. California is the exception here, though whether the measure weakened or strengthened term limits is debatable. It reduced the total number of possible years served, but allowed all those years to be served in either chamber, thereby probably increasing the average number of years legislators serve.

Dr. Valentine discusses another approach at reform. Rather than attempt to change term limits due to their effects on the legislative process, perhaps we should change the legislative process to address and ameliorate those effects. He has suggested a number of process changes that might serve to adapt the process to the new term-limited reality:

- Training
 - Expand freshmen orientation including Robert's Rules & issue-specific (post-session) training
 - Handbook for legislators
 - Just-in-time training, brief sessions on: Appropriations, Consent Bills, Conference Committees
- Chamber Procedure
 - Adopt and Revise Deadlines
 - Adopt and Revise Joint Rules
 - Revise Chamber Action (resolve into committee of the whole)
 - Maximize early part of session
- Committee Procedure
 - Adopt Robert's Rules
 - Limit bills introduced by members
 - Reduce the number of committees
 - Authorize use of committee bills
 - Expand use of interim committees for major issues
 - Allow bill carry-over
 - Restore evening hearings
 - Enforce constitutional rules on clarity and single purpose of bills

All in all, after the implementation of term limits neither the complete collapse of the legislative process forecast by some term limits opponents, nor the beneficent revolution of the citizen legislator described by some advocates, have come to pass. Overall political scientists and many who work in and with the legislature have come to view the unintended negatives of term limits as outweighing the positives. On the other hand, term limits have a very clear and strong popular mandate that it would be both politically dangerous and very

difficult to challenge. For that reason perhaps Dr. Valentine's legislative changes deserve some serious consideration.