

## **Introduction**

There is an undisputed advantage to being an incumbent in all elections. Term limits are aimed at curbing this reality. There are however many arguments both for and against term limits. Legislative term limits exist on a state and local level in governments across the country. The term limits movement began on a large scale in the mid 1990's, but have existed on a municipal level since 1851 in the Indiana Constitution.<sup>1</sup> Yet, the infancy of debate over legislative term limits has not yet proven the effects of term limits, so there remains mere arguments of what the benefits and costs of adopting term limits are. Nevertheless, term limits remain popular among voters across the nation.<sup>2</sup>

Defeating an incumbent's electoral advantage is the purpose and inevitable effect of limiting the number of terms one person may sit in an elected office. Why this is a good thing is left to argumentative rhetoric. There are many argued benefits to legislative term limits. Term limits increase the diversity among candidates and legislators, especially women and minorities. Legislative term limits create equality between districts because there will not be super senior legislators with exaggerated clout. Term limits bring new candidates and legislators with a wider array of private sector and other levels of governmental experience. Lastly, more frequent turnover in political leadership allows for new ideas and less entrenched policy. Despite these numerous arguments in support of term limits, not all are convinced.

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<sup>1</sup>Fagre, Daniella. "Microcosm of the Movement: Local Term Limits in the United States" U.S. Term Limits Report. 1995

<sup>2</sup>Ibid

There are people and experts who believe that legislative term limits have no place in American government. There are many arguments advanced in opposition to term limits. Term limits result in a loss of experience in the legislature. Regular elections already serve as a form of term limits and they are undemocratic. Term limits shift power and influence to the executive branch, bureaucratic staff, and lobbyists. Term limits increase the number of unaccountable legislators who know they are not seeking reelection.

Although the debate over term limits continues, there are examples of term limits in practice. These examples do provide a glimpse into the impact of term limits. The California State Legislature adopted term limits in 1990. Monroe County, New York had 10 year legislative term limits go into effect and for the first time in 2005 term limit out ten legislators. Cities in Orange County, California has lived with term limits since as far back in one city as 1966, but most in the early 1990's.<sup>iii</sup> Nonetheless, the impact of term limits remains in question.

The early effects of the term limits movement are beginning to be seen. Yet, there remains both arguments for and against legislative term limits. Places where term limits have been passed and implemented offer some insight. What problems exist in Erie County which term limits can definitively address should be the focus of any revision consideration.

### **Argued Benefits of Legislative Term Limits**

The first and most common argument for term limits is that they increase diversity among candidates and legislators, especially women and ethnic minority groups. Simply understood, the

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<sup>iii</sup> Petracca, Mark P. "Municipal Term Limits in Orange County, California." National Civic Review. Spring/Summer 1994. Vol. 83, issue 2. 1994.

argument runs that more open seats means more opportunities which means more diversity. The reason term limits increase diversity more than regular elections is because the huge disadvantages one faces against an incumbent scare people away from running. By taking away the incumbent and leveling the playing field, more people rightfully believe that they can win<sup>iv</sup>. Most examinations of the effects of term limits suggest that this is very true. There has been significant increases in the number of both women and minorities running and winning after implementing term limits in the state legislatures of Michigan, forty-two percent more women and sixty-five percent more African Americans, Maine, and California, nearly a 400% increase in Hispanic representation.<sup>v</sup> Despite the increases, not all are convinced that term limits actually will increase the number of women in legislatures. Renee Van Vechten, while agreeing that term limits in California have increased the number of ethnic minorities, does not think that term limits increased the number of women.<sup>vi</sup> Van Vechten points to the rate of women joining the legislature, which has been steadily increasing since the 1970's, well before term limits, and with no boost in 1990 when term limits were adopted for the California state legislature.<sup>vii</sup> Also, the Center for American Women and Politics is not convinced that term limits have increased the number of female representatives in state legislatures because many women were term limited and

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<sup>iv</sup>Basham, Patrick. "Assessing the Term Limits Experiment: California and Beyond." Cato Institute Policy Analysis No. 413. 2001.

