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To: Senate Committee on Ethics, Elections and Local Government
From: Joanna Wochner, Research Analyst
Re: Term Limits

TERM LIMITS IN THE STATES

This memorandum provides information on term limits considered and enacted in states and at the federal level, as well as information about litigation in states that have enacted term limits for either state or federal legislators.

Current Term Limits

Term Limits – State Legislatures

Currently, there are 15 states that have term limits for state legislators. The states with term limits in place include: Maine, California, Colorado, Arkansas, Michigan, Florida, Ohio, South Dakota, Montana, Arizona, Missouri, Oklahoma, Nebraska, Louisiana, and Nevada. Term limits in the states range from 6 to 12 years and are either consecutive or lifetime limits.

In total, 21 states have, at some time, approved legislative term limits. However, those limits have been repealed by the legislature or declared unconstitutional by the courts in six states. Term limits were repealed by the state legislatures of Idaho and Utah, and the state supreme courts of Massachusetts, Oregon, Washington, and Wyoming declared term limits to be unconstitutional.

Kansas

In 1994, a constitutional amendment creating term limits for members of the Kansas legislature was introduced in the Kansas Senate. The proposed amendment died in a senate committee and was never passed out of the legislature. Additionally, the Kansas House of Representatives considered a constitutional amendment to limit the number of terms individuals could serve as secretary of state and attorney general. That proposal also never appeared on a ballot for consideration by the voters.

Term Limits – U.S. Congress

State imposed term limits on United States senators and representatives have been declared unconstitutional by the Supreme Court of the United States. This court decision was the result of a 1994 attempt by 24 states to pass term limits for federal legislators

Method of Enacting Term Limits

The majority of states with term limits have enacted those limits through direct initiative, meaning the voters themselves introduced the constitutional amendment and it was placed directly on the ballot without consideration by the state legislatures. The state of Kansas does not have this type of process.

All of the states that have ever adopted term limits for legislators have done so by means of a direct initiative by the voter, except the state of Louisiana. Louisiana's term limits were initiated by the state legislature.

Types of Term Limits

As noted above, term limits in the states are either consecutive or lifetime limits. Those states with consecutive limits limit a legislator to serving a number of years in a chamber. Once the limit is reached, the legislator may either run for another office or leave the legislature. After a certain number of years, the legislator may again run for a seat in the original legislative chamber and hold office for the number of years allowed in the limit.

In contrast, lifetime limits mean that after a legislator has served a certain number of terms, the legislator is forever banned from serving in that office again.

Litigation

The states' enactment of term limits generated a number of court cases. The following information highlights litigation activities in the states, including term limits upheld and struck down by the courts.

Term Limits Upheld

Arkansas

The Supreme Court of the United States held that states could not adopt additional qualifications for U.S. Congressional candidates by imposing term limits on federal legislators. The term limits for Arkansas state legislators were upheld by the Court.

California

The 9th Circuit Court held that the California proposal failed to provide adequate notice to voters that it would severely burden the people's fundamental rights by imposing a lifetime ban on running for office after reaching term limits. The Court did not take a position on whether

a state can impose lifetime term limits on its legislators without violating the Constitution. The 9th Circuit Court of Appeals reversed and upheld the term limits, stating term limits were an effective means to promote democracy through competitive elections.

Michigan

The Federal District Court upheld lifetime term limits, indicating that while the limits slightly narrowed the field of candidates, they did not prevent voters from electing candidates who share their views. The Court also said state ballot initiatives only can be overturned if the ballot language "works a patent and fundamental unfairness on voters."

Montana

The Montana Supreme Court rejected the lawsuit because the suit was not brought until ten years after the initiative was passed. The lawsuit alleged the amendment to the Montana Constitution creating term limits violated the single subject rule.

Term Limits Struck Down

Massachusetts

The Massachusetts Superior Court held that term limits could not be changed through legislation, but instead required a constitutional amendment.

Oregon

The Oregon Supreme Court held that the Term Limits Initiative violated the state's single-subject rule, because the Initiative contained two or more constitutional amendments that should have been voted on separately under Article XVII, section 1, of the Oregon Constitution.

Washington

The Washington Supreme Court found the term limits passed into law to be unconstitutional. The Court said term limits were additional qualifications for political offices. Statutes cannot add to qualifications when the Constitution sets those qualifications.

Wyoming

The Wyoming Supreme Court ruled that the term limits violated provisions of the state constitution setting eligibility requirements and ensuring equal political rights.

| Term Limits in States Surrounding Kansas | | | | |
|---|-----------------------|----------------------------|----------------------|---|
| State | Year Effective | Limits - Years | Type of Limit | How Enacted |
| Nebraska | 2000 | 8 - Senate | Consecutive | Direct Initiative, Constitutional Amendment |
| Colorado | 1990 | 8 - House, 8 - Senate | Consecutive | Direct Initiative, Constitutional Amendment |
| Oklahoma | 1990 | 12 - House, 12 - Senate | Lifetime | Direct Initiative, Constitutional Amendment |
| Missouri | 1992 | 8 - House, 8 - Senate | Lifetime | Direct Initiative, Constitutional Amendment |

Recent Proposals

2012

Nebraska (Amend. 3)

- Legislatively Referred, Constitutional Amendment
- Failed
- Would have raised term limits from 8 to 12 years

2008

California (Prop. 93)

- Direct Initiative
- Failed
- Would have increased term limit to allow legislators to remain in current office up to 12 years, serve all years in one chamber

South Dakota (Amend. J)

- Legislatively Referred, Constitutional Amendment
- Failed
- Would have repealed term limits

2007

Maine (Question 5)

- Legislatively Referred, Constitutional Amendment
- Failed
- Would have extended term limits from 8 to 12 years

2006

Oregon (Measure 45)

- Direct Initiative
- Failed
- Would have made term limits 6 years for house members, 8 years for senate members, or a total of 14 years in the legislature

2004

Arkansas (Prop. 1)

- Legislatively Referred, Constitutional Amendment
- Failed
- Would have extended terms to 12 years for both house and senate members

Montana (Measure C-42)

- Legislatively Referred, Constitutional Amendment
- Failed
- Would have extended term limits to 12 years

2002

California (Prop. 45)

- Direct Initiative, Constitutional Amendment
- Failed
- Would have allowed voters to petition SOS to permit termed-out legislator to serve up to 4 more years in office