<sup>v</sup> Ibid

<sup>vi</sup>Van Vechten, Renee. "Ten Years Into Term Limits: Academic Findings and the View from the Legislature." Panel 4-The Changing Face of Representation and Policy. University of California at Berkely. May 17, 2001.

<sup>vii</sup>Ibid

replaced by men.<sup>viii</sup> There simply is no consensus on the overall impacts on female representation, but there is no disputing the increase in ethnic diversity.

A less common argument for term limits is that legislative term limits create equality between districts because there will not be super senior legislators with exaggerated clout. Harvard Law professor, Einer Elhauge claims that the fundamental reason for term limits is to reduce the interdistrict inequalities in legislative power.<sup>ix</sup> This reason is so fundamental because it is the only argued reason that explains why this cannot be accomplished by simply voting incumbents out. The longer a legislator remains in office the more power and influence the legislator holds within the legislature itself. For instance, committee assignments, leadership positions, media attention and many other senior legislator privileges. As a result, it actually becomes in the best interest in the voter to leave their incumbent in office to maintain or build legislative superiority over the other districts. Term limits do not allow long term or permanent legislative superiority and relieve the voter from the double edged sword position of voting out an unwanted incumbent and keeping legislative seniority. Elhauge points to the incumbency advantage prior to term limits where ninety-seven percent of members of the state-assembly were reelected and after term limits the advantage was only four to five percent.<sup>x</sup> Interdistrict equality is certainly a virtuous aim, however that voters are aware of other districts' legislators

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<sup>viii</sup>Carol, Susan and Jenkins, Krista. "Unrealized Opportunity? Term Limits and the Representation of Women in State Legislatures." Center for American Women and Politics. 2002.

<sup>ix</sup>Elhauge, Einer. "What Term Limits Do That Ordinary Voting Cannot." Cato Institute Policy Analysis No. 328. 1998.

<sup>x</sup>Ibid

and the legislative clout relative to their own legislator is dubious to me.

In addition to diversity of gender and ethnicity term limits are also argued to add professional diversity, specifically more experience in the private sector and other levels of government. The term limits in the state of California have produced a noticed increase in the number of legislators whom are former private business persons and former local officials.<sup>xi</sup> Basically, if experience is lost from term limits, the only lost experience is within the particular legislature, not experience from the invaluable business backgrounds and other elected positions.

Another argument for legislative term limits is that more frequent turnover in the political leadership of the legislature will allow new ideas into the government and prevent stale and entrenched policy. As legislators remain in office for a longer number of years they become less in touch with current ideas. Also, because of previous positions and statements it becomes difficult to introduce new political ideas and policies. Term limits force new people into the legislature. The newly elected legislators are more in touch with current and fresh ideas while not having the burden of remaining consistent with past positions. This argument remains highly speculative.

### **Argued Costs of Legislative Term Limits**

As common as diversity is argued in favor of term limits, loss of experience is argued in opposition to term limits. By forcing out experienced incumbents, the legislature becomes filled with people with less or no institutional experience.<sup>xii</sup> Legislators gain a great deal by

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<sup>xi</sup>Ibid

<sup>xii</sup>Bordetsky, Ann, and Lori Kim, "Unintended Consequences of Proposition 140: California's Legislative Oversight," paper for Political Science 171: California Politics, University of California, Berkeley, Spring 2002.

understanding the history of certain issues and negotiations. Legislators build relationships among one another, lobbyist, staff, media and anyone else involved in the legislature. These relationships help the legislators function as efficiently as possible. When legislators are removed as these relationships are built the legislature will not function as efficient as possible and representation will less effective. Monroe County Executive, Maggie Brooks, noted this loss of experience as the many new legislators took office.<sup>xiii</sup> California Legislators have been found to be less likely to kill bad bills in committee since term limits, lack a collective memory on policy positions, and utilize budgetary oversight.<sup>xiv</sup> Seventy-seven percent of elected officials in Orange County disagree that term limits decrease the quality of government.<sup>xv</sup>

Another argument is that regular scheduled elections already serve as a form of term limits and therefore term limits are undemocratic. This argument is purely normative and philosophical. Term limits do restrict voter choices, in fact that is the purpose of them. The response to that argument is that real choice is denied by the incumbent advantage and term limits further democratic principles of what choice is. Also, there is a history of limiting voter choices. There are term limits on executives, of course the President of the United States. Age, citizenship status, and criminal record requirements on many elected positions. Restricting voter choice has

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<sup>xiii</sup> Goodman, James. "New Monroe Legislature Meets." Rochester Democrat and Chronicle. New York. January 4, 2006

<sup>xiv</sup> Cain, Bruce E and Thad Kousser. "Adapting to Term Limits: Recent Experiences and New Directions." Public Policy Institute of California. 2004.

<sup>xv</sup> Petracca, Mark P. "Municipal Term Limits in Orange County, California." National Civic Review. Spring/Summer 1994. Vol. 83, issue 2. 1994.

always been a part of American democracy. Most importantly though, is the fact that term limits are so popular among voters. The average percentage of the vote of local term limits measures is 70 percent.<sup>xvi</sup> If the people themselves are overwhelmingly in favor of limiting their own choices to candidates who have not served more than a given number of years, how can that not be democratic.

As mentioned before, term limits will result, at the least, in a loss of experience within the legislature. It is therefore argued that lost power is shifted to other groups. For instance, the executive branch, bureaucratic staff, or lobbyist. A study of the California State Legislature found that, “term limits have greatly reduced the legislature’s ability to rewrite executive proposals.”<sup>xvii</sup> Every city in Orange County has a council-manager form of government and fifty-four percent of election officials believe power shifted from the council to the manager after term limits.<sup>xviii</sup> Bureaucratic staff also have been given a longer leash as a result of term limits because legislative committees lack the experience to ensure bureaucrats are acting efficiently and with legislative intent.<sup>xix</sup> The same study however noted no change in special interest power or financial donation.<sup>xx</sup>

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<sup>xvi</sup>Fagre, Daniella. "Microcosm of the Movement: Local Term Limits in the United States" U.S. Term Limits Report. 1995

<sup>xvii</sup> Cain, Bruce E and Thad Kousser. “Adapting to Term Limits: Recent Experiences and New Directions.” Public Policy Institute of California. 2004.

<sup>xviii</sup>Petracca, Mark P. “Municipal Term Limits in Orange County, California.” National Civic Review. Spring/Summer 1994. Vol. 83, issue 2. 1994.

<sup>xix</sup> Cain, Bruce E and Thad Kousser. “Adapting to Term Limits: Recent Experiences and New Directions.” Public Policy Institute of California. 2004.

<sup>xx</sup>Ibid

A final argument in favor of term limits is that they create unaccountable legislators who do not have to run again. Term limits do prevent legislators run running for reelection and this does leave the legislator unaccountable. A term limited legislator is no less accountable than an incumbent with no significant challenge at reelection.<sup>xxi</sup> In addition, many term limited legislators continue politically to campaign for a different position and remain accountable.

### **Conclusion**

Despite the many arguments both for and against term limits there are very few clear impacts of adopting legislative term limits. Most of the arguments lack any real proof, but deserve some consideration and at least notice nonetheless. However, early indications do reveal an increase in minority legislators, some loss of experience in the legislature, and most certainly an elimination of incumbent advantage. It remains unclear how female legislators are really affected by term limits. The experiences of term limits in California, Monroe County New York and Orange County California provide small windows into the effects of term limits with unconvincing results.

The Erie County Legislature may have a need for legislative term limits. Prior to the 2005 elections the legislature was dominated by long lasting incumbents. There was a tremendous amount of change in 2005, but predominantly because many candidates opted not to run. In fact, seven incumbents simply decided not run. Of the eight that chose to run again, six of them were able to still win despite the harshest of political climates. Of the nine new faces in the Erie

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<sup>xxi</sup>Elhauge, Einer. "What Term Limits Do That Ordinary Voting Cannot." Cato Institute Policy Analysis No. 328. 1998.

County Legislature, only two are there because of defeating an incumbent.<sup>xxii</sup> Term limits for the Erie County Legislature would eliminate the advantage incumbents clearly hold right now and change would not be left to whether incumbents choose not to run.

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<sup>xxii</sup> Spina, Mathew. "Democrats add to majority in Legislature; 12-member bloc can override vetoes." Buffalo News. New York. November 9, 2005.

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